

# Chapter 4

## Professional and ethical standards

4.1 This chapter discusses the role of industry bodies in addressing the professional and ethical standards of financial advisers providing personal advice on Tier 1 financial products. The chapter covers:

- ethical conduct and codes of ethics;
- implications for competition and the costs of implementing professional standards and their regulation;
- recognition of professional bodies; and
- implementation of a systems approach and transitional arrangements.

### Ethical conduct and codes of ethics

4.2 During the inquiry the committee considered evidence which suggested that the financial advice industry should apply a more uniform approach to adopting codes of ethics. It is the committee's view that ethical conduct is best assured by a culture that is ethical. To this end, the committee has considered evidence about the efficacy of codes of ethics and in this section, discusses the function of codes of ethics, their current status, and proposals for change.

4.3 Codes of ethics and codes of conduct are different but can be complimentary to each other:

Codes of conduct are designed to anticipate and prevent certain specific types of behavior; e.g. conflict of interest, self-dealing, bribery, and inappropriate actions

...ethics codes can focus...on actions that result in doing the right things for the right reasons. Ethical behavior should become a habit and effective codes allow both bureaucrats and elected officials to test their actions against expected standards. Repeated over time this kind of habit becomes inculcated in the individual and ingrained in the organization.<sup>1</sup>

4.4 Codes of ethics include both a set of requirements and the commitment of the members of the occupation or organisation to conform to, and uphold the rules and ideals.<sup>2</sup> Codes of ethics often include a set of guiding principles such as the 22 principles set out by Professions Australia who suggest that:

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1 Dr Stuart Gilman, *Ethical codes and codes of conduct as tools for promoting an ethical and professional public service*, 2005, pp 8, 16, 70.

2 Professions Australia, Ethics Resource Centre, *Codes of Ethics Code Principles*, <http://www.professions.com.au/codeprinciples.html>, (accessed 18 December 2014).

A professional organisation's standards for entry should also include a requirement to adhere to an enforceable code of ethics, the requirement to commit to measurable ongoing professional development and sanctions for conduct that falls below the required standards.<sup>3</sup>

4.5 The PSC identifies ethics as a core part of professionalism which in its view comprises the personally held beliefs about one's own behaviour as a professional. It's often linked to the upholding of the principles, laws, ethics and conventions of a profession as a way of practice.<sup>4</sup>

4.6 Professions Australia's definition of a profession includes codes of ethics:

It is inherent in the definition of a profession that a code of ethics governs the activities of each profession. Such codes require behaviour and practice beyond the personal moral obligations of an individual. They define and demand high standards of behaviour in respect to the services provided to the public and in dealing with professional colleagues. Further, these codes are enforced by the profession and are acknowledged and accepted by the community.<sup>5</sup>

### ***Current status of codes of ethics in the financial advice industry***

4.7 Dr George Gilligan has argued that a focus on increasing the professionalisation can make an important contribution to restoring protection for consumers:

There is an imbalance between the privileged participation and potential for rewards as licensed financial services actors that individuals and organisations receive, in comparison to the civic duties and obligations that could or should accompany that privileged status. Balance can only be restored through normative change at individual, organisational and industry levels. An emphasis on culture and increased professionalisation can be a fruitful pathway to reinvigorate the implied social contract between financial organisations and the financial citizenry, from whom increasing sophistication is expected by both the state and the industry, notwithstanding evidence that many citizens have substantial difficulty in understanding those risks.<sup>6</sup>

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3 Professions Australia, Ethics Resource Centre, *Codes of Ethics Code Principles*, <http://www.professions.com.au/codeprinciples.html>, (accessed 18 December 2014) listed at Appendix 3 of this report.

4 Professional Standards Councils, *What is a Profession?*, <http://www.psc.gov.au/what-is-a-profession>, (accessed 18 December 2014).

5 Professions Australia, *Definition of a Profession*, <http://www.professions.com.au/definitionprofession.html>, (accessed 11 Nov 20014).

6 Dr George Gilligan, University of New South Wales, *Benchmark Reform and the Future of Financial Regulation*, 1 December 2014,

4.8 ASIC advised the committee that it considers that the financial advice industry has a significant amount of work to do to improve the culture of financial advisers, and to move from operating as a sales-based culture to a profession exercising independent judgement in the best interests of their clients.<sup>7</sup> The current regulatory framework imposes obligations on the AFS licensee or authorised representative, rather than the individual financial adviser.<sup>8</sup>

4.9 ASIC suggested that the large number of industry associations operating in the financial advice industry presents some challenges to achieving a harmonised set of codes. They also noted that there is an increased system cost when multiple administration and compliance systems for multiple codes are operating across these industry associations.<sup>9</sup>

4.10 The Superannuation Consumers' Centre submitted that codes of practice are one of the two main tools of self-regulation, the other being complaints schemes. They also submitted that while the complaints schemes have been more successful, this was because there was a requirement to belong to an ASIC approved complaint scheme unlike other codes that are not currently mandatory.<sup>10</sup>

4.11 Some industry bodies with members operating in the financial advice industry have codes of ethics. The Accounting Professional & Ethical Standards Boards has published its *Australian Professional & Ethical Standard 110 Code of Ethics for Professional Accountants*.<sup>11</sup> The FPA has had a code of ethics since 1992 and proposed that a code of ethics should be required for the recognition of professional bodies.<sup>12</sup>

4.12 ASIC advised the committee that while some financial advisers adhere to a code of ethics as part of membership of an industry association or as part of a professional designation, it is not compulsory to belong to an industry association, nor is it clear to what extent the codes are followed, investigated and enforced.<sup>13</sup>

### **Implications of adopting codes of ethics**

4.13 Some submitters supported the requirement for financial advisers to be members of an approved professional association and to adhere to professional codes of ethics.<sup>14</sup> The committee notes however that this is not a universally held view.

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7 ASIC, *Submission 25*, p. 10.

8 ASIC, *Submission 25*, p. 10.

9 ASIC, *Submission 25*, p. 31.

10 Superannuation Consumers' Centre, *Submission 11*, pp 12–13.

11 Accounting Professional & Ethical Standards Boards, *Submission 4*, p. 1.

12 Financial Planning Association of Australia, *Submission 6*, pp 2, 44.

13 ASIC, *Submission 25*, p. 10.

14 Mr Paul Moran, *Submission 1*, p. 4; Financial Planning Association of Australia, *Submission 6*, pp 29, 32.

Submitters who did not support a mandatory code of ethics did so on the basis that they considered codes to be unnecessary.<sup>15</sup>

4.14 The FPA advised the committee that some evidence exists to show that financial advisers who operate under a professional association are less likely to be the subject of ASIC enforcement actions in relation to financial advice.<sup>16</sup>

***Implications for costs and competition***

4.15 ASIC informed the committee that in its view, costs to industry may include:

- developing the code;
- complying with additional obligations that go beyond those imposed under the law; and
- funding independent code administration, including:
  - implementing dispute resolution procedures, remedies and sanctions;
  - monitoring and reporting on compliance; and
  - regular independent reviews.<sup>17</sup>

4.16 ASIC also advised that competition among industry bodies for members actually means that the existing industry bodies have a disincentive to levy their members for sufficient funds to investigate and regulate for compliance with codes, particularly when such codes are not mandatory.<sup>18</sup>

4.17 The FPA informed the committee that the cost for membership of professional associations range from a few hundred dollars to \$1000 annually. The FPA noted that professional bodies may incur costs associated with ensuring compliance with standards and these are generally included in membership fees.<sup>19</sup>

***Costs relative to benefits of professionalisation***

4.18 Implementing codes of ethics can be seen as part of a broader approach to professionalisation of the financial advice industry. SPAA acknowledged that there are costs associated with professionalisation but suggested that the benefits far outweigh the costs involved.<sup>20</sup> The FPA argued that adherence to professional and ethical obligations must not be viewed as a cost burden:

This is an essential business investment as the cost of not taking action to improve standards will be far greater. The cost of not acting to change the

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15 Dean Glyn-Evans, Deans Evans & Association Pty. Limited, *Submission 2*, p. 3.

16 Financial Planning Association of Australia, *Submission 6*, p. 31.

17 ASIC, *Submission 25*, p. 31.

18 ASIC, *Submission 25*, p. 10.

19 Financial Planning Association of Australia, *Submission 6*, p. 32.

20 SMSF Professionals' Association of Australian, *Submission 29*, p. 17; Financial Planning Association of Australia, *Submission 6*, p. 32.

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status quo will be borne more heavily by consumers than the monetary investment industry must make to lift the bar.<sup>21</sup>

4.19 From its survey of industry participants, the PSC found that there is industry support for professionalisation:

Despite recognising that there are significant costs associated with professionalisation, all of the industry stakeholders interviewed were in favour of it. Indeed, all of the interview respondents were confident that the benefit of professionalisation outweighs the cost and transition effort required to achieve it. Of the stakeholders interviewed, association groups, who are aspiring to embark on professionalisation, were most concerned about the cost. Despite this they all agreed that the benefits outweighed the costs.<sup>22</sup>

4.20 The PSC reported that results from its survey indicate that industry participants believe that the benefits of professionalisation outweigh the costs including increased community protection, less regulation, higher standards, increased trust in professionals and financial benefits to individual professionals.<sup>23</sup> The survey also indicated that there is a general expectation among the industry stakeholders that professionalisation will eventually lead to reduced regulation in the industry.<sup>24</sup>

4.21 It was argued that the cost of regulation to industry participants should be balanced against the broader cost that a lack of professional regulation represents to consumers.<sup>25</sup> The committee notes that previous inquiries have heard that the cost of poor financial advice may be as high as \$37 billion over the last decade<sup>26</sup> and so the cost of developing and regulating codes of ethics should be balanced against the risks associated with poor standards and inappropriate advice.

4.22 The ABA advised that the inevitable compliance costs associated with establishing and maintaining any new framework can be offset by productivity and efficiency gains such as the portability of qualifications, as well as deregulation projects, especially changes intended to reduce the compliance costs of disclosure standards.<sup>27</sup>

4.23 In the FPA's view the associated costs would not be high and were in the interests of members of the industry as a way of maintaining a competitive advantage:

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21 Financial Planning Association of Australia, *Submission 6*, p. 32.

22 Professional Standards Councils, *Submission 35*, Attachment 1, *White Paper Professionalisation of Financial Services*, p. 14.

23 Professional Standards Councils, *Submission 35*, Attachment 1, *White Paper Professionalisation of Financial Services*, p. 15.

24 Professional Standards Councils, *Submission 35*, Attachment 1, *White Paper Professionalisation of Financial Services*, pp 12–13.

25 Consumer Credit Legal Service WA, *Submission 16*, p. 5.

26 Consumer Credit Legal Service WA, *Submission 16*, p. 5.

27 Australian Bankers Association, *Submission 27*, p. 3.

It is also important to consider the impact of raising education standards and requiring the adoption of professional obligations on competition in the financial advice market. The FPA believes this will be negligible. This Inquiry is taking place in an environment where financial advice providers themselves are currently competing to lift standards within their own businesses.<sup>28</sup>

4.24 The Consumer Credit Legal Service WA submitted that in their view regulating the professional and ethical behaviour of financial advisers should result in fairer competition in the industry over the longer term:

It would potentially act as an additional disincentive for financial advisers who may engage in misconduct for their own financial benefit. This, in turn, may limit the participation of 'rogue' financial advisers in the industry. Ultimately, financial advisers who already hold themselves to higher professional and ethical standards are likely to remain more competitive as the playing field is levelled.<sup>29</sup>

4.25 The PSC informed the committee that the impact on competition can depend on whether the changes are industry wide or whether part of the industry is targeted:

This is the challenge that emerges in education: introducing wholesale, industrywide change just tends to lead to a massive flight to the bottom and increased competition in providers. This is why our particular regime is about picking and nurturing the culture of professions. It is not necessarily about trying to professionalise an entire industry, but about picking communities that will benefit and respond to it more strongly, and I think our systems of regulation need to find a way to encourage that.<sup>30</sup>

4.26 Other submitters suggested that the financial advice industry is already highly regulated with current requirements leading to a rising cost of advice. Some submitters suggested that this is leading to ongoing consolidation in the advice industry, where many independent licensees are finding they can no longer sustain the high cost of compliance.<sup>31</sup>

#### *Committee view*

4.27 The committee observes that requiring adherence to a code of ethics through membership of a professional association may put some cost pressure on industry participants. From the evidence received in this inquiry, industry participants generally acknowledge that those resulting cost and competition pressures are outweighed by the benefits of adopting codes of ethics to enhance professional and ethical standards.

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28 Financial Planning Association of Australia, *Submission 6*, p. 34.

29 Consumer Credit Legal Service WA, *Submission 16*, p. 5.

30 Dr Deen Sanders, Chief Executive Officer, Professional Standards Councils, *Committee Hansard*, 14 October 2014, p. 72.

31 CPA Australia and Chartered Accountants Australia and New Zealand, *Submission 15*, p. 14.

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4.28 As discussed at the beginning of this chapter, codes of ethics seek to bring about the desired behaviour for the right, self-motivated reasons (as opposed to behaviour motivated by fear of sanction). The committee considers that adoption and implementation of codes of ethics would help to move the financial advice industry towards a resilient professional culture that would lead to consistent ethical behaviour.

4.29 The PSC requires professional associations and their members to have certain processes, programs and practices in place before a Professional Standards Scheme can be approved. The requirements are discussed in more detail in the next section. However, the committee notes here that one of the requirements relates to ethics which are described as:

The prescribed professional and ethical standards clients can rightfully expect your members to exhibit. This includes your specific expectations of practice and conduct, and should do more than just reiterate statutory expectations.<sup>32</sup>

4.30 To assist professional associations the PSC has published a *Model Code of Ethical Principles*, that sets out the nature and role of codes of ethics, a description of the generic content of codes of ethics, and an outline of the processes for devising a code of ethics.

4.31 The committee's view is that there needs to be a change in the drivers of behaviour in the financial advice industry. While acknowledging that there are many financial advisers who operate to very high ethical standards, the committee considers that for far too long, there has been a significant minority of financial advisers being driven by self-interest. It is the committee's view that professional ethics should be a driver of the behaviour of financial advisers.

4.32 The committee therefore recommends a new benchmark, that professional associations be required to establish codes of ethics which are compliant with the requirements of a Professional Standards Scheme under the Professional Standards Council. Under the recommended model, every financial adviser will have to be a member of a professional association that is approved by the PSC, which means that they will be working under the auspices of at least one compliant code of ethics.

### **Recommendation 11**

**4.33 The committee recommends that professional associations representing individuals in the financial services industry be required to establish codes of ethics that are compliant with the requirements of a Professional Standards Scheme and that are approved by the Professional Standards Council.**

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32 Professional Standards Councils, *Are you ready to apply for a Professional Standards Scheme?*, <http://www.psc.gov.au/professional-standards-schemes/are-you-ready-apply>, (accessed 27 November 2014).

## Recognition of professional associations

4.34 In this section, the committee discusses the recognition of industry associations, including options for approaches to recognition, such as the Professional Standards Schemes through the Professional Standards Councils. As in other chapters, the committee's discussion focusses on financial advisers providing personal advice on Tier 1 financial products.

### *Options for recognition*

4.35 Recognition of industry associations would be required if membership of an industry association is contingent on an individual being permitted to operate as a financial adviser. The AFA submitted that some vehicle to recognise professional associations has merit if membership of professional bodies is mandated.<sup>33</sup>

4.36 ASIC informed the committee that in its view, a recognised professional body could perform the role of a professional standards body to increase professionalism in the financial advice industry. ASIC noted that options for recognising such a body include recognition by:

- ASIC; or
- the Australian Government in regulations; or
- Parliament through legislation; or
- a specially created advisory panel.

4.37 If the power to recognise professional bodies is given to ASIC, ASIC advises that there should be a clear statutory purpose for the power by reference to clear statutory criteria. ASIC also indicated that the criteria for recognition should depend on the purpose of the recognition.<sup>34</sup>

4.38 The AFA was not convinced of the need for financial advice professional associations to be recognised by ASIC. However, should government consider it necessary, the AFA suggests that accreditation of professional associations and clear criteria would be required.<sup>35</sup>

4.39 The FPA proposed that a co-regulatory framework for recognition of professional bodies should include legislative structure, professional body criteria, a practising certificate, and restricting the use of the titles 'financial planner' and 'financial adviser'. The FPA submitted that:

We also considered the role of a profession and the link to the notion of serving the 'public interest', whereby professionals are considered public servants, whose duty to the public and the community takes precedence over deriving client or private benefit. This must be a key consideration in

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33 Mr Philip Anderson, Chief Operating Officer, Association of Financial Advisers Ltd, *Committee Hansard*, 14 October 2014, p. 15.

34 ASIC, *Submission 25*, p. 5.

35 Association of Financial Advisers, *Submission 14*, p. 9.



the development of appropriate criteria for a Regulator or government body to recognise a professional body – serving the ‘public interest’.<sup>36</sup>

4.40 Many submitters did not support recognition of professional bodies being undertaken by ASIC.<sup>37</sup> In FINSIA's view, such a role would be outside ASIC's legislative objectives and scope. FINSIA suggested that an independent advisory board would be more appropriate.<sup>38</sup> The Financial Services Council also suggested recognition by a separate board or body.<sup>39</sup>

4.41 The Superannuation Consumers' Centre strongly supported professional bodies as part of the pathway to professionalism, but had concerns about approval of industry bodies by ASIC:

We think it would be very confusing for consumers, because industry associations have roles that go well beyond competency and professional standards. They are effectively a form of union for their members. They advocate for their members' interests and often vigorously and publicly oppose efforts of the regulator, including to raise standards, as we saw quite recently when ASIC tried to raise standards of RG 146.<sup>40</sup>

### ***Professional Standards Councils***

4.42 In this section the committee considers whether the PSC would provide an appropriate body and process to recognise professional associations.

4.43 The PSC is the combined Australian Governments' statutory body responsible for the approval, monitoring and enforcing of Professional Standards Schemes. The PSC's goal is to protect consumers by demanding high levels of professional standards and practice from those professionals who participate in Professional Standards Schemes.<sup>41</sup> The PSC informed the committee that:

The three essential goals of professional standards legislation are to protect consumers, improve professional standards, and thirdly, and perhaps most uniquely...to encourage and, where appropriate, assist the self-regulatory capacity of professional communities so that they can take greater responsibility for consumer protection. We do this by working with associations to strengthen and improve professionalism, and provide self-regulation while protecting consumers. In return for these commitments to greater professional accountability, professionals that take part in approved

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36 Financial Planning Association of Australia, *Submission 6*, pp 38, 44.

37 Association of Financial Advisers, *Submission 14*, p. 9; Superannuation Consumers' Centre, *Submission 11*, p. 5; CPA Australia and Chartered Accountants Australia New Zealand, *Submission 15*, p. 17; Axiom Wealth Pty Ltd, *Submission 34*, p. 5.

38 FINSIA, *Submission 7*, p. 13.

39 Financial Services Council, *Submission 26*, p. 10.

40 Ms Jennifer Mack, Chair, Superannuation Consumers' Centre, *Committee Hansard*, 14 October 2014, p. 61.

41 Professional Standards Councils, *Submission 35*, p. 4.

Professional Standards Schemes have their civil liability limited under law.<sup>42</sup>

4.44 Professional Standards Schemes are legal instruments that bind associations to monitor, enforce and improve the professional standards of their members, and protect consumers of professional services. Professional Standards Schemes also cap the civil liability or damages that professionals who take part in an association's scheme may be required to pay if a court upholds a claim against them.<sup>43</sup>

4.45 Professional Standards Schemes aim to provide the following benefits to consumers:

- their service providers have formal professional standards they must uphold;
- creates a body of professionals to make sure their service provider upholds professional standards; and
- if anything does go wrong, there are insurance or assets available to pay damages awarded by the court.<sup>44</sup>

4.46 For an industry association to participate in a Professional Standards Scheme, there is an intensive application process. The association must fall within the definition of an 'occupation association' as set out in the professional standards legislation and have programs and practices in place for each of the following areas:

- **Education:** Specific technical and professional requirements to practice in the professional area, including entry-level formal qualifications, certification, and ongoing continuing professional development and education.
- **Ethics:** The prescribed professional and ethical standards clients can rightfully expect members to exhibit. This includes specific expectations of practice and conduct, and should do more than just reiterate statutory expectations.
- **Experience:** The personal capabilities and experience required to practice as a professional in the professional area.
- **Examination:** The mechanism by which all of the elements above are assessed and assured to the community. This extends beyond qualification or certification requirements into expectations of regular assurance of practice, such as compliance programs and professional audits.

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42 Dr Deen Sanders, Chief Executive Officer, Professional Standards Councils, *Committee Hansard*, 14 October 2014, p. 66.

43 Professional Standards Councils, *What are Professional Standards Schemes?*, <http://www.psc.gov.au/professional-standards-schemes/what-are-schemes>, (accessed 27 November 2014).

44 Professional Standards Councils, *Why apply for a Professional Standards Scheme?*, <http://www.psc.gov.au/professional-standards-schemes/why-apply>, (accessed 27 November 2014).

- **Entity:** The association must be an entity capable of overseeing and administering professional entry, professional standards, and compliance expectations on behalf of the community.<sup>45</sup>

4.47 The PSC informed the committee that at present the Institute of Public Accountants, the Institute of Chartered Accountants and CPA Australia are the only bodies that operate across financial services that are regulated through the PSC. Other organisations less directly connected to financial services such as the law societies in each state and territory are also regulated by the PSC.<sup>46</sup>

4.48 The AFA informed the committee that in its view Professional Standards Schemes are broader than recognition, noting that approval of a Professional Standards Scheme also includes the establishment of a limit on civil liability. The AFA indicated that:

This invariably involves a significant workload with respect to professional indemnity insurance, historical insurance claims and actuarial considerations. There are some significant implications with respect to the financial advice profession that would need to be addressed before this was considered, including the implications of such a scheme in the context of the Corporations Act and the role of licensees, who under the Corporations Act are liable for consumer claims.<sup>47</sup>

4.49 The FPA submitted that professional bodies should be recognised by the PSC and noted that the PSC scheme is a successful cooperative federal and state government initiative for the public regulation of professions through individual professional membership.<sup>48</sup>

4.50 The AFA indicated to the committee that it considered that:

The Professional Standards Council presents a vehicle for the formal recognition of professional associations through regulatory means. The application process through the Professional Standards Council is rigorous and comprehensive. The Professional Standards Council identifies the key elements that would typically be expected of a profession.

We believe that further consideration of the option and the criteria set out by the Professional Standards Council is appropriate.<sup>49</sup>

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45 Professional Standards Councils, *Are you ready to apply for a Professional Standards Scheme?*, <http://www.psc.gov.au/professional-standards-schemes/are-you-ready-apply>, (accessed 27 November 2014).

46 Dr Deen Sanders, Chief Executive Officer, Professional Standards Councils, *Committee Hansard*, 14 October 2014, p. 67.

47 Association of Financial Advisers, *Answers to questions on notice*, taken on 14 October 2014, (received on 3 November 2014).

48 Financial Planning Association of Australia, *Submission 6, supplementary submission*, p. 7.

49 Association of Financial Advisers, *Answers to questions on notice*, taken on 14 October 2014, (received on 3 November 2014).

*Committee view*

4.51 The committee considers that requiring professional associations to establish Professional Standards Schemes approved by the Professional Services Councils has a number of advantages including that:

- the PSC is an existing body, so no new body would be created;
- Professional Standards Schemes are an established process that has been implemented in other sectors; and
- three industry associations whose members provide financial advice are already covered by Professional Standards Schemes.

4.52 The committee therefore recommends that financial advice industry associations that wish to have representation on the Finance Professionals' Education Council and to be able to make recommendations to ASIC regarding the registration of financial advisers, should be required to establish Professional Standards Schemes under the Professional Standards Councils. In making this recommendation the committee notes that:

- additional resources may be required by the PSC in order to make appropriate arrangements for implementation and transitional considerations; and
- the government may need to consider the interactions between liability arrangements under Professional Standards Schemes and the *Corporations Act 2001*.

**Recommendation 12**

**4.53 The committee recommends that financial sector professional associations that wish to have representation on the Finance Professionals' Education Council and to be able to make recommendations to ASIC regarding the registration of financial advisers, should be required to establish Professional Standards Schemes under the Professional Standards Councils, within three years.**

4.54 As is currently the case, financial advisers should be free to choose to join multiple associations, including those industry bodies without a Professional Standards Scheme. The committee considers, however, that as outlined in earlier recommendations of this report, a person must be required to join a professional body that is operating under a Professional Standards Scheme approved by the Professional Standards Councils in order to be registered as a financial adviser. That professional association will then become the body that is authorised to advise ASIC regarding the fitness of the person to be registered, subject to completion of the professional year and registration exam. That professional association would also advise ASIC on the continuing fitness for registration of an individual based on achievement of mandatory CPD and compliance with the code of ethics.

4.55 If a financial adviser wishes to change professional sectors and have a different association as the nominated body to oversee professional and educational standards, they must meet the professional year (with recognised prior learning

provisions) and registration exam requirements for that body and not have any censures or limitations outstanding from the previous professional association or ASIC.

### **Recommendation 13**

**4.56 The committee recommends that any individual wishing to provide financial advice be required to be a member of a professional body that is operating under a Professional Standards Scheme approved by the Professional Standards Councils and to meet their educational, professional year and registration exam requirements.**

### **Implementation of measures to raise professional, ethical and education standards in the financial advice industry**

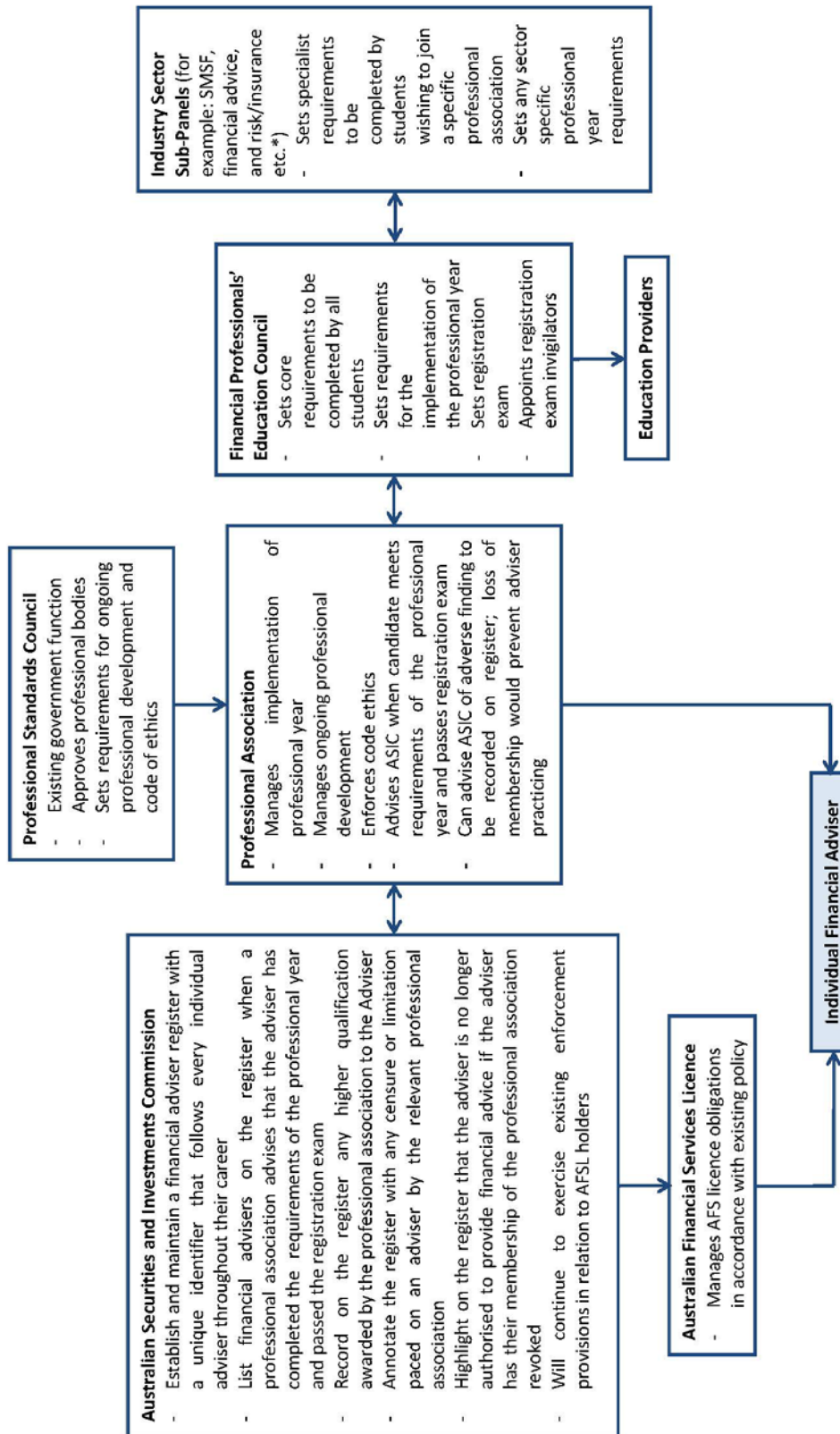
4.57 In this section the committee sets out its views on the implementation of the recommendations in this report. The section also discusses the need to take a systems approach and to address transitional arrangements.

#### ***Committee view on a systems approach***

4.58 While the committee notes the important role of high professional and ethical standards, the committee recognises that lifting professional and ethical standards is only part of a more complex system. All parts of the system need to be operating effectively to provide appropriate safeguards for consumers and investors while allowing efficiency, innovation and growth within the industry. As noted in Chapter 1, Professor Reason's model suggests that appropriate organisational or systems defences are required to reduce risk, which in the case of financial advice includes the measures outlined in para 1.55. The committee is therefore proposing the approach set out in Figure 5.1, which brings together recommendations from this inquiry. The figure demonstrates:

- the role of professional associations;
- professional and ethical standards and their oversight by the PSC as recommended in this Chapter;
- ASIC's role in establishing and managing the register of financial advisers as already announced by the government with the changes recommended in Chapter 2;
- the role of AFS licensees in managing license obligations;
- the Financial Professionals' Education Council and its industry sub-sector panels as recommended in Chapter 3;
- education providers; and
- individual financial advisers.

**Figure 5.1: Financial advice education stakeholder relationships**



\* Scope to include other existing sectors that wish to come under this structure, and other developing specialities such as philanthropy

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4.59 Figure 5.1 includes the following criteria and information for financial advisers to be on the register that the committee recommended in Chapter 2:

- a unique identifier that follows every individual adviser throughout their career;
- listing financial advisers on the register when a professional body advises that the adviser has completed the requirements of the professional year and passed the registration exam;
- a record of any higher qualification awarded by a professional body to the adviser;
- an annotation with any censure or limitation placed on a financial adviser by professional body; and
- highlighting on the register when an adviser is no longer authorised to provide financial advice if the adviser has their membership of the professional body is revoked.

4.60 The committee notes that its recommended approach:

- creates no new government or regulatory entities;
- expands the membership and function of an existing industry led and funded council that sets educational standards;
- should not increase the cost of advice to consumers as the cost of running the council (currently less than \$50 000) will be spread across multiple associations;
- complements measures already announced by government, including the register of advisers;
- addresses the key concerns of most stakeholders identified during the inquiry;
- draws from existing practices in other professions such as law, health and accounting; and
- draws on the assessment concept adopted by regulators in other sectors, of having both a theory exam (centrally controlled but independently administered by approved invigilators) as well as an assessment of demonstrated competence including the potential for recognition of prior learning in some areas.

4.61 The approach recommended above would help address the PSC requirements that for an industry association to participate in a Professional Standards Scheme, they must have programs and practices in place related to education, ethics, recognition of professional experience and use practical assessments and examinations to test competence and knowledge. In addition, they must have the capacity to oversee and administer professional entry, professional standards, and compliance expectations on behalf of the community.

***Committee view on transitional arrangements***

4.62 The committee notes that with any significant policy or legislative change, appropriate time is required for industry and consumers to implement new requirements. While the committee has received evidence in submissions and hearings about transitional arrangements, the committee has not examined transitional issues and proposals in detail. The committee does note, however, that some of the recommended changes will require different transitional timeframes.

4.63 The establishment of the register of financial advisers may occur sooner than industry associations are able to establish approved Professional Standards Schemes under the Professional Standards Councils. The committee also notes that varied transitional arrangements may be needed for financial advisers who are at different stages of their career.

4.64 In framing its recommendations, the committee has been mindful of the need for transitional arrangements. The committee is however firmly of the view that swift and decisive action is required in order to raise the professional, ethical and education standards of financial advisers. On this basis, the committee is recommending that the government require implementation of these reforms within three years of response to this report. The Finance Professionals' Education Council should be established within six months, as it will have a key role as the body that will determine recognised prior learning requirements for existing advisors. The establishment of a code of ethics compliant with Professional Standards Scheme guidelines should be finalised within 18 months.



## Recommendation 14

**4.65 The committee recommends that government require implementation of the recommendations in accordance with the transitional schedule outlined in the table below.**

<b>Transitional arrangement and timeframes</b>	<b>Date</b>
Provisional registration (available to existing financial advisers from the implementation of the proposed government register until 1 Jan 2019 to address the goal of transparency)	Mar 2015
Finance Professionals' Education Council established	1 Jul 2015
FPEC releases AQF-7 education standards for core and professional stream subjects	Jun 2016
Establishment of codes of ethics compliant with Professional Standards Scheme guidelines	Jul 2016
FPEC approved AQF-7 Courses available to commence	Jan 2017
FPEC releases recognised prior learning framework (dealing with existing advisers and undergraduates who commence AQF-7 courses prior to Feb 2017)	Jul 2016
FPEC releases professional year requirements including recognised prior learning framework for existing advisers	Jul 2016
Professional associations operating under PSC Professional Standards Schemes	1 Jan 2017
Target date for existing financial advisers to qualify for full registration	1 Jan 2018
Cut-off date for full registration - provisional registration no longer available	1 Jan 2019

**Senator David Fawcett**

**Chair**