

FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA



# **Parliamentary Joint Committee Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry**

**FPA Supplementary Submission to:**

Parliamentary Joint Committee  
on Corporations and Financial Services

**Public Hearing**

**14 October 2014**



# Supplementary submission

FPA RECOMMENDATIONS TO PJC ON CORPORATIONS AND FINANCIAL SERVICES | DATE: 14.10.2014

## FPA Recommendations Summary

1. From 1 January 2018, new financial planners and financial advisers must:
  - a. hold an approved degree (AQF7 level) as a minimum entrance education standard to be eligible to provide tier 1 personal financial advice
  - b. meet relevant experience requirements equaling one year full time in the previous three years
2. Existing financial planners and financial advisers will be eligible for appropriate transition arrangements, including bridging courses, completing additional units of study, or completing assessment options to meet the new education requirements by 1 January 2019
3. The current RG146 be dropped and replaced with a holistic framework to financial adviser education, including a new curriculum approved by the Financial Planning Education Council (FPEC) at AQF7 level.
4. All financial planners and financial advisers will be required to meet minimum continuing professional development (CPD) requirements of 90 points/hours over a triennium
5. No national exam required.
6. The development and implementation of a co-regulatory design, which recognises and facilitates the role of 'recognised' professional bodies in assisting the regulator to achieve its consumer protection and confidence mandates
7. Professional bodies be recognised by meeting certain qualification criteria - ie. The Professional Standards Councils (PSC)
8. The use of the titles financial planner and financial adviser be permitted only by individuals holding a Practising Certificate as a member of a recognised professional body
9. General Advice be re-termed 'general or product information' and be limited to the provision of 'factual information and/or explanations' relating to financial products



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## FPA proposed Education and Professional Standards Framework

### EDUCATION

Education Council  
(FPEC)

- Council is independent and has representation of professional bodies and education providers
- Council is funded by professional bodies and education providers (no institutions so as to remove any conflicts)
- Sets education for all providers of personal advice
- Sets national curriculum for education providers to meet minimum education standards
- Approves education courses as meeting minimum education standards
- Sets and approves bridging options to meet minimum education standards
- Audits education providers
- Maintains register of approved education providers/ courses that meet curriculum

### STANDARDS

ASIC

- Licensing
- Register
- Enforce Corporations Act
- Provide regulatory guidance to comply with the law

TPB

- Tax Agent Approval
- Register
- Enforce TASA requirements
- Set minimum CPD
- Set minimum experience requirements
- Provide regulatory guidance to comply with the law

Professional Standards Council\*

Recognised Professional Bodies  
(i.e. meet criteria recognised by PSC)

- Set entry standards for members
- Set Code of Conduct for members
- Set Professional standards for members
- Set CPD requirements for members
- Has responsibility for enforcement of the Code, Standards and CPD on members
- Financial Advisers/Planners must be members of a recognised professional body

\*Government Statutory Body for approving, monitoring and enforcing professional standards.



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## Current environment and responsibilities

### FoFA

- July 2012 – Licensees and ARs permitted to choose voluntary compliance with FOFA
- July 2013 – Compliance with FOFA becomes mandatory, except for some conflicted remuneration issues
- December 2013 – Coalition government announces changes to FOFA (Streamlining FOFA); ASIC compliance on measures to be changed on hold
- July 2014 – Mandatory compliance with all of FOFA commenced
- Overall adviser numbers had not changed significantly in response to FOFA.
- There has been a reduction in the relative value of investment commissions and an increase in advice fees as a result of FOFA.
- Most licensees have not changed the type of advice they provide as a result of FOFA, although some licensees report an increase in scaled advice and strategic advice.
- Most licensees reviewed their APLs, and FOFA has directly affected the composition of one third of the surveyed licensees' APLs.
- The greatest compliance challenges and risks stemmed from the best interests duty, fee disclosure statements, and changes to internal systems in response to FOFA.
- 90% of the retail clients who the surveyed licensees serviced were the clients of large licensees, and large licensees had the largest number of passive clients.

### TASA

- The Tax Agent Services regime commenced on 1 July 2014 for financial planners
- Approximately 1500 licensees have registered with the TPB as a tax (financial) advice service
- The transition period ends on 1 July 2017

### ASIC powers

- It is our understanding that ASIC does not have rule making powers
- ASIC has a mandate to create and enforce education and professional standards in the financial planning profession through the Australian Financial Services license regime.
- ASIC's obligations is to enforce the law through regulatory guidance
- While Regulatory Guide 146 establishes training and competency standards for financial advisers, it is a guidance note which only serves to explain ASIC's interpretation of the Corporations Act.
- ASIC has the power to set license conditions for individual licensees.
- ASIC does not have a more direct power to change education and professional standards for financial planners, such as an ability to issue a Class Order which changes the general conditions for AFS licensees.



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## The Regulators

- What is ASIC and the TPB responsible for and who do they regulate?

	ASIC	TPB
Responsibilities	Corporations Act ASIC Act National Consumer Credit Protection Act	Tax Agent Services Act
Who do they regulate	Businesses who hold a Australian Financial Services License (AFSL)	Companies and individuals who provide tax (financial) advice services
Services regulated entities provide	Financial product advice	Tax advice (including advice on tax and superannuation laws)
Relationship with professional bodies	s1101A of the Corporations Act and RG183 permit ASIC to approve codes of conduct (mainly for purposes of opt-in which has now been removed)	TASR permit TPB to recognise professional bodies – goes beyond just the Code. Includes all professional obligations; and provides exemptions for members of recognised professional bodies
Education requirements	Set minimum requirements, with no quantum, in RG146 – AFQ 5	Set minimum requirements of diploma (AQF5) for tax and commercial law course.
Experience requirements	No requirements	Experience requirements vary depending on education level.
Professional obligations	No requirement	No requirement But encourage adherence to professional obligations through exemptions for members of recognised professional bodies



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## Current education and professional standards requirements

- There are significant gaps in the current education and professional standard requirements for financial planners and financial advisers and who they apply to

		ASIC		TPB		FPA proposal
Education requirement	✓	RG146	✓		✓	FPEC framework
Education level	✓	AQF5	✓	AQF5	✓	AQF7
Qualification requirement	✗	No requirement for diploma	✗	No requirement for diploma	✓	Must complete a degree
Course duration	✗	Not stipulated	✓	Minimum 100hrs	✓	minimum
Assessment criteria	✗		✓	range of appropriate assessment tools	✓	
Course approval mechanism	✗	closed	✓	Approval against relevant Course requirement policy	✓	FPEC Accreditation Framework
Approval of course providers	✗✓	ASIC no longer approves courses Education regulators set competencies against RG146	✓	Information Sheet TPB(I) 07/2011 Approval process for course providers	✓	FPEC Accreditation Framework
Course / training register	✗	closed	✓		✓	
Minimum CPD requirements	✗	There is no prescribed minimum requirement. ASIC requires licensees to ensure advisers undertake CPD appropriate for their activities.	✓	60 hours per three years; minimum of 7 hours per year	✓	90 points per triennium; minimum of 25 points per year
Experience requirements	✗		✓	Varies depending on qualifications	✓	Minimum of one year of relevant experience in the preceding 3 years to be permitted to provide tier 1 personal financial advice
Code of Conduct requirements	✓✗	s1101A and RG183 permit ASIC to approve codes of conduct (mainly for purposes of opt-in which has now been removed) ASIC has not approved any Code to date	✓	TASA Code	✓	Professional membership required to use title financial planner / financial adviser
Professional bodies	✗	3 accounting bodies recognised in Corps Regs for the purposes of verifying practitioner qualifications for limited licensing regime	✓	Recognises professional bodies	✓	Professional bodies recognised by PSC
Application		Financial product advice provided by AFS licensees		Tax advice only (including advice on tax and superannuation laws) provided by TPB registered individuals and companies		All types of professional services, including financial services, provided by individual members to consumers



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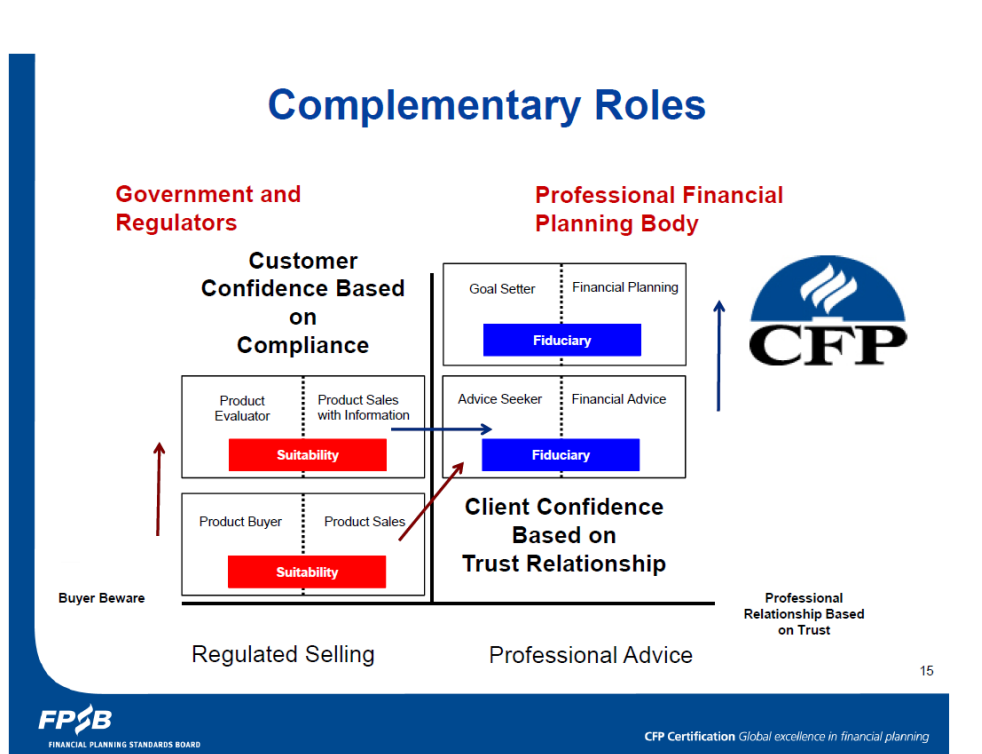
## Proposed solution

### Co-regulation - Why it works

Co-regulation facilitates and encourages the development, advancement and growth of professions:

- by improving the standards of practice of service providers and improving the regulatory capacity of professional communities, reducing the burden of regulation and supervision on government
- improving individual consumers' access to services and generating a higher contribution to the economy through service delivery
- enhancing the reputation and skills of practitioners by adherence to professional standards and CPD requirements specifically design for the type of service they provide to consumers
- by requiring the establishment and policing of standards that ensure community expectations of good practice are met
- as ASIC's powers relate to the corporations - obligations set by professional bodies apply to the individual practitioner, directly regulating individual conduct.

### Co-regulatory Model





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## How it works

Professional bodies should be recognised by the Professional Standards Councils (PSC).

### *Professional Standards Councils*

- was specifically established to recognise, monitor and enforce professional bodies to help industries and government raise the standards practitioners put into practice when delivering services to consumers. This is the sole purpose and specialty of the PSC.
- requires professional bodies to improve their professional standards by implementing robust risk management strategies and adhere to professional indemnity insurance standards.
- recognised professional bodies must ensure members implement risk management strategies throughout their business and service deliver to continuously improve outcomes for consumers.
- aims to limit the occupational liability of practitioner members, which will drive down the cost of advice, reduce reliance on large licensees, and increases consumer protections.
- has demonstrated capacity and experience in the oversight of the professional body side of the co-regulatory model.

The PSC scheme is a successful demonstration of cooperative federal / state government initiative for the public regulation of professions through individual professional membership.

### *Regulators*

The primary role of regulators such as the TPB and ASIC is to enforce the law – Tax Agent Service Act and Corporations Act, respectively.

The Tax Agent Service Regulations and s1101A / RG183:

- permit the regulators to recognise professional bodies based on high level tick-a-box criteria
- do not require recognised professional bodies to continually improve standards and practices of its members
- is compliance focused

### ASIC

- has limited power to approve industry code rather than professional bodies and professional codes
- regulates corporations which does not deliver the same benefits as directly regulating individual conduct

The TPB's regulatory reach is limited to the provision of tax advice which does not capture all financial advice services provided to consumers





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## Proposed Education and Professional Standards Framework

### *Key recommendation*

To ensure consumers are protected, the FPA calls on the Committee to recommend the Government adopt a co-regulatory model that compels all providers of personal financial advice to meet the new education standards, and to restrict the use of the term financial planner and financial adviser to those who are a member of and hold a practicing certificate from a recognised professional body.

### *Dual education and professional standards framework*

The expertise and structures required to develop, implement and enforce professional and ethical standards, are fundamentally different to those required for identifying, developing and implementing appropriate education standards for financial advice providers.

A co-regulatory model should be implemented via a dual holistic education and professional standards framework which includes:

1. An education framework - based on the existing Financial Planning Education Council's (FPEC) National Accreditation and Curriculum framework, and
2. A professional and ethical standards framework - which leverages the existing additional oversight of advice providers through membership of recognised professional bodies.