



5 September 2014

Ms Toni Matulick  
Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Ms Matulick

**Re: Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry**

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide input to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry.

The Corporations Act, the Financial Services Reform (FSR) Act and the Future of Financial Advice (FOFA) reforms constitute the primary regulatory framework for financial advice in Australia. The current regulatory approach involves licensing of the providing entity, minimum competence and training standards for representatives, provisions for adequate disclosure, requirements to manage conflicts of interest, and remedies in case of breach. Internationally, Australia's regulatory approach governing the provision of financial advice is regarded as one of the furthest reaching and most thorough in the world.

Notwithstanding these qualities, there remain some deficiencies or 'gaps' in the following areas:

- The entry requirements for providers of financial advice are too low
- There is a lack of a defined holistic education framework for financial planners and financial advisers
- There is no co-regulatory model to support existing professional frameworks and complement the obligations for financial planners and financial advisers and the increased standards in education
- Anyone can use the title financial planner or financial adviser.



The FPA is committed to ensuring financial planners and financial advisers in Australia practice professionally. Key to this goal is the requirement for higher standards of education for financial planners and financial advisers.

However, improving the competency of financial planners and financial advisers can only be achieved under a collaborative and strategic framework for education, which clearly shows how all the components work together, and considers and addresses all the challenges and barriers to ongoing successful implementation by all relevant stakeholders.

Further, raising education standards alone will not deliver the necessary improvements in the provision of financial advice to consumers. All providers of personal financial advice who use the title financial planner or financial adviser must be compelled to meet professional and ethical standards set by a recognised professional body in order to practice.

The FPA would welcome the opportunity to discuss education, ethical and professional standards for financial advisers further. We would also like to express our desire to appear as a witness at a public hearing of the Inquiry, should the Committee deem this appropriate.

If you have any questions, please do not hesitate to contact our General Manager Policy and Conduct, Dante De Gori, or myself on 02 9220 4500 or [dante.degori@fpa.asn.au](mailto:dante.degori@fpa.asn.au) / [mark.rantall@fpa.asn.au](mailto:mark.rantall@fpa.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Mark Rantall".

**Mark Rantall**  
CEO  
Financial Planning Association of Australia Limited<sup>1</sup>

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<sup>1</sup> The Financial Planning Association (FPA) has more than 10,000 members and affiliates of whom 7,500 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally.

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Dr June Smith, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. From 1 July 2013 all new members of the FPA are required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board



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

**FPA submission to:**  
Parliamentary Joint Committee  
on Corporations and Financial Services

**5 September 2014**

# Professional and education standards

FPA SUBMISSION TO PJC ON CORPORATIONS AND FINANCIAL SERVICES | DATE: 05.09.2014

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- Raise minimum education and competency standards for financial advisers (including particular standards for more complex products or structures, such as SMSFs) and introduce a national examination for advisers providing personal advice

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## Terms of Reference

Pursuant to the committee's duties set out in section 243 of the *Australian Securities and Investments Commission Act 2001*, the committee will examine proposals to lift the professional, ethical and education standards in the financial services industry, including:

1. the adequacy of current qualifications required by financial advisers;
2. the implications, including implications for competition and the cost of regulation for industry participants of the financial advice sector being required to adopt:
  - a. professional standards or rules of professional conduct which would govern the professional and ethical behaviour of financial advisers; and
  - b. professional regulation of such standards or rules; and
3. the recognition of professional bodies by ASIC.

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## Introduction

The FPA has continued to lead the way in raising the bar of education and professional standards for financial planners and financial advisers since it was established. In 1992 two separate entities, the Australian Society of Investment and Financial Advisers (ASIFA) merged with the International Association for Financial Planning Australia (IAFP) to form the FPA. Its first Code of Ethics and professional obligations were introduced in 1992, some 9 years prior to the introduction of the Financial Services Reforms (FSR) Act (2001) and at a time when legal requirements for the provision of financial advice were quite limited.

We developed and required members to complete a Diploma of Financial Planning (DFP 1-8), again pre-FSR, when no education requirements existed in the law and before the introduction of the Interim Policy Statement 146 and the subsequent introduction of the ASIC Training Register. Our first courses defined financial planning in Australia and strongly influenced the direction of financial planning education.

In 2009, we announced that our members would be banned from receiving commissions and conflicted remuneration effective from 1 July 2012, before the PJC Inquiry into financial products and services was established and the resulting Future of Financial Advice (FoFA) reforms developed.

We introduced a world-first Code of Professional Practice including Ethics, Practice Standards and Rules under the core principle of 'client first' in 2008, again before the development of the FoFA requirements.

In 2011, we established the Financial Planning Education Council (FPEC), an independent body chartered with the responsibility of raising the standard of financial planning education and setting the standards for accreditation of financial planning education programs.

The FPA has always had experience requirements for membership entry, highlighting the vital importance of the professional development gained through on the job training which enables the application of the knowledge gained through education. This is an imperative element for a ticket to practice, yet has never been a regulatory requirement. The FPA has filled this gap.

And in 2010 the FPA announced a requirement that all new members must hold an approved degree.

The FPA has been at the fore of setting appropriate and high standards and requirements specifically for financial planners and financial advisers to continuously raise the bar of professionalism and protect consumers. Our continuous drive to professionalism is soundly supported by our financial planning practitioner members.

The need to support the professionalisation of the provision of financial advice is also demonstrated by other financial services professional bodies who have developed professional standards for

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advice providers, including CPA Australia, the Self-Managed Super Fund Professionals Association of Australia (SPAA), Institute of Chartered Accountants Australia (ICAA), and the Institute of Public Accountants (IPA).

Professional membership is a proven model for raising the standards for advice providers that has been continually successful in Australia since the FPA's inception. Professional obligations work to protect consumers.

Public policy should improve consumer protection in the most efficient and effective manner. To introduce new requirements in the law is an expensive and lengthy process and often does not fully deliver on the intended objectives. However, the nature of law making makes it challenging to improve.

The FPA and other professional bodies continuously review their obligations, including education requirements, to ensure they are instilling professional behaviours in financial planners and financial advisers that deliver quality, appropriate and considered advice that Australians deserve. Professional bodies are such an integral and embedded part of the profession they can identify and address emerging issues to protect consumers.

Professional obligations are not limited to the definition of 'financial product advice' in the Corporations Act and are specifically developed for financial planners and financial advisers. A fundamental flaw of the law is this definition as it ties the provision of advice to financial products limiting its regulatory reach.

Professional obligations are not tied to product sales rather focus on the transparent engagement with clients and their needs. Professional bodies have public interest at their core.

A co-regulatory model that supports, nurtures, encourages, and leverages the growth and role of professional bodies is needed. It should facilitate the professionalisation of financial advice based on three principles:

1. A whole of government policy commitment to professionalisation for tier 1 financial advice.
2. Legislation only where required to accelerate or enhance this outcome
3. A legislative approach that provides for soft compulsion initially followed by mandatory exclusion over time

This should include a framework that encourages adherence to both the increased education requirements set by professional bodies and to professional obligations to be permitted to use the titles financial planner or financial adviser.

This model is supported internationally, for example, by the FCA in the UK and in Quebec.

The FPA urges the Committee to support the role of and consumer protection benefits provided by professional bodies.

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## Summary of key recommendations

### Key education recommendations

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 equalling 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 and financial planner 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 if new degree qualification and education framework implemented

### Key professional obligations recommendations

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 Council (PSC)
8. The use of the titles financial planner and financial adviser be permitted only by individuals holding a Practicing Certificate as a member of a recognised professional body

### Other consumer protection measures

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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## ToR 1: The adequacy of current qualifications required by financial advisers

### 1. The current education environment

Under the Corporations Act 2001, advice providers and licensees are required to ensure they are competent to provide their advice services. The enactment of the Tax Agent Services Act (TASA) Amendment Bill in June 2013 has created dual regulatory oversight and education requirements for financial advisers and financial planners. Under this dual system both regulators – ASIC and the Tax Practitioners Board (TPB) – are charged with setting education standards for financial advice providers.

The detailed training obligations set by ASIC in its Regulatory Guide *RG146: Licensing: Training of financial product advisers* are based on the definition of financial product advice in the Corporations Act and therefore are focused on training on financial products rather than building competencies in providing financial advice. The TPB sets guidelines regarding training requirements for tax (financial) advisers focused on the provision of tax advice only.

RG146 was developed in 1997 prior to the introduction of both the Financial Services Reform (FSR) Act and the Future of Financial Advice (FOFA) reforms. The changes introduced under these two regimes were so substantial they have significantly changed the shape of the financial planning profession and financial services industry more generally. The FPA argues that basing any changes to financial adviser and financial planner education on the existing structure of the RG146 will significantly undermine the objectives of the change and will create substantial issues in the practical implementation of any proposed new requirements, particularly for education providers and licensees, which will impact on the success of the new higher training requirements.

The lack of an overarching framework to financial adviser and financial planner education has led to a piece-meal approach developed and added to over more than two decades, which contains unworkable, incompatible and inappropriate requirements, as well as gaps in the holistic system needed to ensure an increase in advice provider competency is achieved. A holistic and coordinated framework must be developed and put in place which clearly separates the provision of advice from the sale of financial products. This can be achieved through a co-regulatory approach compelling professional bodies to provide the holistic framework for financial planners and financial advisers, and RG146 to focus on financial product training.

The different approaches used by the two regulators and the lack of alignment of the requirements for financial adviser and financial planner education exacerbates this issue further. For example:

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**Table 1.1**

	TPB	ASIC
Training register	Approves appropriate training courses and maintains register of courses approved by the Board as meeting its requirements	Permanently closed its training register
Education level	Minimum education level of AQF5 or equivalent	Currently at AQF5 or diploma level. Has proposed an increase to AQF 7 level.
Course duration	Proposes a course duration of 100 to 130 hours or equivalent of one semester	Is silent on course duration.
Assessment criteria	Proposes a range of appropriate assessment tools; and to mandate independent supervision requirements	Is silent on assessment

While this is not a detailed analysis or extensive list of the requirements, the above table serves to illustrate the differences in both the requirements and the approach to financial adviser and financial planner education being adopted by the two regulators. This has lead to confusion for financial advisers and financial planners, licensees and education providers. The lack of a consistent and streamlined approach to financial adviser and financial planner education will inevitably increase training costs, which may lead to an increase in financial advice fees for consumers. Facilitating professional bodies to provide the holistic framework for financial planners and financial advisers could address this issue.

Further, there is a fundamental difference in the approach used to set training standards by each regulator – ASIC sets training standards based on competencies, which are a combination of learned and assessed knowledge and skills; the TPB sets training standards based on knowledge alone, as evident in the education requirements for BAS and Tax Agents and the proposed education requirements for tax (financial) advisers.

Financial advisers, financial planners, and licensees currently need to consider and collate the requirements from various sources and assess, as best they can, whether they have undertaken adequate training to fulfill the education standards under each of the following requirements:

- ASIC Regulatory Guide 146
- TASA Regulations regarding training for Tax (financial) Advisers
- TPB proposed policies regarding training requirements for Tax (financial) Advisers
- The proposed SRO with a mandate to review the standards of competency for advice providers
- specialist advice accreditations
- CPD requirements of ASIC, professional associations and the TPB

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- Professional association requirements.
- Licensee requirements - individual Licensees often provide their own additional training to ensure their authorised representatives/representative are at a consistent level. This highlights the issues of the portability of financial adviser training.

This issue has been further exacerbated by the permanent closure of the ASIC training register, which served as a guide to RG146 compliant courses for licensees and financial advisers and financial planners. The absence of the training register makes it extremely difficult, time consuming and costly for financial advisers, financial planners and licensees to determine and evidence compliance with RG146.

Considering the education sector is very important in understanding the current environment of financial adviser and financial planner education. Education providers have no guidelines as to the level of detail that they need to provide on financial advice knowledge areas that are covered in RG146 beyond the items themselves. The result is that a faculty can choose to state that a course covers multiple financial planning knowledge areas even when all knowledge areas are covered in just one subject rather than being more appropriately provided through a number of in-depth units of study. There are very short courses on the previous ASIC Training Register because of the absence of a defined requirement. The FPA has taken the initiative in developing the FPEC to support education providers in this area.

AQF7 level falls under the jurisdiction of the higher education sector who are regulated by the Tertiary Education Quality and Standards Agency (TEQSA). These are in the main universities. TEQSA does not regulate the curriculum (course content) higher education providers offer. Its oversight is limited to ensuring higher education providers put in place and adhere to appropriate processes.

ASIC requirements under RG146 are generally not considered by TEQSA when undertaking accreditation of education providers. The FPA has a list of approved degrees which meet the required standard for entry into the Certified Financial Planner Program. Universities on FPA's approved degree list have all taken RG146 very seriously but there are other universities that offer introductory courses that do not adequately cover RG146 requirements.

RTOs operate in the vocational education and training (VET) space under the course standards set by the regulator, the Australian Skills Quality Authority (ASQA) (with variations for Victoria and WA). ASQA approves the competencies for RTO course curriculum in financial advice as defined in the IBSA Training Package, which is based on RG146. However, there are no specifications from ASQA or IBSA of what constitutes a sufficient number of competencies in a course.

While RTOs currently develop courses to comply with RG146, RTOs are not permitted to provide courses at the AQF7 level, unless they are also registered with and regulated by TEQSA. However, this kind of dual-regulation is rare as it is not cost-effective.

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Significant changes have occurred both at a regulatory and market level in the financial advice space, and within the education sector.

The FPA recommends the structure and requirements in RG146 are inappropriate in today's financial planning education environment and unnecessarily burdensome and complex. The FPA recommends the current RG146 be dropped and replaced with a holistic framework to financial adviser and financial planner education that ensures the key objective of raising education standards can be delivered. Using RG146 as the base to change education standards will not achieve this objective.

## 2. Education framework for financial advice profession

The Financial Planning Association whole-heartedly agrees that there is a need to increase the minimum education standards and requirements for those providing financial advice to consumers. A key tenet of the FPA's drive towards achieving the highest standards of professionalism is the requirement for higher levels of education for financial advisers and financial planners. The FPA already leads the way with an approved degree and minimum experience requirements for membership.

As demonstrated by the issues discussed in this submission, determining an appropriate framework for financial adviser and financial planner education is an extremely complex issue which crosses multiple regulators, multiple industries, and impacts on the availability, accessibility and affordability of advice for consumers. Such a framework must consider the practical implications for existing financial advisers and financial planners while not restricting new entrants into the profession, and ensuring consumer protection is enhanced while the accessibility and affordability of advice for consumers is maintained.

The FPA supports an increase to training standards and education requirements for financial advisers and financial planners, however the FPA does not believe it is appropriate to mandate an increase in the minimum education level in the absence of recognition of a solid framework for financial adviser and financial planner education which clearly shows how all the elements work together to improve financial adviser competency. The FPA has an established strong professional framework that incorporates a holistic education framework, supported by the work of the FPEC and its *Australian Higher Education Curriculum and Accreditation Framework in Financial Planning*. (See [Attachment 1: FPEC Australian Higher Education Curriculum and Accreditation Framework in Financial Planning](#)).

The FPA believes an effective and appropriate framework for financial adviser education must include the following elements and describe the essential role each part plays, and how all parts must work effectively together to deliver a complete education system to assist in the delivery of quality and affordable advice for consumers.

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Course requirement	Course approval	CPD	Experience / on the job training	Adviser register
<p>Detailing the minimum course requirements an individual must undertake to provide financial advice under an AFSL:</p> <ul style="list-style-type: none"> <li>• course level and award</li> <li>• curriculum or core subject matter, and</li> <li>• course duration</li> </ul>	<p>A central authority must be empowered to approve courses to ensure courses meet the minimum education standards.</p> <p>A list of approved courses must be maintained and publicly available to enable individuals and industry to check the accreditation of courses.</p>	<p>A minimum level of CPD must be set to ensure an individual maintains and builds on their knowledge and skills relevant to the services they provide to consumers. CPD build on the knowledge gained by completing the initial course requirements.</p>	<p>Work experience allows theory to be put into practice, and facilitates learning outcomes that cannot be achieved through a text book.</p>	<p>An Adviser Register will assist consumers and industry with validating the education undertaken and the qualifications held by individual financial planners and financial advisers.</p>

The elements of the framework are discussed in detail below.

## 2.1 Course requirements

There is currently no consistent education qualification requirement an individual must meet to be able to provide personal advice on tier 1 products. RG146 details knowledge areas and skill requirements at the Australian Qualifications Framework<sup>2</sup> (AQF) level of AQF5 to be able to provide tier 1 financial advice. The requirements do not include the course duration which is vital to ensure there is an adequate quantum or depth of study undertaken on each knowledge area.

While there are some excellent qualifications, together with professional designations such as the Certified Financial Planner® designation, these are not “required” under the current minimum training requirements to provide tier 1 financial advice.

The current regulatory requirements have created a fragmentation of training requirements allowing people to be compliant in single areas of knowledge with no training in other knowledge areas contained within RG146. This, and the lack of a quantum requirement, facilitates the allowance of some existing inadequate courses to be undertaken to become RG146 compliant and to sell financial products under the guise of financial advice. This issue is exacerbated by the current lack of any restrictions on who can hold themselves out to consumers as a financial planner or financial adviser. RG146 does not distinguish minimum training or qualification requirements for a person selling a product and a person offering comprehensive advice. Consumers have no way to discern between the relevance of the qualifications themselves.

ASIC lists 14 different knowledge areas in RG146.

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<sup>2</sup> The Australian Qualifications Framework is the national policy for regulated qualifications in Australian education and training, [www.aqf.edu.au](http://www.aqf.edu.au).

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- A 2.1 Financial Planning
- A 2.2 Securities
- A 2.3 Derivatives
- A 2.4 Managed Investments
- A 2.5 Superannuation
  - o Self Managed Superannuation Funds
- A 2.6 Insurance
  - o General Insurance
  - o Life Insurance
  - o Insurance Broking
  - o Miscellaneous Financial Risk Products
- A 2.7 Deposit Products and Non-Cash Payments
- A 2.8 Foreign Exchange
- A 2.9 First Home Saver Accounts
- A 2.10 Margin Lending Facility
- A 2.11 Regulated Emissions Units (defined but not implemented)

A whole qualification is not required to be authorised to give financial advice. Rather a course comprising generic knowledge, specialist knowledge and skills (in the case of tier 1 personal advice) is mandated.

“Financial planning” is defined as being a product by itself and there is no requirement that a financial adviser should be able to advise on any financial product other than the financial plan. The current education minimum requirements position the training requirements as more akin to a financial counsellor. The financial planning education component gets treated as the introduction to the rules of providing advice. It is currently possible to be authorised to give “general advice in financial planning” by itself. This usually means a person fulfilling a role of selling products or property can leverage their status with a claim to being a financial planner or financial adviser. Consumers are confused when the titles financial planner and financial adviser can be used in such a misleading way, in part because they have met the minimum RG146 training requirements.

Since it was first introduced in 1997, ASIC has included extra knowledge areas ‘shoe-horned’ into RG146 without considering what is relevant and without removing out dated requirements. This has resulted in vital elements being squeezed out of the minimum requirements and made it difficult for education providers to adequately cover the ever growing list of knowledge areas within an AQF5 level program.

Developing the minimum training requirements for financial advice providers is a complex issue.

As previously mentioned, in 2012 the FPA established the Financial Planning Education Council (FPEC) as an independent body to bring together academics and financial planning practitioners to define a financial planning curriculum for degree qualifications and to raise the standard of financial planning education. FPEC has developed a national Accreditation and Curriculum Framework for financial planning degrees, establishing an agreed foundation for qualifications that encompasses

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and exceeds the current regulatory requirement for financial planning education courses in Australia. The FPEC course accreditation guidelines and curriculum were developed by academics and practitioners and following extensive consultation with universities and other providers of degree-level education. (See *Attachment 1: FPEC Australian Higher Education Curriculum and Accreditation Framework in Financial Planning.*)

Minimum training requirements must identify appropriate core knowledge areas essential to providing tier 1 personal advice under the current regulatory environment, and inline with consumer needs and expectations. These must be compulsory learning at degree level in order to provide tier 1 personal advice and be called a financial planner and financial adviser. These core knowledge areas should be focused on the provision of personal financial advice, not on financial products.

The quantum or duration of a course must also be mandated as it is vital in ascertaining the depth of knowledge the training must offer on each required topic area.

The FPA believes the FPEC has identified appropriate core knowledge areas essential to providing tier 1 personal advice. These must be compulsory learning at a degree level in order to provide tier 1 personal financial advice and be called a financial planner and financial adviser. FPEC requires degree programs to cover its curriculum through a minimum of the following 8 subjects, with a major in financial planning.

1. Introduction to finance/ personal financial planning
2. Client relationships
3. Superannuation and retirement planning
4. Estate planning
5. Insurance
6. Financial plan construction
7. Taxation 1
8. Investments
- (9. Commercial law – will be mandated after the TPB finalises its course requirements)

A number of universities across Australia have designed and are currently offering courses based on this curriculum. Financial planning programs are diverse in length, sequencing and entry requirements. The FPEC encourages this diversity. At the same time, financial planning programs need to be of sufficient duration to ensure a graduate at the beginning of their financial planning career has the necessary attributes, skills, knowledge and attitudes.

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Importantly, the FPEC sets course duration requirements. Each core curriculum body of knowledge should be regarded as being equivalent to a typical university unit of study. They do not require that the curriculum is delivered as 8 discrete units of study, and each core body of knowledge may be integrated across a range of units within a program. However, each core body of knowledge should be delivered as the equivalent of approximately 39 hours of contact time and 120 hours of non contact time. FPEC expects that the total core curriculum would be over 300 hours contact time and 960 hours of non contact time.

The FPEC requires assessment to be integrated across the curriculum to encourage the learning of important principles with more generic applications and reduce the tendency to learn excessive amounts of detailed information.

Within the range of program structures available, an important principle is that student learning should occur in a structured and integrated curriculum. The FPEC states that this should include opportunities for both horizontal (within a program segment) and vertical (across successive program segments) integration of related subject matter. The process of integration can enhance student learning by demonstrating the relationship between program material and subsequent professional practice. Topic areas taught in isolation tend to be forgotten by students. Vertical integration should include opportunities to revisit and further develop material covered previously in the program. Schools/faculties are encouraged to explore different means of achieving horizontal curriculum integration, such as professional practice experience, interdisciplinary seminars and problem-solving exercises.

The FPA understands concerns have been raised about the availability of relevant degree programs. However, in the mid-1960s the professional accounting bodies instigated tertiary level education standards for entry into their associations. The result was the widespread development of accounting courses in universities and colleges of advanced education. The shift to requiring tertiary qualifications had been proposed by a US academic Professor William Vatter, who had visited Australia in 1955, and who was invited by the professional accounting bodies to prepare a survey on accounting education. His report together with the Martin Committee Report recommending an expanded tertiary education sector in Australia, provided 'great impetus' to the advancement of tertiary accounting education. As degree and diploma entry into the profession expanded, the professional bodies were able to vacate much of the extensive examining function they had undertaken since their inception. Indeed, during this phase university-level accounting education and research became a close and respected partner with the accounting profession in producing and shaping future generations of accountants in Australia and beyond.<sup>3</sup>

The FPA has consulted with practitioner members, licensee and education providers regarding the minimum course requirements an individual must meet to provide tier 1 personal advice. Based on the feedback of this consultation, the FPA recommends the FPEC curriculum be adopted as the minimum course requirements for financial planners and financial advisers. This would require new financial advisers and financial planners to have completed:

<sup>3</sup> Carnegie, G.D. 2009, 'The Development of Accounting Regulation, Education and Literature in Australia, 1788 to 2005', *Australian Economic History Review*, vol. 49, no. 3, pp. 276-301.

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- a minimum of a degree program (AQF7 level)
- covering at least the 8 core knowledge areas
- each as discrete units of study
- delivered as the equivalent of approximately 39 hours of contact time and 120 hours of non contact time for each of at least the 8 core FPEC subjects
- with assessment undertaken at a minimum AQF7 level.

The FPA recommends the new course level of a minimum of AQF7 is appropriate for all providers of tier 1 personal advice. New financial advisers and financial planners should be required to meet the new requirements from 1 January 2018 providing 3 years until the commencement of the new standards; existing planners should be transitioned with appropriate exemptions, bridging course options, and core knowledge area assessment options to test knowledge, for those who meet certain qualification plus experience requirements.

The FPEC curriculum clearly sets out topics that must be covered, which is consistent with the approach taken by the TPB. It is also more transparent for consumers.

An AQF7 level entry requirement for new entrants providing tier 1 personal advice has the potential to increase the professionalism of the industry, enhance the community standing of the profession, and increase the demand and quality of university course in financial planning. It is also consistent with education entry requirements into other professions such as accountancy.

Consideration should be given to bridging courses for those entering the profession under alternative education pathways. The FPEC is currently developing bridging pathways defined on a topic basis rather than competencies.

The FPA acknowledges the current training requirements for those providing general advice on tier 1 products. However, the FPA believe general advice should be re-termed ‘general or product information’ and be limited to the provision of ‘factual information and/or explanations’ related to financial products; and the term ‘advice’ should apply to personal advice only. As such, we have not suggested changes to education requirements for general advice on tier 1 products.

The FPA strongly recommends appropriate transition arrangements be put in place for both new and existing financial advisers and financial planners. Recommendations for transitioning to new course requirements based on the FPEC curriculum are discussion in the *Transition arrangements* section below.

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## Recommendations:

The FPA recommends the Committee support increased education standards for financial planners and financial advisers:

1. **New financial advisers and financial planners** – From 1 Jan 2018, to be eligible to provide personal financial advice on Tier 1 products under an AFSL, either as a representative or Authorised Representative, an individual must hold either:
  - a degree or post-graduate qualification (from an Australian tertiary institution) approved by the FPEC, or
  - a degree or award (from an equivalent institution) at a minimum level of AQF7 approved by the FPEC, or
  - equivalent education approved by the FPEC at a minimum level of AQF7.
2. **Existing financial advisers and financial planners** - are those who are providing tier 1 personal advice under an AFSL at the commencement date of the new education requirements (ie. Registration of the Regulations, or effective date of ASIC Regulatory Guide, detailing the new education requirements), and may be eligible for the transition arrangements for the new education requirements.

The FPEC Higher Education Curriculum and Accreditation Framework in Financial Planning should be adopted as the minimum course requirement. It recommends a minimum of eight subjects should be required to adequately address the core knowledge areas in a degree program at minimum AQF7 level, with the following course duration:

- Each core curriculum body of knowledge should be regarded as being *equivalent* to a typical university unit of study. They do not require that the curriculum is delivered as 8 discrete units of study, and each core body of knowledge may be integrated across a range of units within a program.
- However, each core body of knowledge should be delivered as the *equivalent* of approximately 39 hours of contact time and 120 hours of non contact time.
- It is expected that the total core curriculum would be over 300 hours contact time and 960 hours of non contact time.

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## 2.2 Course approval

To ensure the integrity of the system, education courses must be approved as being compliant with new course requirements. There must also be a public register of approved courses.

As previously stated, ASIC held a training register of approved courses however this was removed in September 2012 and the FPA understands that the Regulator does not want to be responsible for approving courses or managing a training register.

Without the ASIC training register to provide certainty that a training course completed by a financial adviser or financial planner has been independently assessed as RG146 compliant, licensees do not have any tools/mechanism by which to assess whether a financial adviser competently meets the training requirements of RG146.

Further, universities are limited in their capacity to complete any form of assessment or provide documentation showing compliance that the study each individual has undertaken is compliant with RG146.

The FPA questions how a licensee can determine whether a financial adviser or financial planner is RG146 compliant without the ASIC Training Register or an individual document from the education provider.

The absence of a training register of courses compliant with the minimum requirements means there will be no mechanism for licensees or individuals to tell whether a course will result in the individual meeting the minimum training requirements without having them independently reassessed or to redo training. This will come at great expense and will increase the cost of providing advice to consumers.

The issue of course approval also significantly impacts the portability of the individual practitioner's education as each licensee must ensure compliance with the minimum requirements. As stated above, when a practitioner changes licensees this can result in the new licensee requiring the individual to complete an independent reassessed or to redo training, rather than to accept the qualifications already undertaken.

The FPA notes that ASIC representatives have stated on a number of occasions that the corporate watchdog is not an education regulator. However, because ASIC currently mandates minimum training requirements, licensees, financial planners and financial advisers look to satisfy ASIC, not the education regulators, when determining whether a course meets the minimum standards, or whether a financial adviser or financial planner is trained and competent to provide advice to consumers. In the vocational education and training space, this drives the Regulator, the Australian Skills Quality Authority (ASQA), and Registered Training Organisations (RTOs) to ensure courses are RG146 compliant. So in practice, ASIC strongly influences and even dictates the current course curriculum, and as such is acting in the education regulator space.

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Under the current structure, ASIC is the body empowered to ensure compliance with the training requirements in RG146. However, by closing the training register, ASIC has assigned the regulation of those requirements to organisations, such as education providers, that do not have the responsibility to enforce them.

Even so, ASIC has made it clear that it does not want to take on the role of approving courses or managing a training register to facilitate adherence to minimum education requirements for financial advisers and financial planners. This has left a significant gap in the framework that is required to ensure there is the necessary quality and consistency in the education courses available.

As previously mentioned, there is no regulator with a mandate over the curriculum at the AQF7 level. TEQSA does not mandate the curriculum; it manages process. The vocational education regulators also do not set the curriculum – it is the Industry Skills Council (in this case Innovation and Business Skills Australia) who sets the requirements of the curriculum. As IBSA regulates the curriculum in the VET space at AQF5, 6, and 8 level (not AQF7), it could create guidance for postgraduate VET training. However, currently only a tiny proportion of RTOs offer postgraduate qualifications of their own curriculum design.

ASIC has previously proposed that authorised assessors of courses would be universities, RTOs and professional associations. At the time of writing, there is no financial planning specific professional association that is an authorised assessor as the requirements currently exceed the requirements for an RTO or university. An RTO may not be able to offer assessment of current competency at an AQF7 level; and universities do not offer assessment of current competency. The result will likely see a significant shortage and decline in the number of authorised assessors to check to compliance of education programs for financial advisers and financial planners.

The absence of curriculum accreditation has created a growing disparity between course providers. The result has been a growing vacuum of responsibility and hence confusion in the marketplace. There has also been fragmentation of information as to what courses are available.

When RG146 was implemented the impact was felt gradually. The impact of the loss of the ASIC training register is only being felt as people discover that the register is out of date. Individuals do not discover the changes until after they have studied, which is often too late.

The FPA notes ASIC's statements that "we are not the regulator of training courses in Australia and that is not our role and function". ASIC lists the regulators of education without identifying that there is no regulation of the *curriculum* at the university sector and therefore no common test against the current requirements in RG146.

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This raises the question – Who will match against ASIC's requirements in the absence of ASIC and the ASIC Training Register? This again highlights the lack of a solid framework for financial adviser education detailing all the essential components needed to work together to achieve ASIC's objective to improve financial adviser and financial planner training. One part cannot work without the other parts.

The FPEC has addressed this issue. Under its *Australian Higher Education Curriculum and Accreditation Framework in Financial Planning*, the FPEC currently has in place a formal assessment and accreditation program to determine which financial planning education programs meet the FPEC accreditation standards, including its financial planning curriculum, and how such courses will continue to satisfy those standards during the accreditation period.

The FPEC currently has 14 higher education providers and 17 education programs on its approved list (including TAFE NSW and Kaplan who are not universities but offer degree programs). Importantly the FPEC curriculum covers all the regulatory education requirements under the current RG146, and the requirements proposed by the TPB for the purposes of the Tax Agent Services regime.

The FPA supports the quality FPEC curriculum and the vital role the FPEC currently plays in approving tertiary education programs for financial advisers and financial planners. Government policy should provide a co-regulatory model that supports the established role of the FPEC and facilitates its position in developing and overseeing a holistic framework for financial planner and financial adviser education. However, it may be necessary to review the membership and operating elements of the FPEC to solidify this support.

The membership of the FPEC is currently composed of volunteer experts who have given their time and expertise to develop the FPEC Australian Higher Education Curriculum and Accreditation Framework in Financial Planning, and approve universities and programs. Should the FPEC be formally requested to take on the role of approving education programs against the new minimum standards, the FPA suggests the membership of the FPEC be expanded to include all recognised professional bodies. The current membership of the FPEC is:

Name	Role
FPEC Chair: Dr Mark Brimble	Associate Professor (Finance) Griffith University, Director, Centre for Financial Independence and Education, Co-Chair, Financial Planning Academics Forum
Sharon Taylor	Associate Head of School Engagement, University of Western Sydney, Deputy Chair, FPEC – Program Accreditation
Louise Lakomy CFP®	Crystal Wealth Partners, Deputy Chair, FPEC Industry & Client Engagement
Diana Bugarcic	Head Teacher Accounting & Finance & Course Coordinator – Bachelor of Applied Finance (Financial Planning) – TAFE NSW
Amelia Constantinidis	AMP Horizons Director
Dr Kingsley Fong	Senior Lecturer and Associate Head of School in Banking and Finance, Australian School of Business, The University of New South Wales

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Martin McIntosh CFP®	Managing Director, Planning Partners
Chris Morcom CFP®	Director/Private Client Adviser, Hewison Private Wealth
Marc Olynyk AFP®	Senior Lecturer in Financial Planning, La Trobe University
Dr John Teale	Senior lecturer, The University of New England
Rebecca Watt CFP®	Stream Financial
Belinda Robinson	FPA Head of Academic Relations
Ex officio member: Mark Rantall CFP®	FPA CEO

It may also be necessary to assess the funding arrangements or independent secretariat support for the FPEC given the significance of the role and the requirements to maintain a public course register, potentially including the approval of bridging courses.

## Recommendation:

The FPA recommends the Committee support the FPEC

- as an appropriate independent body to assess and accredit/approve education programs as meeting new minimum course requirement;
- continue to assess and accredit courses against the FPEC curriculum; and
- publish on a website a list of the education programs it has accredited / approved as meeting the new minimum education standard for financial advisers and financial planners.

Consideration should be given as to whether FPEC could also approve bridging courses for those entering the profession under alternative education pathways.

## 2.3 Experience requirements and on the job training

Requiring new entrants into a profession to meet experience requirements is a widely used practice. The medical, building, accounting and legal professions, for example, all require new entrants to undertake on the job training to apply the theoretical knowledge they have gained through meeting the education requirements of the relevant profession. Work experience allows theory to be put into practice, and facilitates learning outcomes that cannot be achieved through a text book. Work experience requirements are a vital element of the education framework as they reinforce the knowledge gained through the formal education undertaken to meet the course requirements.

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Work experience for new entrants into the financial planning profession permits individuals to understand and develop the soft skills required for effective client relationships; be involved in the development of financial plans specifically to meet the needs and circumstances of each client; and comprehend and learn the advice processes that must be followed to comply with the legal obligations of providing personal financial advice under an AFSL.

There is currently no mandated minimum experience requirement to be able to be authorised to provide personal financial advice in Australia. It is up to each licensee to determine supervision and experience requirements of the individuals that provide financial advice under their license. The FPA has a minimum 1 year supervised experience requirement before being eligible to be a 'Financial Planner AFP' member, and 3 years experience to be eligible for 'CFP Professional' membership.

The FPA supports an obligation on new entrants to meet minimum work experience requirements to be able to provide tier 1 personal financial advice. However, there must be a balance in relation to the duration of the requirement - if the duration is too lengthy it would create significant financial pressure on the licensee/employer who would carry the cost of employing the new entrant who is not in a legal position to generate an income for the business until they have completed the experience requirements. This could particularly impact sole traders and their ability to expand their business or take on new financial advisers and financial planners, especially in regional areas. It may also deter large licensees from taking on new planners, which will impact on the effectiveness of the new education standards and framework, and the availability of advise for consumers.

Therefore, the FPA recommend that in addition to meeting the education requirements, an individual must have a minimum of one year of relevant experience in the preceding 3 years to be permitted to provide tier 1 personal advice.

Measuring experience in providing personal financial advice as a representative or authorised representative of a licensee is different to measuring employment within financial services either in a related or unrelated role. Therefore it is important that 'relevant experience' for new and existing financial planners and financial advisers is appropriately defined.

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## Recommendation:

The FPA recommends the Committee support a requirement that in addition to meeting the education requirements, an individual must have a minimum of one year of relevant experience in the preceding 3 years to be permitted to provide tier 1 personal financial advice.

For new entrants into the profession, the FPA recommends the following definition:

Relevant experience can be gained by an individual (including but not limited to):

- providing limited financial advice under the supervision of an experienced senior financial planner or financial adviser (for example, a CPF with a minimum of 5 years experience),
- in a paraplanning role assisting representatives in the provision of financial advice to consumers,
- in a compliance role involved in the oversight of representatives providing financial advice to consumers, or
- as part of a financial planner internship program.

It is important that relevant experience includes mentoring and coaching from senior financial planning professionals experienced in providing tier 1 personal financial advice to consumers.

## 2.4 Continuing Professional Development (CPD)

It is not possible for a university program to train students in all the attributes required for high quality financial planning practice. Rather, initial education needs to be supplemented by further vocational training and meaningful Continuing Professional Development (CPD) experiences enabling individuals to critically evaluate progressive changes in financial planning professional practice requirements, and to apply their knowledge appropriately throughout their professional career.

The current requirement in ASIC RG146 is for licensees to implement policies and procedures to ensure that they and their advisers undertake continuing training to maintain and update the knowledge and skills that are appropriate for their activities. There is no prescribed minimum hours or points required.

The TPB requires registered tax (financial) adviser to maintain their knowledge and skills relevant to the tax (financial) advice that they provide through a minimum of 60 hours of CPD over three years (with a minimum of seven hours in one year), both to be eligible for TPB registration and to meet ongoing compliance requirements. The TPB will also accept that their CPD requirements have been

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met if the individual is a member of a TPB recognised professional body and has met the CPD requirements of the professional body.

Most licensees use the FPA CPD policy as their guide to ongoing professional development, however there remains a gap in the industry for those licensees and financial advisers that are not bound by membership of a professional body and therefore have chosen little or no ongoing training.

The FPA already recognises the vital role of CPD which is a key element of our professional framework. The FPA requires its members to meet the following minimum CPD requirements:

Member	CPD points	Non Accredited CPD
CFP professionals	120 points/triennium with a minimum of 35 points each year	Capped at 60 points per triennium
AFP practitioner members	90 points/triennium with a minimum of 25 points each year	Capped at 45 points per triennium

The FPA and the profession recognise the importance of CPD as an integral part of not just the education framework, but also a fundamental part of the professional framework. Not only is it a way of maintaining currency of technical knowledge and ensuring financial planners and financial advisers remain professional; it is also a way of growing new knowledge and expanding an individual's abilities as professionals.

CPD should help financial planners and financial advisers to develop characteristics and skills beyond the technical competencies and aligned to their professional and personal goals. CPD requirements should permit financial planners and financial advisers to:

- consider CPD not as a compliance challenge but as an opportunity to maintain personal and professional confidence and proficiency;
- take opportunities to reflect upon their own professional practice;
- participate in learning activities which meet the legal and ethical obligations of the profession; and
- pursue opportunities for engagement with the profession and the wider community.

**Recommendation:**

The FPA recommends the Committee support a requirement for financial planners and financial advisers to undertake a minimum of 90 CPD points / hour over a triennium period, with a minimum of 25 points / hours in any given year.

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## 2.5 Adviser register

A key element of a holistic education framework for financial planners and financial advisers is a registry of all representatives, including employed and Authorised Representatives (current and those who have ceased providing advice), who provide personal advice under an AFSL. An Adviser Registry is vital as it will bring transparency to the education and training framework which is fundamental to building trust and confidence in the professional. More importantly, it will enhance consumer protection as it provides an authoritative source of validation about each individual financial planner and financial adviser and their bone fides.

The FPA acknowledges and supports the work the Government is currently undertaking to develop an Adviser Register through its Industry Working Group. The development of a register must take into consideration the time, costs and resources needed from both government and the profession the structure of the financial advice industry, the benefits it must deliver to consumers, and implementation and timing issues. While we understand the IWG is working through these matters, the FPA recommends an Adviser Register, once fully developed, must include the following elements:

- Name
- Licensee (current and previous)
- Name of business
- Representative number, status, and date the individual commenced providing advice
- Professional membership of a recognised professional body
- Qualifications
- CPD maintained
- Advice authorisation areas
- ASIC action against the individual
- Registration with the TPB

### Recommendation:

The FPA recommends the Committee support the Government's work on the development of an Adviser Register through the Industry Working Group.

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## 2.6 Transitioning to new requirements

Transitioning to new education standards and identifying appropriate commencement dates are complex matters. It is vital that appropriate and separate transition arrangements are developed for the following two groups:

1. new financial planners and financial advisers, and
2. existing financial planners and financial advisers.

The commencement date of the new education standards and the transition arrangements must provide adequate time for new entrants to undertake the necessary study to complete the education needed to meet the new standards. It must also provide appropriate transition arrangements for those new entrants who are currently enrolled in an education program that may not meet the new standards.

While the FPA believes no blanket grandfathering should apply, there is a need to acknowledge Recognised Prior Learning (RPL), including existing qualifications, ongoing Continued Professional Development (CPD) and licensee required training, as well as relevant experience, of existing financial planners and financial advisers.

The transition arrangements must also reflect that the FPEC curriculum was only released in late 2012 with the first course accredited as meeting the FPEC requirements in 2013. It is therefore not possible for the bulk of existing financial advisers and financial planners to currently meet the new minimum standard, even if they hold a relevant degree qualification or higher, as their degree would probably not have been approved by the FPEC.

As existing financial planners and financial advisers generally work full time, any further education would be undertaken on a part time basis. The transition arrangements for existing financial planners and financial advisers must reflect this and ensure an appropriate timeframe is provided to enable any necessary upgrading of initial qualifications to be undertaken part time.

Many good existing financial planners and financial advisers have a wealth of experience in providing quality tier 1 personal advice to consumers, and hold a diploma qualification. The relevant diploma qualifications have changed significantly over the past decade as the legal requirements set in RG146 have been amended many times. However, RG146 never required an individual to gain a qualification such as a Diploma to be compliant. The amendments to RG146 increased the number of knowledge areas to be covered in a program. An individual could complete a program of study at AQF5 level and limit this to a specialisation area of knowledge such as superannuation or insurance rather than cover all the knowledge areas. This significantly changed the quality of RG146 compliant courses and highlights the need to consider each individual's qualifications on its merits, combined with their experience, to determine the appropriate transition arrangements.

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For example, a financial adviser may have completed a financial planning diploma in 2009 which was RG146 compliant. The adviser also holds a Life Risk Specialist (LRS) accreditation from the FPA, has maintained CPD throughout his professional career, and has been providing life risk personal advice (only) to consumers for more than 5 years. While the adviser's diploma was compliant with the RG146 requirements current in 2009, it did not cover some of the core knowledge areas contained in the FPEC curriculum, specifically taxation and estate planning. Acknowledging this life risk adviser's qualifications and experience, appropriate transition arrangements could require the successful completion of an assessment in the missing knowledge areas such as estate planning and taxation for the TPB requirements.

This example highlights the complex issue of identifying appropriate arrangements for transitioning to new education standards. Even though the financial adviser may have addressed tax in the initial diploma and ongoing through CPD activity, this previous training will not be sufficient for the purposes of the taxation and commercial law course requirements for registration under the TASA regime. The TPB may also not accept the successful completion of an assessment for the purposes of meeting its course requirements for registration. For this reason the financial adviser may be required to undertake a tax course - the FPEC curriculum meets the TPB's proposed education requirements. Therefore, this adviser may also be required to undertake units of study in tax and commercial law from an FPEC approved degree to satisfy both the TASA requirements and the new requirements for providing tier 1 financial advice.

Because of the important role work experience plays in the development of an individual's knowledge and skills, and the different learning outcomes gained depending on the education program undertaken, universities universally assess each individual's previous education, training and experience against course pre-requisites and in considering appropriate exemptions. This includes assessing whether an individual needs to undertake a full degree program, or whether a bridging course or individual subjects to fill education or knowledge 'gaps' is appropriate. This is a well established process that should be leveraged and can appropriately assist existing financial planners and financial advisers, and licensees, to transition to the new education standards.

The FPA has consulted with its practitioner members, licensees, education providers and the FPEC regarding appropriate and workable transition arrangements and commencement dates for moving to a new education standard for financial planners and financial advisers. Due to the plethora of complex issues involved, we would recommend and support further detailed consultation to identify how the introduction of new standards could be achieved for both new entrants into the profession and existing financial planners and financial advisers.

However, the FPA suggests the following commencement dates for the application of the new education standards for financial planners and financial advisers, for further discussion and consideration:

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1. New financial advisers and financial planners – From 1 Jan 2018, to be eligible to provide tier 1 personal financial advice under an AFSL, either as a representative or an Authorised Representative, an individual must hold either:
  - a degree or post-graduate qualification (from an Australian tertiary institution) approved by the FPEC, or
  - a degree or award (from an equivalent institution) at a minimum level of AQF7 approved by the FPEC, or
  - equivalent education approved by the FPEC at a minimum level of AQF7.

New financial planners and financial advisers must also meet relevant experience requirements of one year in the previous three years.

2. Existing financial advisers and financial planners - are those who are providing tier 1 personal advice under an AFSL at the commencement date of the new education requirements (ie. Registration of the Regulations, or effective date of ASIC Regulatory Guide, detailing the new education requirements), and may be eligible for the transition arrangements for the new education requirements. The transition arrangements for existing financial planners and financial advisers will cease on 1 January 2019. The transition arrangements should provide exemptions, bridging and assessment options that appropriately acknowledge the previous education, qualifications, CPD and experience in providing tier 1 financial advice, of existing financial planners and financial advisers.

The FPA suggests the following transition arrangements for new and existing financial advisers and financial planners for consideration and further discussion.

## New financial advisers and financial planners

The following requirements take into account those new financial advisers and financial planners who may have enrolled in an existing RG146 course prior to the new requirements being finalised.

Bridging course requirements could be satisfied by undertaking a unit(s) of study of an FPEC approved degree program. To facilitate this, the FPEC would have a list of the subjects that can be taken from approved courses to enable new and existing financial advisers and financial planners to only do the pieces of study needed to upgrade existing qualifications.

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	Approved Tertiary course	Non-approved degree pathway	RG146
Primary qualification	<ul style="list-style-type: none"> <li>• a degree or post-graduate qualification (from an Australian tertiary institution), or</li> <li>• a degree or award (from an equivalent institution) at a minimum level of AQF7 that is approved as meeting the Financial Planning Education Council (FPEC) curriculum.</li> </ul>	Any tertiary qualification that does not meet the FPEC curriculum requirements. For example, a new financial planner who commenced a degree program that does not meet the FPEC curriculum prior to the new requirements being finalised.	DFP ADFP RG146 – product specific course For example, a new financial planner who commenced a training program consistent with the current RG146 requirements, prior to the new requirements being finalised.
Requirement to meet new course requirement	Not required. Has completed an FPEC approved degree.	Required to complete education at a minimum of AQF7, which has been approved by FPEC. This may be a bridging course or units of study to fill knowledge and education 'gaps'.	Required to complete an FPEC approved education program at a minimum of AQF7 level.
Experience requirement	Will be required to meet the minimum experience requirements to practice. This is one year full-time equivalent of <i>relevant experience</i> <sup>^</sup> in the preceding 3 years	Will be required to meet the minimum experience requirements to practice. This is one year full-time equivalent of <i>relevant experience</i> <sup>^</sup> in the preceding 3 years	Will be required to meet the minimum experience requirements to practice. This is one year full-time equivalent of <i>relevant experience</i> <sup>^</sup> in the preceding 3 years
Voting member of a recognised professional body	Required	Required	Required

<sup>^</sup> Relevant experience can be gained by an individual (including but not limited to):

- by providing limited financial advice under the supervision of a senior financial planner or financial adviser,
- in a paraplanning role assisting representatives in the provision of financial advice to consumers,
- in a compliance role involved in the oversight of representatives providing financial advice to consumers, or
- as part of a financial planner internship program.

It is important that relevant experience includes mentoring and coaching from senior financial planning professionals experienced in providing tier 1 personal financial advice to consumers.

## Existing financial advisers and financial planners

Bridging course requirements could be satisfied by undertaking a unit(s) of study of an FPEC approved degree program. To facilitate this, the FPEC would have a list of the subjects that can be taken from approved courses to enable new and existing financial advisers and financial planners to only do the pieces of study needed to upgrade existing qualifications.

The FPA also recommends that an assessment option be available for existing financial advisers and financial planners, where appropriate.

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	Certified Financial Planner and other professional designations of ASIC approved bodies**	Tertiary qualification in a relevant discipline ***	Tertiary qualification in a non-relevant discipline	RG146 specialisation, Diploma or Advanced Diploma
New Course requirement	Not required	Not required	Required to meet the requirements of an FPEC approved degree or education at AQF7 level or higher.  It is up to the education provider to assess the relevance of the individual's existing education and experience.	Required to pass a course at a minimum of AQF7, which has been approved by FPEC.  This may be a: <ul style="list-style-type: none"><li>• bridging course or units of study to fill knowledge and education 'gaps', or</li><li>• undertake additional education of four set units of study from an FPEC approved program at a minimum of AQF7 level</li><li>• assessment options in the knowledge or education 'gaps', if appropriate.</li></ul>
Experience requirement	One year full-time equivalent of <i>relevant experience</i> <sup>^</sup> in the preceding 3 years	One year full-time equivalent of <i>relevant experience</i> <sup>^</sup> in the preceding 3 years	One year full-time equivalent of <i>relevant experience</i> <sup>^</sup> in the preceding 3 years	One year full-time equivalent of <i>relevant experience</i> <sup>^</sup> in the preceding 3 years
Voting member of a recognised professional body	Required	Required	Required	Required

\*\*A professional body should meet the ASIC criteria for approval, and require individuals who hold their designation to undertake ethics training and maintain CPD.

\*\*\* A *relevant discipline* is a discipline related to finance, financial planning, commerce, economics, business, tax, accountancy, or law

<sup>^</sup> Existing financial planners and financial advisers must meet the relevant experience requirements by providing tier 1 personal financial advice, as an Authorised Representative or employed representative, under an AFSL.

Individuals who commence a course based on the current AQF5 level requirements in RG146 during the transition period and after the education requirement were changed, must complete an FPEC approved degree and one year full-time equivalent of *relevant experience*<sup>^</sup> in the preceding 3 years.

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## Recommendation:

The FPA recommends the Committee support further industry consultation to identify appropriate and workable commencement dates and transition arrangements for the introduction of new education requirements for both new entrants into the profession and existing financial planners and financial advisers.

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**ToR 2: the implications, including implications for competition and the cost of regulation for industry participants of the financial advice sector being required to adopt:**

- a. professional standards or rules of professional conduct which would govern the professional and ethical behaviour of financial advisers; and
- b. professional regulation of such standards or rules

### 3. The current environment

According to ASIC licensing data, there are 5,027<sup>4</sup> Australian Financial Services License holders and 51,147<sup>5</sup> authorised representatives of AFSL holders who are licensed to provide ‘financial product advice’ as defined under the Corporations Act. Such people might work as bank tellers, product provider call centre staff, financial advisers, stock brokers, accountants, or fully-fledged financial planners, all providing different types of financial advice services to consumers depending on their training, competency, and authorisation.

The FPA has more than 10,750 members and affiliates of whom 8,055 are practicing financial planners and more than 5,500 CFP professionals. The professional obligations and standards set by the FPA’s enforceable Code of Professional Practice plays a fundamental role in protecting consumers and the financial wellbeing of Australians, and is vital to ensure our members provide quality advice to their clients (see *Attachment 2: Summary of FPA professional requirements* for more detail).

Thus, there are 10,000 financial planners in Australia who are FPA members and approximately 2,000 are members of professional accounting bodies. Based on ASIC’s figures, this potentially leaves approximately 39,147 authorised representatives providing financial advice to consumers without a requirement to comply with the additional standards of ethics, conduct and education of professional membership. This significantly reduces the consumer protections available to the clients of approximately 76% of financial planners and financial advisers currently operating in the market.

Australians deserve the best possible advice from the most qualified practitioners and these practitioners should be bound by a professional framework that goes beyond the law and requires adherence to standards of conduct, ethics and education which are specifically tailored to the provision of quality personal financial advice.

<sup>4</sup> ASIC figures as at 10 May 2013 as provided to PJC Inquiry, answers to questions on notice 22 April (received 13 May 2013)

<sup>5</sup> ASIC figures as at 10 May 2013 as provided to PJC Inquiry, answers to questions on notice 22 April (received 13 May 2013)

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The FPA notes that ASIC's figure does not include employed representatives who also provide personal financial advice. The FPA also does not know whether the 76% of authorised representatives who are currently not bound by professional standards are deemed to be or want to be financial planners or financial advisers.

However, the FPA does know that Australian consumers deserve the added protections of a regulatory framework which supports and facilitates collaboration and cooperation between ASIC and professional bodies. Government policy that supports and facilitates membership of a professional body through a co-regulatory model, will ensure providers are obliged to adhere to professional obligations which will broaden the reach of the overall regulatory system and strengthen consumer protection.

## 4. Role of professional standards

Professional standards impose obligations that exceed the minimum requirements set in the law. Professional standards and professional membership are more than a set of additional rules and standards. They encourage the 'norming' of ethical conduct and professional behaviours building a sense of professional aspiration, pride and commitment to high professional ideals.

The primary emphasis of professional regulation is in the setting and enforcement of professional norms and behaviours, negotiated directly with the community of professionals themselves, for the national public benefit the profession serves. Another feature of professional regulation is an emphasis on providing clarity and depth to the professional community's expectations of good process, identifying the boundaries of good practice, over and above the expectations of the law. Working in concert, these overlapping systems can provide enhanced consumer protection and help build the broader community's trust and confidence in the sector, and the regulatory system.

Whilst firms may play a significant role in setting standards of behaviour and conduct, it is the normative power of professional standards and their appeal to ethical behaviour, which offers the best prospects to significantly improve consumer outcomes across the variations in service offerings and business models in the financial services sector. Professional standards speak universally to all members of the profession as they are business model agnostic. They encourage individual professionals to strive for client-centred outcomes and to resist adverse commercial interests. They install pride, a sense of belonging and public purpose in their adherents.

By their nature professional bodies seek to bind individual practitioners rather than the licensee, to professional standards and rules, as is the case with financial advice. (In other fields there may not be a licensee but an employer.) This is a vital difference and benefit professional bodies bring to the regulatory design. Where ASIC in its capacity as Regulator of the Corporations Act, governs corporations and licensees, professional bodies set and enforce professional standards for their members who are individual practitioners on the 'frontline' interacting with and providing the direct service to consumers.

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Refer to *Attachment 2: Summary of FPA professional requirements* for the details of the professional obligations set by the FPA and an overview of our enforcement activity as further demonstration of the vital role professional bodies play in governing the professional and ethical behavior of financial planners and financial advisers.

## 5. Compelling adoption of professional standards

There are strong reasons for compelling the adoption of professional standards for individuals to call themselves a financial planner or financial adviser. In recent years, numerous cases of poor financial advice and fraud have come to light, with some consumers making considerable losses and the reputation of the financial advice industry being damaged in the process. For example, the collapse of Trio Capital resulted in consumers losing roughly \$176 million from their superannuation.<sup>6</sup>

While corporate collapses such as Trio Capital, Opes Prime, and Westpoint involved fraud, many consumers who invested in these products received personal financial advice. Professional, ethical and education standards should serve to assist financial planners and financial advisers to identify appropriate financial strategies and investments suitable to each client's circumstances, goals and needs. This is a fundamental form of consumer protection and must be at the core of providing personal financial advice to clients.

The FPA's review of data collected since 2009 on ASIC enforcement action concerning individuals in relation to financial advice, shows that FPA members represent significantly less than 5% of the overall ASIC enforcement action each year<sup>7</sup>. FPA members have also accounted for significantly less than 10% of financial advisers banned by ASIC. **The fact that more than 90% of financial advisers banned by ASIC were providers who are not members of the FPA and therefore not subject to the additional regulatory oversight of our professional obligations, clearly demonstrates the consumer protection benefits of professional standards<sup>8</sup>.**

Statistical under-representation when compared to the total financial adviser and financial planner population in ASIC enforcement activity is a proof point of the positive effect of professional obligations. It demonstrates the vital role professional bodies play in 'norming' good professional behaviour beyond legal minimum standards, and the necessity of such obligations for the protection of consumers.

<sup>6</sup> Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital, Final Report, 16 May 2012

<sup>7</sup> Based on publicly available enforcement information released by ASIC

<sup>8</sup> ASIC bannings analysed against FPA membership data

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## 5.1 The costs

Adherence to professional and ethical obligations to be allowed to use the title financial planner or financial adviser, and increased education standards, 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 status quo will be borne more heavily by consumers than the monetary investment industry must make to lift the bar. It is extremely difficult for governments to stamp out fraud or corporate crime. However, the financial advice profession itself is committed to raising standards to help protect consumers from involvement in any future corporate collapses.

Compelling financial planners and financial advisers to adhere to professional and ethical obligations in order to use these titles, will deliver sound consumer protection benefits and improve the quality of personal financial advice. This, in turn, will help increase consumer confidence and trust in the financial advice profession and drive consumer recognition of the value of financial advice. Requiring membership of a professional body to be able to use the title financial planner or financial adviser is a sound business investment.

The financial services industry has demonstrated a desire to make this business investment with several of the largest financial planning groups, representing more than half of the financial planners and financial advisers in Australia, recently announcing a commitment to raise the education standards of their representatives. This included membership of a professional body for some groups and the choice of industry associations for others. The FPA believes it is essential that individuals who use the title financial planner or financial adviser operate under a professional code in addition to legislation.

In response to the Inquiry's Terms of Reference, the FPA provides the following example of professional membership fees for its reference. This does not include education and training costs.

Organisation	Category	Annual membership fee
FPA	CFP	\$ 895.00
	Financial Planner AFP	\$ 595.00
CPA Australia	Assessment fee	\$ 160
	First year membership: Associate	\$ 300
	First year membership: CPA or FCPA	\$ 670
Self-Managed Super Fund Professionals Association of Australia	Associate Membership	\$ 695.00
	Specialist Membership	\$ 695.00

There may also be some additional costs incurred by professional bodies as a result of ensuring the compliance to professional standards by an increased membership. However, as membership fees are based on the operational costs including membership compliance, such costs would be covered by the membership fees across all members. For individuals practitioners, professional membership

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fees and education costs are claimed from the business as a training and personal professional development expense or may be claimed as a tax deduction.

## 5.2 Competition

Competition in the financial services professional body environment in Australia is healthy. This includes professional bodies that have financial planners and financial advisers as members. This is evidenced by the number of professional bodies that have gained recognition under existing rules by either the Tax Practitioners Board (TPB) or the Professional Standards Council (PSC).

For example, of the 17 recognised tax agent associations of the TPB, the following 7 have members who provide personal financial advice to consumers:

1. Association of Chartered Certified Accountants Australia and New Zealand
2. CPA Australia
3. Financial Planning Association of Australia
4. Institute of Chartered Accountants in Australia
5. Self-Managed Super Fund Professionals Association of Australia
6. Institute of Public Accountants (IPA)
7. The Tax Institute

The Professional Standards Councils<sup>9</sup> promote consumer protection and excellence in professional standards by encouraging the self-regulation of occupational groups through Professional Standards Schemes.

Professional Standards Schemes are for members of occupational associations, and:

1. recognise those who implement robust risk management strategies such as complaints and discipline systems, codes of ethics and continuing occupational education; and
2. limit occupational liability for members of occupational associations who carry professional indemnity insurance and/or business assets to the limitation of liability amount.

Professional Standards Schemes are a statutory innovation. They require occupational associations to improve their professional standards and protect consumers by implementing robust risk

<sup>9</sup> <http://www.psc.gov.au/>

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management strategies and adhering to professional indemnity insurance standards. It rewards such practices by limiting the occupational liability of members of occupational associations.

Three of the 20 Professional Standards Schemes have members who provide personal financial advice under an AFSL:

1. CPA Australia
2. Institute of Chartered Accountants Australia (ICAA)
3. Institute of Public Accountants (IPA)

While there is nothing stopping other associations from meeting the existing criteria for gaining recognition as a professional body, requiring membership of a Regulator/government body recognised professional body to be able to use the title financial planner or financial adviser will encourage greater competition in this area.

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. For example, the announcements made by the following corporate groups:

Company	New requirements for advice representatives
CBA	<ul style="list-style-type: none"><li>• All <b>new</b> financial planners, and people in planner supervisory roles for Commonwealth Financial Planning, will be required to hold a Degree in finance, business, commerce, or a related field.</li><li>• By 30 June 2017, existing financial planners authorised under the Commonwealth Financial Planning licence, and their supervisors, will be required to hold either an AFP Advanced Diploma in Financial Planning (or equivalent) or a Degree in finance, business, commerce, or a related field by 30 June 2017.</li><li>• Furthermore, Commonwealth Financial Planning will seek to develop their Senior Financial Planners through CFP certification</li></ul>
AMP	<ul style="list-style-type: none"><li>• By 2019, all AMP financial planners must either hold CFP accreditation, Fellow Chartered Financial Practitioner accreditation or a masters in financial planning</li></ul>
NAB	<ul style="list-style-type: none"><li>• By 2017, all financial planners to have university degree and hold Certified Financial Planner (CFP) accreditation</li><li>• Has set highest bar for MLCFP/Garvan, Apogee, GPL &amp; Meritum</li></ul>
Westpac	<ul style="list-style-type: none"><li>• By 2019, All existing and new financial advisers must hold a Certified Financial Planner (CFP), a Fellow Chartered Financial Practitioner (FChFP), or Masters in Financial Planning (MoFP) qualification or financial planning certification from one of the recognised accounting bodies.</li></ul>

The profession itself is leading the way in raising standards in a manner that will minimise any impact of the change on the provision of financial advice services and on consumers.

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## 6. Professional regulation of standards or rules

Professional standards serve to strengthen the accountability of financial services providers when servicing the needs of Australians by complementing the legal obligations under the relevant laws.

Professional standards go beyond the requirements of the law and therefore play a vital role in protecting consumers. A key consumer protection element of professional standards lies in their enforceability through compliance and disciplinary measures. While professional standards also provide an additional complaint mechanism for consumers, more importantly they serve as a vital measure to prevent the issues that give rise to consumer complaints.

Professional bodies serve to assist Government in protecting consumers by raising the bar of accountability, ethical obligations and education of members, beyond the requirements of the law. Professional obligations complement and reinforce the legal obligations regulated by ASIC. It is in the public interest for the Government to encourage and support the adherence to professional obligation through effective and efficient regulatory design which facilitates co-regulation, restricts the use of the titles financial planner and financial adviser and requires membership of a recognised professional body, particularly in the financial services sector which influences the financial wellbeing of all Australians.

There are distinct differences between compelling adherence to professional and ethical standards through membership of a recognised professional body versus legislating a Code of Conduct.

Professional codes are by, of, and for the profession and the protection of the public. They are organic, rather than being legislatively imposed. They are by their nature technical and specifically based upon the special body of knowledge the profession specialises in. They are norming because they are organic and represent the profession's expectations of acceptable standards of practice. They are about values and ethics and ultimately what it means to be a professional in the particular profession they apply to.

Legislative industry codes are typically about agreed sets of behaviours between commercial enterprises usually established with consumer agreement. They are about industry coming to grips with an agreed set of behaviours towards consumers. However, there is a need to go further in the financial advice industry. That is the political and moral imperative at the heart of this Inquiry. Professional quality advice is about the individual practitioners sitting across the table from the client. Professional codes normalise that individual's behaviour through the personal status that belonging to a profession bestows on the individual.

Professional codes in the financial advice profession apply to the individual practitioner and the actual technical financial advice they provide to consumers. Such codes have the ability to set high standards specific to the provision of personal financial advice, beyond the capability of a legislated code. A legislated code generally applies to the licensed entity and requires companies to meet the ethical standards and responsibilities expected of a corporate entity. Further, a legislated code would be restricted to the definition of 'financial product advice' which is product rather than advice

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focused and does not encapsulate the provision of financial planning services. A professional code specifically speaks to such services and is not limited to the product centric Corporations Act definitions.

Government policy that supports membership of a professional body to be able to use the titles financial planner or financial adviser must be done under a co-regulatory model. True co-regulation based on a collaborative two-way partnership between the appropriate government body or Regulator and professional bodies, is a cost-effective way to enhance consumer protection. The telecommunications industry is a point of reference for a successful existing co-regulatory model in Australia<sup>10</sup>.

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<sup>10</sup> The flexibility benefits of Australia's co-regulatory approach, ACMA, Speech by Chris Chapman to the 14<sup>th</sup> European Conference of Postal and Telecommunications Administrations (CEPT), Strasbourg, France, 17 April 2008

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## ToR 3: The recognition of professional bodies

### 7. Why recognise professional bodies?

The FPA believes effective regulation of professional services such as personal financial advice is best achieved through a collaborative effort among governments, professional bodies and the licensed, regulated community. In this preferred model Government sets the regulatory expectations of practice, market integrity and consumer protection, and professional bodies determine professional norms, conduct expectations and education and certification requirements that foster consumer and Government confidence in the profession.

Professional standards and codes play a vital role in both improving upon the law and the way it is applied, as well as providing improved consumer protections in the way they clearly identify professional expectations. We believe that collaboration among governments, regulators and professional bodies encourages the alignment of public and professional interests to create better regulatory and consumer outcomes. Not only do professional standards safeguard the consumer, when adopted and applied by the professional community, they also safeguard the professional community from the need for persistent regulatory/legislative change, the cost of which is generally borne by consumers.

This professional, industry, government and regulatory partnership is a strategy that the FPA has promoted for some time and recent changes in the Corporations Act to incorporate FoFA (specifically the link between s962CA and s1101A that promotes the benefit of being a member of a body with a recognised professional Code) give support to the concept that this sort of partnership will be an improvement to consumer protection and professionalisation in financial advice.

With that opportunity we have approached this Inquiry as a chance to completely rethink the way professional bodies respond to external regulatory issues and how we communicate the role of professional standards in resolving them. We are acutely aware that legislation and regulatory approaches change frequently in financial services and that this is costly and disruptive for financial planning practices, as well as confusing and risky for consumers.

Whilst it will always be the case that ASIC will measure compliance against the expectations and wording of the law, the intent of professional standards is to negotiate achievement of that compliance in a way that leads to the right behaviour, rather than one that can be resolved with tick-a-box compliance solutions. In this way, financial planners and financial advisers can focus on meeting their professional obligations, confident that by adhering to a Code of conduct and professional standards of a recognised professional body, they are also largely satisfying and exceeding their personal regulatory obligations.

In assuming the obligations and duties of a professional body, members aspire to a higher status in the eyes of the public. The Parliamentary intent to allow for an appropriate government body or Regulator to approve professional codes, which encourages professionalisation, is a key co-regulatory tool in the enhancement of consumer protection.

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Co-regulation and enhanced cooperation between government bodies / regulators and professional bodies will deliver significant consumer protection benefits with 'public interest' at the core of the co-regulatory relationship.

Professional bodies are deemed to perform an integral role in providing licensing procedures, overseeing and developing ethical foundations, and playing a key role in the educational requirements linked to the professions. Arguably, this is a necessary state to ensure the highest delivery of standards and service by protecting the public through the prevention of sub-standard services provided by unqualified and uncertified practitioners; a perfect example of this being the medical profession.<sup>11</sup>

A co-regulation model with recognised professional bodies will provide:

- a cost effective mechanism for government, industry and consumers, to ensure financial planners and financial advisers go beyond the requirements of the law when providing tier 1 personal financial advice to clients
- a simpler and more accessible process to maintain, review and raise professional obligations to address consumer protection gaps identified in the law or professional standards in the future.

Professional bodies have built and implemented the framework of standards and obligations which have over recent decades addressed significant issues in the financial advice profession. In recognition of these existing frameworks, Government should consider how its public policy can assist in expanding the reach and role of professional bodies under a co-regulation model.

## 8. Professional body recognition framework

The FPA believes that providing recognition of professional bodies by a Regulator or government body can only successfully meet the desired objectives through a collaborative and cooperative two-way co-regulatory partnership that operates under a complete framework. A co-regulatory framework for professional body recognition must consider four key components:

1. Legislative structure
2. Professional body criteria
3. Practising certificate
4. Restricting the use of the titles financial planner and financial adviser

<sup>11</sup> Fallon, F. (2014), "The Institute of Public Accountants - their journey towards professional recognition", Working Paper, Deakin University

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The following table demonstrates that this framework is consistent with moves internationally to adopt a co-regulatory oversight of financial advice providers and restrict the use of financial planner and financial adviser terminology.

	Quebec	UK	New Zealand
Restriction	Use of the term "financial planner" and other titles similar to the title of "financial planner" and the abbreviation of those titles are restricted <sup>12</sup>	Investment advisers need to hold a Statement of Professional Standing (SPS) issued by a body accredited by the FCA to give independent or restricted advice <sup>13</sup>	<u>Category 1 Products</u> (more complicated products) - Only authorised financial advisers and a Qualifying Financial Entity (QFE) or a member of a QFE (only if the QFE is the product provider of category 1 product) may give financial advice in relation to category 1 products. <sup>14</sup> <u>Category 2 Products</u> – An authorised financial adviser, a registered individual and a QFE adviser may give financial advice in relation to a category 2 product. <sup>15</sup> Only an authorised financial adviser who is authorised to provide investment planning services may hold him/herself out as financial planner. <sup>16</sup>
Qualification	Holder of a certificate issued by the Autorité des marchés financiers <sup>17</sup>	Benchmark level is to the equivalent of QCF Level 4	Authorisation by Financial Markets Authority (FMA) <sup>18</sup>
Role of Professional Associations	Members of professional associations that have an agreement with the Authority may be exempt <sup>19</sup>	Professional associations accredited by the FCA will issue annual SPSs. They may alert FCA to issues and may then act to discipline advisers	N/A

First developed in the 13<sup>th</sup> century, Royal Charters are granted by the Queen in England and are exclusively available to professional associations who must demonstrate a unique field of activity that is not covered by any other professional body, and that its members are degree qualified. A Royal Charter enables the body to issue licensing authority for specific divisions and tasks of labour within the defined profession.<sup>20</sup> This type of co-regulatory tradition has, over time, developed a proven track record.

<sup>12</sup> An Act Respecting the Distribution of Financial Products and Services s 56.

([http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2.&file=/D\\_9\\_2/D9\\_2\\_A.html](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2.&file=/D_9_2/D9_2_A.html)).

<sup>13</sup> FSA Policy Statement 11/01 ([http://www.fsa.gov.uk/pubs/policy/ps11\\_01.pdf](http://www.fsa.gov.uk/pubs/policy/ps11_01.pdf))

<sup>14</sup> Financial Advisers Act 2008 s 18(1)(a) (<http://www.legislation.govt.nz/act/public/2008/0091/latest/DLM1584653.html> ).

<sup>15</sup> Financial Advisers Act 2008 s 18(1)(c).

<sup>16</sup> Financial Advisers Act 2008 s 20B.

<sup>17</sup> An Act Respecting the Distribution of Financial Products and Services s 56.

<sup>18</sup> Financial Advisers Act 2008 s55.

<sup>19</sup> An Act Respecting the Distribution of Financial Products and Services s 59-60.

<sup>20</sup> Fallon, F. (2014), "The Institute of Public Accountants - their journey towards professional recognition", Working Paper, Deakin University

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The Australian Law Reform Commission (ALRC) states that co-regulation typically refers to situations where industry develops and administers its own arrangements, but government provides policy support to enable the arrangements to be enforced<sup>21</sup>.

Further, the FPA believes by ensuring the regulatory design encourages and leverages a collaborative and cooperative two-way working relationship between co-regulatory professional bodies and an appropriate government body or Regulator, the capabilities of the regulatory system, as a whole, will be maximised to improve overall consumer protection. To ensure co-regulation functions at optimum effectiveness in working together to protect consumers, the professional body / Regulator relationship must have the public interest at its core, be based on trust, and allow the two-way exchange of information on a confidential basis, particularly relating to consumer complaints and provider conduct issues.

## 8.1 Legislative structure

### a) ASIC

The FPA notes the legal ability for ASIC to work collaboratively with professional bodies exists in relation to information sharing in s127 of the ASIC Act, and as articulated in Regulatory Guide 103. Importantly, s127(4)(d) states:

*Where the Chairperson is satisfied that particular information .... will enable or assist a prescribed professional disciplinary body to perform one of its functions ... the disclosure of the information to the agency, government, officer or body by a person whom the Chairperson authorises for the purpose is taken to be authorised use and disclosure of the information.*

However, ASIC Regulations 2001 – Regulation 8AA, limits the application of s127(4)(d) to the following prescribed professional disciplinary bodies:

- a) The Institute of Chartered Accountants in Australia;
- b) CPA Australia;
- c) Institute of Public Accountants.

<sup>21</sup> <http://www.alrc.gov.au/publications/13-codes-and-co-regulation/regulatory-forms>

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The FPA understands the introduction of the *Corporations Amendment Regulation 2013 (No. 3)* creates a limited licensing regime for accountants, allowing them to provide a limited range of financial product advice. This change also means that accountants are now covered by the same duties towards consumers as financial advisers and financial planners, including the best interests duty. However, in order to supplement the transition of accountants to the AFSL licensing regime, the then Government allowed for accountants' existing professional qualifications to be recognised under 'Regulatory Guide 146 Licensing: Training of financial product advisers' (RG 146)<sup>22</sup>. These streamlining arrangements are only available to accountants that hold a practising certificate from a prescribed professional accounting body such as CPA Australia, the Institute of Chartered Accountants in Australia and the Institute of Public Accountants. Therefore, ASIC is able to assume, provided that a practising certificate has been obtained from a prescribed professional body, that each accountant has the necessary experience to provide the financial advice services.<sup>23</sup>

The Corporations Act also allows ASIC to declare that members of specific accounting professional bodies are 'qualified accountants'<sup>24</sup> for the purposes of investor disclosure in s708(8)(c) of the Corporations Act. When providing financial advice, a product disclosure statement must be provided. However, section 88B(2) provides for an exemption in relation to the disclosure for a sophisticated investor. Disclosure is not in a mandated form if the provider is offering securities to a person who is the subject of a current certificate from a qualified accountant, certifying they have a prescribed net asset or gross income level. Before approving, ASIC will consider the nature and extent of relevant education and experience requirements applied by the professional body, and whether the relevant professional body has appropriate and effective disciplinary procedures.<sup>25</sup> *Regulatory Guide 154 - Certificate by a qualified accountant* provides guidance as to how ASIC approves an individual as a qualified accountant.

This demonstrates a clear precedent for legally incentivising membership of a professional body to ensure market participants are captured and adhere to professional obligations, including education requirements for membership, and to facilitate co-regulation to assist the Regulator to protect consumers.

The Regulations show a clear precedent and ability for ASIC to enter into a collaborative and cooperative two-way working relationship with professional bodies, including the legal ability to share information. To date, this ability has not been leveraged to support the existing professional frameworks within the financial advice profession.

The FPA has provided further evidence of the legal precedent for co-regulation and information sharing between regulators and professional bodies in *Attachment 3: Precedent for co-regulation*. Also provided is an overview of co-regulatory approaches used in Australia outside the financial services sector, and in international jurisdictions.

<sup>22</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/036.htm&min=brs&DocType=0>

<sup>23</sup> <http://ministers.treasury.gov.au/Ministers/brs/Content/pressreleases/2012/attachments/36/Replacement-for-accountants-exemption.pdf>

<sup>24</sup> Section 88B(2) Corporations Act

<sup>25</sup> RG 154.10

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## b) Professional Standards Councils (PSC)

An alternative option would be to utilise the existing structure of the Professional Standards Councils whose role it is to approve professional bodies against criteria recognised in the law in each state and territory in Australia.

The PSC is the independent statutory body responsible for promoting professional standards and consumer protection through the approval, monitoring and enforcement of Professional Standards Schemes based on the three pillars of professional standards legislation:

1. Protect consumers - The PSC expects professional bodies within its regulated communities to make sure their members uphold these standards through education and guidance, monitoring and enforcement, and other measures.
2. Improve professional standards - the PSC work closely with professional bodies to develop self-regulation initiatives and promote change to improve professional standards and conduct.
3. Help professional bodies - By approving and administering Professional Standards Schemes, the PSC works with professional bodies to strengthen and improve professionalism within associations. Professionals that take part in an approved Professional Standards Scheme have their civil liability limited.

For the PSC to approve a scheme they must be satisfied that the professional body has in place risk management strategies and the means by which those strategies will be implemented. The professional body is required to report annually to the Councils progress against those strategies. This includes the development of and commitment to a 5 year Strategic Risk Management Plan and risk mitigation framework supported by the professional body's existing and proposed scheme governance arrangements.

A unique aspect of the PSC is its power to limit the civil liability (damages) that a member of a recognised professional body can be required to pay. This would encourage financial planners and financial advisers to mitigate their business risks through professional membership and sound risk management strategies integrated into their advice processes.

This has been a proven driver of change in professions currently operating under PSC approved professional bodies. The clearest example of this is the legal profession. The Law Society of NSW was first approved by the PSC in 1996.

The PSC has all the necessary legal structures in place to approve professional bodies as it has been specifically set up for this task, with the primary purpose of improving consumer protection by leveraging the role of professional bodies in the regulatory design. The professional standards legislation that exists in every Australian jurisdiction governs the operation of Professional Standards Schemes.

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Jurisdiction	Legislation
ACT	Civil Law (Wrongs) Act 2002 Civil Law (Wrongs) Regulation 2003
NSW	Professional Standards Act 1994 Professional Standards Regulation 2009
NT	Professional Standards Act 2004 Professional Standards Regulations 2008
QLD	Professional Standards Act 2004 Professional Standards Regulation 2007
SA	Professional Standards Act 2004 Professional Standards Regulations 2006
TAS	Professional Standards Act 2005
VIC	Professional Standards Act 2003 Professional Standards Regulations 2007
WA	Professional Standards Act 1997 Professional Standards Regulations 1998
Federal	Treasury Legislation Amendment (Professional Standards) Act 2004 Australian Securities and Investments Commission Act 2001 Corporations Act 2001 Competition and Consumer Act 2010

## 8.2 Criteria

Precedent and criteria for Regulator recognised professional bodies has been set, for example, in the Tax Agent Services Regulations Schedule 1 Part 2 Recognised tax agent association, which permits membership of a Tax Practitioners Board (TPB) recognised professional body as a TPB registration option. This is a long-standing precedent which existed in the Income Tax Assessment Act prior to the introduction of the Tax Agent Service regime. (See *Attachment 4: Recognised professional bodies* for further details.)

In 2012, the UK Government introduced criteria for approving professional bodies that have financial planners and financial advisers as members. To date the FCA has recognised eight professional bodies.

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The FPA has assessed the criteria used to recognise professional bodies by the PSC, the FCA, and within the Tax Agent Services Regulations, in relation to its relevance and ‘fit’ with the Australian financial advice profession and regulatory environment. 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<sup>26</sup>. This must be a key consideration in the development of appropriate criteria for a Regulator or government body to recognise a professional body – serving the ‘public interest’.

A recognised professional body also must be of a minimum size to ensure its stability as a business. It must have professional obligations and ethical standards that go further than the requirements of the law, which it enforces to ensure the consumer protection benefits of professional membership are maintained.

The FPA proses the following criteria for the recognition of professional bodies:

1. Main purpose of the professional body is to act in the public interest and contribute to raising consumer confidence and trust by promoting professional standards;
2. Must have minimum number of individual financial planner and financial adviser practitioner voting members who meet the minimum education requirement of an FPEC approved degree. Consistent with the TASA Regulations, a minimum of 1,000 voting members;
3. Must have membership criteria that meets education and experience requirements;
4. Must have a CPD policy that members must adhere to;
5. Must have a professional framework including Code of Ethics and Practice Standards and rules;
6. Must have arrangements for monitoring members compliance with those standards;
7. Must provide help and guidance to members in meeting those standards;
8. Must be not-for profit and not have any commercial conflicts or corporate voting members;
9. Must have adequate resources (including financial resources) and systems and controls to implement complaints and disciplinary handling processes;
10. Must be able to report and share information about members with the Regulator / government body.

<sup>26</sup> Richardson, A. J. (1992) Educational Policy and Professional Status: A Case History of the Ontario Accountancy Profession. *Journal of Canadian Studies*, 30: 44-57.

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## 8.3 Practicing Certificate

The certification earned by a professional society provides evidence of acquired and continued learning, demonstrating an impartial third-party endorsement of an individual's professional knowledge and experience.<sup>27</sup> This is a practice followed by the FCA which requires financial planners and financial advisers to make an annual declaration that they are meeting standards and as evidence, hold a Statement of Professional Standing (SPS) from an accredited body.

Requiring certification, such as a Practicing Certificate, to be provided by a recognised professional body to its financial planner and financial adviser members, can be used as a demonstration to consumers of adherence to professional and ethical obligations that are in the public interest and go beyond the law.

A requirement of a recognised professional body should be to issue Practicing Certificates to members who meet the new education standards and adhere to its professional and ethical obligations, including ongoing CPD. Meeting these requirements and receiving a Practicing Certificate from a recognised professional body permits the individual to use the title financial planner or financial adviser. Individuals who do not hold a current Practicing Certificate should not be allowed to use these titles.

## 8.4 Restricting the use of the titles financial planner and financial adviser

It is the FPA's strong belief that to strengthen consumer protection and to reinforce compliance to professional standards, the law must restrict the use of the titles financial planner and financial adviser to only those that are a member of a Regulator / government body recognised professional body.

A lack of restrictions on the use of the titles financial planner and financial adviser is, among other things, a significant gap in consumer protection. It leaves trusting consumers open to influence by unlicensed and unqualified individuals calling themselves financial planners or financial advisers.

During the Parliamentary Joint Committee (PJC) Inquiry into the collapse of Storm Financial, the recommendation of restricting the titles financial planner and financial adviser was raised. The Boutique Financial Planning Principals Group (BFPPG) stated:

*The public can readily identify other professions: doctors, lawyers etc by their title. There are, however, thousands of individuals holding themselves out to be financial planners who meet the bare minimum training or ethical requirements. In most cases these people are associated with single product areas of advice or advice that is focused strongly into one type of asset class or investment type. There are real estate agents who call themselves financial planners so that they can offer advice on the investment of excess funds after the*

<sup>27</sup> Barnhart, P.A. (1997) *The Guide to National Professional Certification Programs*. Amherst, MA: HRD Press Inc.

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*purchase or sale of a property. There are property developers who call themselves financial planners so that they can package the sale of their property development into superannuation funds.*

The PJC committee acknowledged in their report [5.87]<sup>28</sup>:

*...legitimate concerns about the varying competence of a broad range of people able to operate under the same 'financial adviser' or 'financial planner' banner. The licensing system does not currently provide a distinction between advisers on the basis of their qualifications, which is unhelpful for consumers when choosing a financial adviser.*

From a consumer perspective there is minimal understanding of the different roles and more importantly restrictions placed on the different providers and the limitations of the advice information consumers may be provided.

There is a high level of confusion in the market, within industry, media, Government and consumers, about the definitions and roles of financial planners, financial advisers, those that just sell financial products and those operating unlicensed. Some incorrectly represent themselves to consumers as financial planners and financial advisers without the appropriate, training, licensing, and professional standing and competency required. This significantly erodes consumer protection. The lack of constraint on individuals calling themselves financial planners and financial advisers puts consumers at risk of receiving poor advice from incompetent providers and creates consumer confusion.

The titles financial planner and financial adviser are also increasingly being used in marketing and promotional material by persons who provide non-traditional ancillary services, such as realtors, stockbrokers, life insurance agents or brokers, mortgage brokers, property brokers, sales agents of various investment vehicles, accountants, and unlicensed individuals.

This position is supported by an article in the Canberra Law Review (2011)<sup>29</sup>:

*Trust and confidence in a professional industry is built upon the belief that the professionals working in that industry have special training and knowledge, high standards of accountability and a belief that advice given is in the best interest of the client seeking expert knowledge. Without adequate training and specialist knowledge, it is difficult to see how any of the previously mentioned factors can be fulfilled, as good advice cannot be given by an adviser whom has not been properly trained and lacks specialist knowledge. In order to restore trust and confidence in the financial advice industry, these issues must be addressed.*

*Furthermore, a closely related matter to this issue that is yet to be implemented is the restriction of the use of the term 'financial adviser' and 'financial planner' to people that*

<sup>28</sup> Parliamentary Joint Committee, *Inquiry into financial products and services*, November 2009, pp 90

<sup>29</sup> Canberra Law Review (2011) Vol. 10, Issue 3. The future of financial advice reforms: Restoring public trust and confidence in financial advisers – an unfinished puzzle. University of Canberra

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*have membership to the appropriate professional standards board. Until these issues have been addressed, there will remain significant deficiencies in the implementation of the Ripoll Inquiry recommendations, which will hinder progress in restoring consumer trust and confidence in the financial advice industry.*

Australians deserve the best possible advice from the most qualified practitioners – and these practitioners should be bound by a professional framework that goes beyond the law and requires adherence to standards of conduct, ethics and education, which are specifically tailored to the provision of quality financial advice.

The criteria for using the titles financial planner and financial adviser should be linked to membership of a professional body recognised by an appropriate Regulator or government body. This is akin to individuals who attain their status as a registered tax (financial) adviser through membership of a recognised professional tax agent association.

## **Recommendations:**

In response to Terms of Reference 3, the FPA recommends the Committee support a framework for Regulator / government body to recognise professional bodies for the financial planning profession by:

1. Supporting appropriate policies to enable the effective implementation and operation of the co-regulation of financial planners and financial advisers through recognised professional bodies. This could, for example, be achieved by:
  - Amending the ASIC Regulations to permit ASIC to recognise professional bodies who have financial advisers and financial planners as their members that meet a set criteria, and establishing a Memorandum of Understanding between ASIC and recognised professional bodies to permit a co-regulatory partnership and information sharing, or
  - Supporting the established mechanisms of the Professional Standards Councils.
2. The titles of financial planner and adviser will only be permitted to be used by individuals holding a Practicing Certificate as a member of a recognised professional body

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## Financial Services Inquiry:

The Inquiry would value views on the costs, benefits and trade-offs on the following policy options or other alternatives:

- No change to current arrangements
- Raise minimum education and competency standards for financial advisers (including particular standards for more complex products or structures, such as SMSFs) and introduce a national examination for advisers providing personal advice

## 9. Minimum education standards

As previously stated, the FPA agrees that there is a need to change the current education requirements to increase the minimum education standards and requirements for those providing tier 1 personal financial advice to consumers. The FPA recommends the following financial planner and financial adviser education framework to raise the standards:

Education framework	Course requirement	Course approval	CPD	Experience / on the job training	Adviser register
Purpose	<p>Detailing the minimum course requirements an individual must undertake to provide financial advice under an AFSL:</p> <ul style="list-style-type: none"> <li>• course level and award</li> <li>• curriculum or core subject matter, and</li> <li>• course duration</li> </ul>	<p>A central authority must be empowered to approve courses to ensure courses meet the minimum education standards.</p> <p>A list of approved courses must be maintained and publicly available to enable individuals and industry to check the accreditation of courses.</p>	<p>A minimum level of CPD must be set to ensure an individual maintains and builds on their knowledge and skills relevant to the services they provide to consumers. CPD build on the knowledge gained by completing the initial course requirements.</p>	<p>Work experience allows theory to be put into practice, and facilitates learning outcomes that cannot be achieved through a text book.</p>	<p>An Adviser Register will assist consumers and industry with validating the education undertaken and the qualifications held by individual financial planners and financial advisers.</p>
Requirement	<p>An individual must hold:</p> <ul style="list-style-type: none"> <li>– a degree or post-graduate qualification (from an Australian tertiary institution) approved by the FPEC, or</li> </ul>	<p>Course must be approved by the Financial Planning Education Council (FPEC) against its Australian Higher Education Curriculum and Accreditation Framework in Financial Planning</p>	<p>Financial planners and financial advisers must undertake a minimum of 90 CPD points / hour over a triennium period, with a minimum of 25 points / hours in any given year</p>	<p>An individual must have a minimum of one year of relevant experience in the preceding 3 years to be permitted to provide tier 1 personal advice.</p>	<p>All representatives and authorised representatives who provide personal advice under an AFSL should be listed on a public Adviser Register</p>

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	<ul style="list-style-type: none"><li>- a degree or award (from an equivalent institution) at a minimum level of AQF7 approved by the FPEC, or</li><li>- equivalent tertiary education approved by the FPEC at a minimum level of AQF7</li></ul>	FPEC should maintain a public register of the courses it approves.			
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The FPA has discussed the costs, benefits and trade offs of changing the education requirements for financial planners and financial advisers in previous sections for this submission.

## Recommendation:

The FPA recommends the Committee call for increasing the minimum education requirements for providers of tier 1 personal advice, and support the FPA's proposed education framework for financial planners and financial adviser.

## 9.1 SMSFs and complex products

The FPA recommends a new course requirement of a degree approved by the FPEC and based on the FPEC curriculum. Importantly, any increase in education standards must have the provision of personal financial advice at its core, not a focus on financial products which is a key failing of the current structure of RG146. The FPEC curriculum requires, within its core knowledge areas, study to be undertaken in key subject matter vital to providing personal financial advice on SMSFs and complex financial products including the following:

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	<b>Core knowledge area</b>	<b>Example of relevant topic requirements</b>
SMSFs	Superannuation and retirement planning	<ul style="list-style-type: none"> <li>• SIS legislation</li> <li>• Types of super funds</li> <li>• Self managed super funds</li> <li>• Taxation in relation to super</li> </ul>
	Taxation 1	<ul style="list-style-type: none"> <li>• Superannuation taxation</li> </ul>
	Investments	<ul style="list-style-type: none"> <li>• Investment structures</li> <li>• Investment strategies</li> <li>• Investing in property and collectibles</li> </ul>
Complex products	Client relationships	<ul style="list-style-type: none"> <li>• Behavioural finance: risk profiling vs investment behaviour</li> </ul>
	Superannuation and retirement planning	<ul style="list-style-type: none"> <li>• Transition to retirement</li> <li>• Account-based pensions</li> <li>• Annuities</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>• Life insurance and estate planning strategies in financial planning</li> <li>• Taxation consequences of premiums and benefits</li> <li>• Personal insurance</li> </ul>
	Taxation 1	<ul style="list-style-type: none"> <li>• Gearing</li> <li>• Investment structures with tax implications</li> <li>• Tax strategies in financial planning</li> </ul>
	Investments	<ul style="list-style-type: none"> <li>• Investment Strategies</li> <li>• Indirect investments</li> <li>• Investing in property and collectibles</li> <li>• Research and research methodologies</li> </ul>
	Investments 2 and fund analysis	

While SMSFs and complex products are addressed in the core knowledge areas of the FPEC curriculum, the FPA suggest this is adequate at the introductory or base level of education, but the provision of financial advice on SMSFs and complex products such as derivatives, warrant additional minimum education standards to be able to be authorised to provide advice in these areas.

**Recommendation:**

The FPA recommends the Committee support the FPEC curriculum as adequately and appropriately providing minimum education requirements for providers of personal financial advice, and require additional minimum education standards to be able to be authorised to provide advice on SMSFs and complex products, within a proposed holistic education framework for financial planners and financial advisers.

## 9.2 National exam

The FPA does not support the introduction of a national exam for financial advisers and financial planners. A national exam for providers of tier 1 personal financial advice was initially proposed by ASIC in April 2011 to achieve the following objectives:

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- To ensure all advisers have the requisite competence to perform their duties to a reasonable minimum standard.
- To provide a benchmark for training organisations to ensure that the individuals they train have the necessary skills, knowledge and competence to pass the exam.

It was proposed that the national exam would also serve as a mechanism to develop a register of individual advice providers.

The new requirements proposed by the FPA in this submission combine to achieve these objectives in a much more efficient, effective and timely manner with significantly less impost and cost on government, consumers and the profession as they leverage proven systems and structures already in place.

The FPA proposes a holistic education framework for financial planners and financial advisers, including increased course requirements, course approval mechanisms, CPD standards, minimum work experience, and an adviser register.

The FPA proposes the criteria for the recognised professional associations must require bodies to ensure individual practitioners meet or exceed the new education requirements including CPD, and issue a practising certificate to enable individuals to provide personal financial advice and use the title financial planner or financial adviser. In conjunction with the proposal of compelling membership of a recognised professional body (to be permit to use such titles) and adherence to professional obligations, these measures will exceed the objectives and potential benefits of a national exam. These improvements make the need for a national exam redundant.

A national exam is a checklist type approach to raising education standards. This is inadequate. Education standards for financial planners and financial advisers must be raised to a degree requirement within a holistic education framework. However, as previously stated, education standards alone are not enough. A co-regulatory approach must be used to compel those who use the title financial planner or financial adviser to adhere to professional and ethical standards set by professional bodies.

The development of the new Adviser Register (as per the Government's commitment) will deliver a superior outcome with more certainty than developing a list of advisers via a national exam. The Government has proposed its Adviser Register will be a legal requirement for all representatives, employed and authorised representatives, not just limited to those who sit an exam. It can also be implemented in a significantly shorter timeframe as it is not reliant on, and does not need to wait for, an exam to be developed.

## Recommendation:

The FPA recommends the Committee oppose the introduction of a national exam for financial planners and financial advisers.

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## Enhancing the framework of consumer protection

### 10. Defining advice for the consumer

The FPA believes a framework for education for advice must apply to all financial advice on tier 1 products provided to consumers. Fundamental to this position is the separation of advice from product selling and the need for a change to the definition of 'general advice' in the Corporations Act to underpin the achievement of the objective of the Inquiry to raise the professional, ethical and education standards in the financial advice profession.

There is a high level of confusion in the market, within industry, media, Government and consumers about the definitions and roles of financial advisers and financial planners, and those that sell financial products.

Some consumers incorrectly mistake the use of the word 'advice' to be a standard definition when in fact there is a significant legal and technical difference between 'general' and 'personal' advice.

The Law defines the act of providing 'financial product advice', specified as general advice and personal advice:

- Personal advice (s766B) is given when the provider of the "financial product advice" has considered one or more of the consumer's objectives, financial situation and needs.
- General advice is financial product advice that is not personal advice.

We are concerned that defining financial product advice on this basis makes it more difficult for consumers to distinguish personal financial advice from marketing material or product sales. This risk is confirmed by ASIC's *Report 384 – Regulating Complex Products*, where the Report states;

*"Our research has indicated that marketing information plays a particularly strong role in product distribution and may influence investors' decision making more than other product disclosure. In particular, when investors approach product issuers or other intermediaries responsible for selling products directly, rather than going through advisers, the information contained or implied in product issuers' marketing information is often the first, and may be the only, information that investors use to decide whether or not to invest in that product."*<sup>30</sup>

Framing 'general advice' as advice plays into the behavioural aspects of financial decision-making by giving the impression that the advice has a reasonable basis or is appropriate for the client, and thereby exposes retail investors to decisions made under uncertainty about the regulatory framework for that advice. Anecdotal evidence shows that it is common for individuals to interpret general advice as personal advice because it is relevant to their circumstances at the time it is provided. To ensure consumers can easily distinguish between the various roles and services in the

<sup>30</sup> ASIC, 'Report 384 – Regulating Complex Products' (January 2014), at [46]

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financial services sector, providers of general or product information should not be permitted to use the titles financial planner or financial adviser.

## Recommendations:

The FPA recommends the Committee support additional consumer protection measures by recommending:

- 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.
- Personal Advice be re-termed 'Financial Advice' and have the following meaning:

*Any recommendation made personally to a consumer on which that consumer could reasonably be expected to act in relation to an investment or financial decision, including but not limited to, any recommendations relating to shares, debentures, collective investments, futures or options contracts, life insurance, superannuation, property or other financial instruments, transactions or investments.*

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## Attachment 1: FPEC Australian Higher Education Curriculum and Accreditation Framework in Financial Planning

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Provided as a separate supporting document due to its size and content.

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## Attachment 2: Summary of FPA professional framework

### Overview

In most professions, regulation is a dynamic interaction between government-imposed legal requirements, business-imposed rules of work, and the expectations of professional peers as manifested in professional obligations. Each of these systems of regulation have the potential for overlap with each other, but it is the goal of the FPA's Code of Professional Practice and Code of Ethics to respond to those issues that are not covered in law, or which the law does not provide a sufficient standard for professional financial planning practice.

The FPA's professionalism framework applies to all CFP® and AFP® practitioner members as a directly enforceable form of professional regulation. It also provides a foundation of expectations and norms for wider industry application and provides a vital link between overarching statutory regulation, licensee obligations, and expected professional behaviour.

In order to fulfill our obligations as a professional body the FPA has not only led the global community in the development of professional regulation, but as an organisation we ourselves undergone substantial changes. Since 2009, the FPA has undertaken the following initiatives to strengthen the professional obligations on our members:

- Effective 1 July 2012, the FPA changed its membership structure (with the support of members) to move to a professional body with a membership solely of financial planner practitioners (this received a 94% yes vote from membership at our EGM in April 2011).
- The membership change ensured the accountability to adhere to professional obligations sits with the financial planner when providing services to consumers, which complements the regulatory and licensee obligations to enhance consumer protections.
- The FPA has moved to higher standards of membership which will require, for all new members, a minimum degree qualification and one year experience from 1 July 2013.
- Continued to build a Professional Framework for financial planners, as evidenced by the introduction of a new Code of Professional Practice;
- Put new disciplinary regulations in place for enforcing the FPA's Code and professional practice obligations;
- In October 2009 (prior to FoFA), the FPA launched a Remuneration Policy for our members, banning investment commissions on new business from July 2012;
- Updated the FPA's Continuing Professional Development (CPD) policy, ensuring a qualitative approach is taken for ongoing training of financial planners.

All these initiatives served to change the professional landscape under which members of the FPA operate in Australia.

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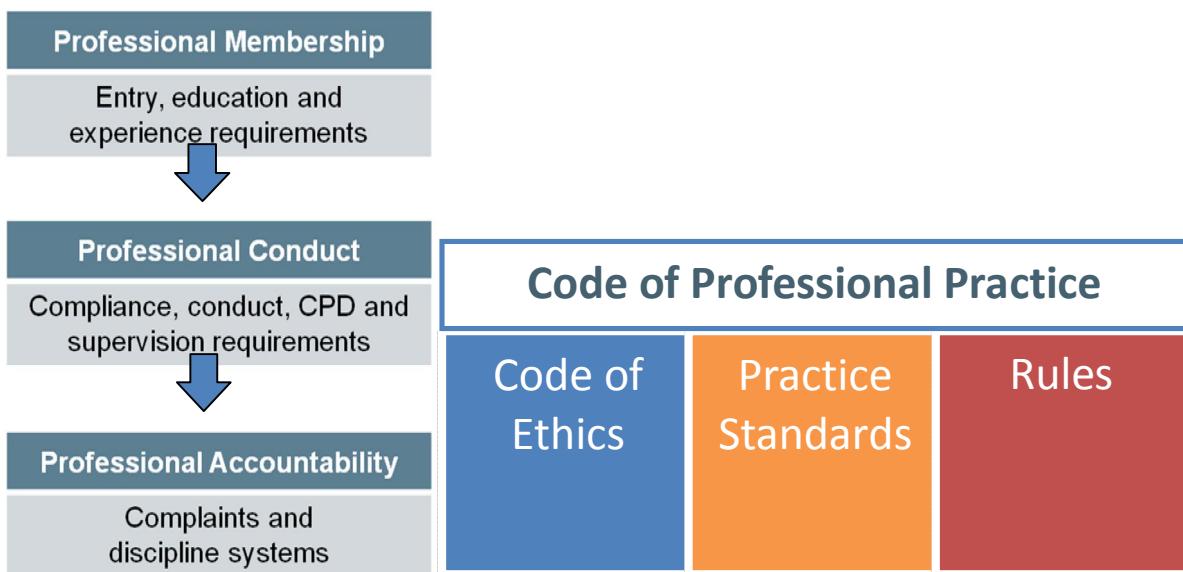
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The FPA has harmonised nine separate layers of obligation for members into a Code of Professional Practice, with all rules and regulations being captured through:

1. Code of Ethics – enshrines the high standards of professional behaviour that a member presents in the course of the provision of professional services.
2. Practice Standards – establishes the benchmark of expectations in professional practices, and promotes the six-step financial planning process in delivering quality advice and the professional conduct of FPA members that enhances the reputation of the profession.
3. Rules of Professional Conduct – underpins the minimum requirements with which a member must conform in order to demonstrate professionalism.
4. Guidance – provides guidance to members in interpreting elements of the single Code framework and establishes best practice models that assist the members' day to day activities in providing professional services.

This is world-leading, but in itself it is not enough. A profession must also have a professional framework. The FPA has a framework for:

- professional membership
- professional conduct
- professional accountability



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## *Binding professional obligations*

The FPA first adopted a binding Code of Ethics and Rules of Professional Conduct on 5 February 1992. In 1997, in anticipation of the introduction of the FPA's revised Code of Ethics and Rules of Professional Conduct on 1 May 1997, the FPA Compliance Handbook noted:

*As a condition of FPA membership, members sign a declaration agreeing to abide by the FPA Code of Ethics.*

*Principal and Practitioner members acknowledge and agree that the substance and contents of any charge for violation of FPA Code of Ethics and Rules of Professional Conduct against a member and the action taken in respect of such a charge, may be notified to any relevant government or statutory authority, and the disciplinary finding published with or without disclosure of the name of the member in the official publication of the Association by notification to the members of the Association.<sup>31</sup>*

The FPA completed a further round of modifications to the Code of Ethics and Rules of Professional Conduct effective from 1 July 2009. These changes developed and aligned FPA professional standards into a 'single code of practice', committing financial planning in Australia to the FPBS global Code of Ethics and new global Practice Standards, and introduced a revised set of 122 Rules of Professional Conduct effective from 1 July 2010. In July 2011, the FPA completed an historic restructure of its membership to refocus on the individual practitioner professional, dissolving the Principal (AFS Licensee) Member category and bringing further changes to its Code of Professional Practice. Most recently, in October 2012 the FPA embarked on an ambitious further update of its professional code to reflect the profession's response to the legislative enactment of the Future of Financial Advice reforms to the Corporations Act 2001.

Just like the application of statutory regulation, professional regulation is a combination of stated rules and supporting regulations. As the governing entity of a professional association the FPA Board is empowered by the FPA Constitution to make rules and regulations that govern member behaviour. In addition to governing member behaviour, these rules place obligations on the FPA to monitor behaviour and enforce the regulations according to specific requirements. This activity is undertaken by the FPA's Professionalism Division (Policy and Conduct, Professional Standards, Professional Designations). The division oversees the development and application of standards, as well as the active investigation of complaints and general investigation of malpractice risks in the membership. In addition to a Professional Accountability team, the FPA has a formally constituted and independently chaired Conduct Review Commission which follows a private tribunal model for disciplinary proceedings against members.

It is currently best practice for AFS Licensees to map their own adviser requirements and business rules to the expectations established in the FPA Code of Professional Practice.

<sup>31</sup> FPA Compliance Handbook- A Handbook of Compliance Best Practice for Financial Planners 5.2 Apr/97

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The Financial Ombudsman Service (FOS) has publicly recognised the FPA Code of Professional Practice, providing evidence of the normative status of the Code for financial planners as an industry standard upheld by the leading External Dispute Resolution Scheme in financial planning disputes.

## *Client Conduct – Putting Client First*

Rule 1 of the FPA's Code of Ethics is a requirement for "Putting the Client First", and was introduced by the FPA in 2009, before the Future of Financial Advice reforms.

"Putting the Client First", together with the rest of the FPA's Code of Professional Practice has been shown to comply with the statutory "best interest duty" test introduced in the FoFA regulations. FPA members remain one step ahead of the curve, continuing to focus on delivering best in class financial advice to clients at a time when the wider industry is dealing with a rapidly shifting regulatory environment.

The FPA's 'client first' obligation was introduced and embedded by our members well before the 'best interests duty' was proposed by the Government to be mandated in the Corporations Law. While this shows the ability of professional bodies to respond to the consumer protection needs of specific professions, the fact that a best interests duty was legislated highlights how the voluntary nature of professional membership leaves many industry participants unaccountable to professional obligations. This shows the need for the regulatory design to facilitate a legislative environment that encourages industry participants to be members of professional bodies to ensure professional obligations are extended to all service providers.

## *Conflicted Remuneration*

In October 2009, the FPA Board lead the industry by committing to ban conflicted remuneration. The FPA's Code of Professional Practice was amended accordingly and since 1 July 2012, FPA members have committed that all new advice will be free from conflicted remuneration arrangements. Many of the recommendations published in FPA's Remuneration Committee Report now appear under the FoFA regulations.

## *Public Complaints System and Investigations Handling*

The FPA has a formal complaints and investigation handling system codified in the FPA Disciplinary Regulations. The system works as a result of cooperation between the FPA's accountability team and Conduct Review Commission (CRC).

The accountability team is responsible for investigating complaints, gathering evidence, conducting preliminary investigations, inviting the member to assist and allowing the member every opportunity to give an explanation, and assisting complainants throughout the process. The aim is to deliver a recommendation to the Chair of the CRC as to whether FPA's Code of Professional Practice has been contravened and if the Chair should issue a breach notice.

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The Conduct Review Commission (CRC), through its independent Chair, is responsible for reviewing the recommendation made to it by the FPA's accountability team, issuing a breach notice if satisfied that the evidence and legal arguments are sound, arranging and conducting hearings, and determining the most appropriate disciplinary action to take.

The FPA receives complaints by consumers regarding breaches made by FPA members. In the quarter from October - December 2012, there were 12 new investigations received and 13 investigations closed<sup>32</sup>. In the June 2013 quarter (April to June 2013), the FPA received five new complaints, finalised eight investigations and had nine ongoing investigations.<sup>33</sup> The FPA publishes quarterly Professional Standard reports on its complaints procedures, which includes the identification of any remedial tips for planners to help educate members in adhering to the Code obligations, and minimise the risk of breach reoccurrence for consumers.

## *Active Professional Disciplinary Panel*

The CRC receives complaints, with almost half of them being Members providing unsuitable recommendations (44%)<sup>34</sup>. 21% of complaints regard misleading conduct, and 9% regard non-disclosure of fees, risks and conflicts of interest.<sup>35</sup> In 2011-12, the most common reason for a breach in which a determination was provided was Rule 111 - *providing explanation of risks in terms the client is likely to understand*<sup>36</sup>.

There are a number of sanctions available for the CRC to enforce, depending on the extent of the breach and amount of Member cooperation. The most regular sanctions given by the CRC are admonitions, further education and supervised practice, and fines ranging from \$1,500 to \$20,000 per contravention<sup>37</sup>. Although expulsion and suspension are uncommon sanctions, as the CRC aims to promote ethical behaviour in the industry and reintegration into good standing, the CRC had 2 terminations of memberships and one suspension over the October-December 2012 quarter<sup>38</sup>. Where the CRC believes that the individual can provide good evidence that their experience and expertise can contribute to the financial planning industry and there remains some scope that the individual will regain adherence to the professional obligations, the CRC will be more encouraged to designate further education as a sanction rather than expelling or suspending the individual.

Once a decision is made by the Panel, the decision can be appealed. The CRC has had only one appeal of its determinations to date, which was dismissed<sup>39</sup>, demonstrating that the decisions are fairly and accurately made and the sanctions provided are reasonable.

<sup>32</sup> <http://www.financialplanningmagazine.com.au/analysis/quarterly-complaints-and-discipline-report-oct-1>

<sup>33</sup> <http://www.financialplanningmagazine.com.au/analysis/quarterly-complaints-and-discipline-report-april-t>

<sup>34</sup> From Bad Practice to Good Practice and the FPA's Conduct Review Commission - Dimity Kingsford-Smith's article

<sup>35</sup> From Bad Practice to Good Practice and the FPA's Conduct Review Commission - Dimity Kingsford-Smith's article

<sup>36</sup> [http://www.fpa.asn.au/media/FPA/FPA%20Standards/FPA\\_ProfessionalStandardsReport2012-FINAL.pdf](http://www.fpa.asn.au/media/FPA/FPA%20Standards/FPA_ProfessionalStandardsReport2012-FINAL.pdf) - FPA Annual Report 2011-12 p20

<sup>37</sup> From Bad Practice to Good Practice and the FPA's Conduct Review Commission - Dimity Kingsford-Smith's article

<sup>38</sup> <http://www.financialplanningmagazine.com.au/analysis/quarterly-complaints-and-discipline-report-oct-1>

<sup>39</sup> [http://www.fpa.asn.au/media/FPA/FPA%20Standards/FPA\\_ProfessionalStandardsReport2012-FINAL.pdf](http://www.fpa.asn.au/media/FPA/FPA%20Standards/FPA_ProfessionalStandardsReport2012-FINAL.pdf) - FPA Annual Report 2011-12 p20

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The powers and activity of the CRC demonstrate the significant role professional bodies can play in the regulatory design, particularly in responding to consumer complaints and ensuring appropriate action is taken against inappropriate conduct of individual providers.

The FPA notes the civil penalty provisions within the Corporations Act as an alternative to criminal prosecution and to give ASIC sanctions to meet non-fraudulent contraventions. However, the Corporations Act is specific and express that they are to be civil in procedure, rules of evidence and standard of proof. While the FPA understands the need for such legal requirements for ASIC, in contrast the FPA's Conduct Review Commission Disciplinary Panel may inform itself as it deems necessary and is not restricted to the rules of evidence. It must make its determination on the basis of the material before it and on the balance of probabilities. This enhances our ability to respond to consumer complaints and allows for flexible solutions to be implemented to enhance the protection of the public and the profession.

The FPA has a demonstrated capacity to act promptly to inappropriate behaviour that puts consumers at risk, with sufficient flexibility to achieve results.

## *Publication of Disciplinary Decisions with Reasons*

Under Part 10 of the FPA Disciplinary Regulations, the CRC is required to produce a statement of reasons for its determination regarding a breach. Part 13 allows the FPA to publish the outcome of the determination on the FPA's website and in the Financial Planning Magazine. Publication can be following a special breach due to non-cooperation, following a Disciplinary Panel determination or following a summary dismissal. The Member's name is published in the case of expulsions and the name of the complainant withheld.

The FPA also acts to incorporate the reasons for the determination into training and feedback to members. This ensures that recurrences of common breaches are significantly reduced, and members are made aware of areas in which they have to take extra care.

Complaint procedures and the activity of the CRC is one strategy the FPA uses for reducing infringements of the Code of Professional Practice. In addition, the FPA uses training, continuing professional development (CPD) obligations, and improvements to the Code of Professional Practice itself, to continuously improve the professional conduct of individual members and enhance consumer protection.

## *Supervision and Oversight of Members*

A key aspect of consumer protection is the accountability of financial services providers through compliance monitoring and complaints management. A vital element of this process is the ability to identify and track trends and systemic issues, and to modify regulatory requirements to ensure consumer protection is improved. Professional bodies play a key role in this regard.

In addition to acting on complaints from consumers, the FPA also has the power to initiate investigations of its own under its supervisory and oversight capacity.

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The FPA analyses information from its complaints procedures and compliance monitoring to identify and address issues affecting consumers and the quality of advice. This could range from planner education initiatives, to a review of the adequacy of professional obligations in extreme cases.

Managing these arrangements in-house also provides for the efficient use of member information and market intelligence to screen new applicants and to maintain an effective member registry.

## *Entry Requirements*

Membership of the FPA requires a qualifying degree.<sup>40</sup> This is on top of requiring at least one year's supervised experience and set well above the minimum standards in the law (eg. compliance with RG146 Licensing: Training of Financial Product Advisers).

## *Training and Competence*

Members have minimum ongoing training requirements in line with FPA's Continuing Professional Development (CPD) Policy. Compliance is mandatory and audited annually. Failure to demonstrate compliance can result in disciplinary sanction including expulsion.

The FPA's dedicated in-house team of training development and delivery experts oversee the implementation of its world class CPD Program. Programs span 6 disciplines: Capability, Professional Conduct, Critical thinking, Reflective Practice, Interdependence, Attributes and Performance. Programs go beyond the requirements in RG146 (Licensing: Training of Financial Product Advisers) while achieving compliance.

## *Certification and Accreditation*

The FPA administers a two tiered accreditation system through the certification of either an AFP® or CFP® mark which are both tightly integrated with the CPD Program.

The AFP® mark confirms that the financial planner is a professional, qualified and experienced member of the FPA, committed to the world-leading FPA Code of Professional Practice.

The CFP® designation is the highest level of certification that a financial planner can achieve. The CFP® mark is internationally recognised and represents standards of excellence. It demonstrates a commitment to professionalism in financial planning to the public and peers alike.

From a regulatory perspective, CFP® professionals account for over 35% of the financial planner population but only approximately 7% of ASIC enforcement action.<sup>41</sup> This exemplifies the effectiveness of FPA's systems, policies and vision to professionalise the industry, and the vital role professional bodies play in 'norming' good professional behaviour beyond legal minimum standards.

<sup>40</sup> [http://www.fpa.asn.au/media/FPA/CFP/Education\\_2013ApprovedDegreeList1\\_13.pdf](http://www.fpa.asn.au/media/FPA/CFP/Education_2013ApprovedDegreeList1_13.pdf)

<sup>41</sup> According to ASIC and FPA Data since 2009.

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## CERTIFIED FINANCIAL PLANNER<sup>TM</sup> Professionals (CFP<sup>®</sup>)

The CERTIFIED FINANCIAL PLANNER<sup>®</sup> designation is the peak certification for financial planners globally, with some 150,000 CFP<sup>®</sup> professionals operating in 24 countries around the world. United Kingdom, United States, Canada, France, Germany, Ireland, Japan, New Zealand, South Africa, Switzerland, Australia, Austria, Brazil, People's Republic of China, Chinese Taipei, Hong Kong, India, Indonesia, Malaysia, The Netherlands, Republic of Korea, Singapore, Thailand, and Columbia who is in the process of preparing to administer the CFP program.

To gain CFP certification, a planner must have completed an undergraduate degree, masters degree or PhD and have successfully completed all of the units of study in the CFP Certification Program. To enter the CFP program, at least three years of financial planning experience is also required. The CFP program is an advanced education program that covers the knowledge a financial planning professional must be able to draw on to deliver financial planning to clients, or when interacting with colleagues or others in a professional capacity.

The program consists of five units; four education units and one certification (examination) unit, which tests the ability to apply knowledge to financial planning situations in accordance with a globally recognised competency profile. The initial CFP certification process rests on the 'Four Es' (education, examination, experience and ethics). Importantly, there is a dedicated education unit on Ethics and Practice Standards.

**Education:** Candidates for CFP certification must master theoretical and practical financial planning knowledge by completing a comprehensive course of study that meets standards set by global Financial Planning Standards Board (FPSB).

**Examination:** Candidates for CFP certification must pass a comprehensive CFP Certification Examination that assesses their ability to apply integrated financial planning knowledge to real world client situations. Based on regular research of what planners do, the CFP Certification Examination covers the financial planning process, tax planning, employee benefits and retirement planning, estate planning, investment management and insurance.

**Experience:** Candidates for CFP certification must meet relevant work experience standards (one-year supervised experience or a minimum of three years of unsupervised practice experience) in the financial planning process prior to being awarded CFP certification to ensure they possess financial counselling skills in addition to financial planning knowledge.

**Ethics:** Candidates for CFP certification must agree to abide by a strict Code of Ethics and Professional Responsibility that defines their ethical responsibilities to the public, clients and employers. CFP professionals must disclose any investigations or legal proceedings related to their professional or business conduct and agree to place the interest of clients first, act fairly, diligently and with integrity, and offer clients professional services that are objective and based on clients' needs. CFP professionals must disclose in writing to clients information about their sources of compensation and conflicts of interest.

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In addition, CFP professionals are required to maintain technical competence and fulfil ethical obligations. In Australia, every three years, they must complete at least 120 hours of continuing professional development education to stay current with developments in the financial planning profession.

The certification unit of the CFP program consists of the preparation of a comprehensive financial plan incorporating Statement of Advice (SOA) requirements, written verification of the planner's communication and interpersonal skills by the planner's supervisor and a 3 hour multiple choice question examination. The program reflects the six step financial planning process of:

1. gathering client financial information;
2. identifying client goals;
3. identifying client's financial issues;
4. preparing client's financial plan;
5. implementing the recommendations based on the client's agreed financial plan;
6. reviewing and revise the plan at regular intervals, or when circumstances change.

CFP professionals must also adhere to the FPA Code of Professional Practice which includes the Code of Ethics, Rules of Professional Conduct and Practice Standards; and undertake 120 hours of quality on ongoing Continuing Professional Development (CPD) every three years.

## Ongoing CPD requirements

Continuing Professional Development needs to be dynamic and up-to-date with the changes in the industry, financial services market, regulatory environment and economic conditions, and evolving consumer needs. Therefore, the FPA recommends the responsibility for setting, over-seeing and maintaining compliance with CPD requirements are being placed with industry rather than the Regulator.

The industry is already well established in developing, maintaining and monitoring CPD requirements for financial advisers. For example, the following table summarises the key CPD requirements for practitioner members of the FPA.

CPD Points	CFP® Professionals <b>120 points/triennium with a minimum of 35 points each year</b>	Associate Financial Planners <b>90 points/triennium with a minimum of 25 points each year</b>
Non Accredited CPD	Capped at 60 points per triennium	Capped at 45 points per triennium
Ethics Points Requirement	Minimum of 3 points per triennium in the Professional Conduct specifically covering Ethics	
Content Requirements	<ul style="list-style-type: none"><li>• CPD activities undertaken <i>must</i> be captured in a Professional Development Record</li><li>• Members are encouraged to take a holistic approach to CPD and as such should look to include CPD activities across all professional dimensions</li></ul>	

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Record Keeping	<p>The following records must be kept for 5 years</p> <ul style="list-style-type: none"> <li>• Professional Development Record (or CPD register)</li> <li>• Professional Development Plan</li> <li>• Additional Evidence for non accredited activity</li> </ul>
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The FPA uses a Professional Dimensions Model for developing, maintaining and monitoring its CPD requirements. Being a professional is more than being technically competent. It's about being a rounded individual with ability to think critically and respond to client needs in a professional way. The Professional Dimensions describe the holistic skills and knowledge that it takes to be a professional.

The FPA's CPD Policy encourages members to identify development opportunities across the 6 professional dimensions. In our view any and all educational activity can fall under one or more of the dimension



<b>Capability</b>	The technical, legal, product and industry knowledge that it takes to advise clients and run a business
<b>Professional Conduct</b>	All the skills and knowledge that go into making good, informed and client centred decisions
<b>Critical Thinking</b>	The skills of how to process complex information and create new solutions
<b>Reflective Practice</b>	Skills in developing others and yourself - thinking about the professional and personal needs of others as well as your own
<b>Interdependence</b>	Engagement with the profession, the industry and peers in ways that instil consumer confidence
<b>Attributes and Performance</b>	Skills in building professional relationships and improving professional performance

## CPD monitoring and enforcement

Adherence to the FPA's CPD Policy is a practitioner member requirement and failure to comply may ultimately result in suspension of membership.

The FPA undertakes audits of a random sample of Member Professional Development Records at the conclusion of each triennium. Members are required to produce the following:

- An up-to-date Professional Development Plan
- A copy of their Professional Development Record
- Supporting materials for non accredited CPD (if requested)

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To comply, the Professional Development Record should show evidence of CPD activity that:

- Links to the Professional Development Plan;
- Includes 3 points in the Professional Conduct Dimension specifically on Ethics
- A minimum of 25 points annually<sup>42</sup> with a minimum of 90 points over the triennium;
- No more than 45 points accumulated through non accredited activities; and
- No more than 15 points accumulated through non-accredited professional reading.

CFP Professionals may also be asked to provide a record of their CPD activity as part of the CFP professional membership renewal process. If a member's CPD record is found to be in deficit, the member will be given 90 days to rectify the deficit. Failure to cooperate with the audit process will result in disciplinary proceedings being brought against the member, which may lead to fines, cancellation of CFP Professional status or cancellation of FPA membership.

<sup>42</sup> The FPA measures CPD over financial years, from 1 July to 30 June.

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## Attachment 3: Precedent for co-regulation

### Existing legal provisions that support co-regulation

Precedent has been established through existing provisions in financial services law and regulations which support the role of professional bodies as a co-regulation partner in effective regulatory design, to assist regulators in protecting consumers.

#### (a) Corporations Act 2001 (Cth)

There are no explicit exemptions in the Corporations Act which alter licensing requirements for individuals who are members of a professional association. The only sections that are remotely related are sections 926A<sup>43</sup> and 926B<sup>44</sup>. These sections represent the general exemptions made by ASIC and Regulations, provided for in every Part of the Act. However, the exemptions outlined in these sections do not apply to Division 4 of Chapter 7 (in relation to applying for a license) and Division 8 (disqualification).

Although not present in the Corporations Act until recently, the *Corporations Legislation Amendment (Membership Designations and Other Measures) Regulation 2013* now provides relief for registered company auditors to be deemed to hold practising certificates, provided they are members of professional accounting bodies. A practising certificate is a qualification issued by a professional accounting body to members certifying that they have a specific level of training and experience. Instead of an individual having to hold a practising certificate, registered company auditors will be required to have a professional membership designation from a registered professional body. The Regulation's Explanatory Notes claim that this will not only allow a greater number of individuals to undertake a review, but it will ensure that all these individuals are qualified to do so<sup>45</sup>. These membership designations are different for every professional body, with a variety of designations representing different "qualifications, training and experience".<sup>46</sup>

Also, the *Corporations Amendment Regulation 2013 (No. 3)* created a limited licensing regime for accountants, allowing them to provide a range of financial product advice service. The limited AFSL for accountants allows them to provide advice on self managed super funds, deposit products, securities and much more. This also means that accountants are now covered by the same duties towards consumers as financial advisers and financial planners, including the best interests duty.

<sup>43</sup> Exemptions and Modifications by ASIC - allows ASIC to exempt an individual or financial product from the requirements under Part 7.6, Licensing of Financial Services

<sup>44</sup> Exemptions and Modifications by Regulations - allows the regulations to exempt an individual or financial product from the requirements under Part 7.6, Licensing of Financial Services

<sup>45</sup> [http://www.austlii.edu.au/au/legis/cth/num\\_regs/cladaomr2013n125o2013930.html](http://www.austlii.edu.au/au/legis/cth/num_regs/cladaomr2013n125o2013930.html)

<sup>46</sup> [http://www.austlii.edu.au/au/legis/cth/num\\_regs/cladaomr2013n125o2013930.html](http://www.austlii.edu.au/au/legis/cth/num_regs/cladaomr2013n125o2013930.html)

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However, in order to supplement the transition of accountants to the AFSL licensing regime, the then Government allowed for accountants' existing professional qualifications to be recognised under 'Regulatory Guide 146 Licensing: Training of financial product advisers' (RG 146)<sup>47</sup>. These streamlining arrangements will only be available to accountants that hold a practising certificate from a professional accounting body such as CPA Australia, the Institute of Chartered Accountants in Australia and the Institute of Public Accountants. Therefore, ASIC is able to assume, provided that a practising certificate has been obtained from a professional body, that each accountant has the necessary experience to provide the broader range of services.<sup>48</sup>

The Corporations Act allows ASIC to declare that members of specific accounting professional bodies are 'qualified accountants'<sup>49</sup> for the purposes of investor disclosure in s708(8)(c) of the Corporations Act. When providing financial advice, a product disclosure statement must be provided. However, section 88B(2) provides for an exemption in relation to the disclosure for a sophisticated investor. Disclosure is not in a mandated form if the provider is offering securities to a person who is the subject of a current certificate from a qualified accountant, certifying they have a prescribed net asset or gross income level. Before approving, ASIC will consider the nature and extent of relevant education and experience requirements applied by the professional body, and whether the relevant professional body has appropriate and effective disciplinary procedures.<sup>50</sup> 'Regulatory Guide 154 - Certificate by a qualified accountant' provides guidance as to how ASIC approves an individual as a qualified accountant.

## *i) ASIC code approval*

For a Code to be approved by ASIC, it must not only satisfy the threshold criteria outlined in 'Regulatory Guide 183 Approval of financial services sector codes of conduct' (RG 183), but it must also satisfy s1101A and s962CA.

RG 183 provides useful information for code applicants, requiring threshold criteria: namely that the code has an enforcement mechanism, is binding and transparent and is reviewed regularly, before any code will even be considered as ASIC approved<sup>51</sup>.

ASIC also has the power to approve codes of conduct in relation to the conduct of financial service licensees, authorised representatives and issuers of financial products under s1101A of the Corporations Act.<sup>52</sup> ASIC must approve the code if it is satisfied that the code isn't inconsistent with any Commonwealth legislation under which ASIC has regulatory responsibilities.

<sup>47</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/036.htm&min=brs&DocType=0>

<sup>48</sup> <http://ministers.treasury.gov.au/Ministers/brs/Content/pressreleases/2012/attachments/36/Replacement-for-accountants-exemption.pdf>

<sup>49</sup> Section 88B(2) Corporations Act

<sup>50</sup> RG 154.10

<sup>51</sup> RG 183.19 - RG 183.21

<sup>52</sup> Section 1101A(1)

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ASIC must also consider if it is appropriate to approve the code, having regard to the ability of the applicant to ensure that the persons will comply with the code and the desirability of codes of conduct being harmonised<sup>53</sup>.

The requirement of the harmonisation of codes of conduct means that ASIC will ensure that all approved codes have certain characteristics and meet certain standards of enforcement, administration and review.<sup>54</sup> However, this does not mean that a code which enforces higher standards will not be approved. Once ASIC has determined that the code meets the threshold criteria under RG 183, they will then need to determine whether the statutory criteria has been satisfied under s1101A(3)<sup>55</sup>.

## *ii) Regulation of auditors and insolvency practitioners*

Both auditors and insolvency practitioners are required to be registered under Part 9.2 of the Corporations Act. Insolvency practitioners must be registered by ASIC provided that ASIC is satisfied that they are adequately educated through a degree, diploma or certificate, satisfied as to experience and are capable of performing the duties of a liquidator<sup>56</sup>.

Similarly, ASIC must register an auditor if it is satisfied that the applicant is adequately educated through a degree, diploma or certificate from a prescribed institution, has practical experience and satisfied all competency requirements and is capable of performing the duties of an auditor<sup>57</sup>. There are practical exemptions provided in the Corporations Act. Section 324BD provides an exemption from registration for an auditor if it is impracticable for the company to obtain services from a registered auditor due to the locality of the company's business.

## *(b) The ASIC Act*

While there are no provisions in the ASIC Act which alter licensing requirements for members of professional associations, the Act does set a precedent for the facilitation of a co-regulatory partnership by permitting the exchange of information between ASIC and a prescribed professional body under s127.

## *(c) Other ASIC administered legislation*

ASIC administers a number of legislation, especially in relation to credit licensing. The *National Consumer Credit Protection Act 2009* (Cth) (NCCP) requires an individual engaging in credit activities to obtain an Australian credit licence<sup>58</sup>.

<sup>53</sup> Section 1101A(3)

<sup>54</sup> RG 183.38

<sup>55</sup> RG 183.28

<sup>56</sup> Section 1282 Corporations Act

<sup>57</sup> Section 1280 Corporations Act

<sup>58</sup> Section 35 NCCP

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ASIC must grant the licence to the individual provided that an approved form is submitted, the person isn't likely to contravene their obligations and they are a fit and proper person<sup>59</sup>. There are no provisions in the NCCP Act which relate to licensing when an individual is also a member of a professional association.

## (d) ASIC Regulatory Guides and Other Instruments

Apart from RG183 and RG154 discussed above, there is also 'Regulatory Guide 126 - Compensation and insurance arrangements for AFS licensees' (RG 126) which provides some guidance as to how ASIC may treat members of professional bodies in satisfying their licensing requirement to have compensation arrangements. Under RG 126, ASIC is willing to take into account minimum standards set by industry and professional bodies. However, it has explicitly stated that even though individuals may comply with these standards, it doesn't necessarily mean that they have complied with licensing requirements under the Corporations Act<sup>60</sup>.

Under s912B, arrangements for compensation must be stated when dealing with retail clients under a license. This obligation is covered in RG 126 which provides a guide for licensees to determine whether their professional indemnity insurance is adequate. RG 126 gives industry bodies the freedom to determine their own compensation arrangements, such as group compensation arrangements, which ASIC may consider as alternative arrangements that satisfy s912B(2)(b)<sup>61</sup>.

## Co-regulation precedent in Australia and overseas

### In Australia - by industry

#### *Legal Industry<sup>62</sup>*

Historically the legal profession in Australia has been self-regulating. Since 1994 this has gradually changed: lawyers' professional associations now form part of a co-regulatory framework that includes independent statutory authorities and the courts.

*The statutory authorities administer the rules, handle complaints, undertake investigations, resolve consumer disputes and conduct research and education. The rules themselves are established by each jurisdiction's legislature. The professional associations assist with disciplinary matters and are also responsible for admission procedures and the like. While statutory authorities and professional associations can and do issue cautions, reprimands and impose minor penalties, serious conduct matters are determined by the Tribunals. The Tribunals also hear appeals and can review decisions.*

<sup>59</sup> Section 37 of NCCP Act

<sup>60</sup> RG 126.34

<sup>61</sup> RG 126.49

<sup>62</sup> [http://www.olsc.nsw.gov.au/olsc/olsc\\_education/lsc\\_lawregulate.html](http://www.olsc.nsw.gov.au/olsc/olsc_education/lsc_lawregulate.html)

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The balance in these co-regulatory frameworks between government authorities and professional associations varies from jurisdiction to jurisdiction and reflects local conditions. Nonetheless, there is a general tendency towards investing more regulatory power in independent statutory authorities.

Regulatory authorities include professional associations (i.e. law societies and bar associations) and statutory authorities (e.g. Legal Services Commissioners), and the Legal Ombudsman in each State. Functions of regulatory authorities include admitting people to legal practice, issuing practising certificates, making practice rules, receiving complaints against lawyers, resolving consumer disputes and investigating conduct matters.

## *Pharmacy Industry<sup>63</sup>*

The pharmacy industry is currently under reform. These changes are brought about to address the concerns that current regulatory arrangements do not provide adequate public protection regarding compounded medicines. One recommendation is to enhance co-regulation with pharmacy and pharmacist regulators by amendments to Commonwealth legislation to reference the role of professional oversight and requirements, including pharmacy approvals, and clearer requirements regarding medicines exempt from Therapeutic Goods Administration (TGA) processes.

## *Recreational Aviation Industry<sup>64</sup>*

Australian sport aviation operates under self administration. This means that the Government's Civil Aviation Safety Authority (CASA) sets the regulations and then works in close cooperation with established organisations, known as recreational aviation administration organisations or RAAOs, to make sure the regulations are applied and enforced. The RAAOs provide CASA with specialist knowledge and insight into the sport aviation industry. That is CASA makes the rules and the organisations apply the rules to their members.

The organisations exist to oversee members' activities and assure CASA that activities are being conducted safely. CASA needs to be fully confident that RAAOs have the capacity to provide the safety outcomes required.

CASA sets clear expectations for RAAOs and their board members in ensuring that self administration is providing a safe environment for sport aviators as well as other airspace users and people and property on the ground. RAAOs are required to meet performance standards as well as undergo audits. The organisations must continually assure CASA that they are providing appropriate oversight of their sport aviation activities and managing risks.

CASA works in close cooperation with RAAOs as well as receiving regular reports about activities and safety performance and auditing the organisations. As a result CASA is aware of safety issues across the industry. This builds a safer sport aviation industry for both those taking part and the general public.

<sup>63</sup> <http://www.tga.gov.au/pdf/consult/consult-medicines-130605.pdf>

<sup>64</sup> [http://www.casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC\\_93439](http://www.casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC_93439)

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Sports aviators must belong to a specified organisation. Without full membership sports aviators are not legally allowed to take part in such activities.

If organisations are unable to meet their obligations and assure CASA of their member's compliance, then CASA will not allow the organisation to continue to administer its activities under the exemption. Without the exemption the activities allowed by it cannot occur. That is, if the organisation doesn't assure CASA that it is meeting safety outcomes and overseeing activities, sports aviators are not permitted to fly under the exemption.

Without the exemption then people wanting to fly need to meet the regulations that apply to other aviation activities.

## *Media Ratings Industry - ALRC Publication<sup>65</sup>*

In the media ratings industry, links between industry peak bodies and government regulatory bodies regarding classification and content regulation would continue to be important as industry takes responsibility for more classification under the ALRC's proposed model.

In an ongoing capacity, industry bodies should assist the Regulator to reinforce industry classification requirements, by informing members about classification training options, disseminating information about authorised industry classifiers and collating industry classification reports that include decisions data and complaint statistics.

## *Animal Welfare and Livestock Industry<sup>66</sup>*

Several livestock industries have made significant progress in developing quality assurance (QA) programs that incorporate animal welfare requirements. The new Standards and Guidelines will be consistent with the relevant requirements of industry QA programs. It is expected that peak industry bodies will work with jurisdictional governments in a "co-regulatory" environment to establish a primary role for industry QA audit processes to monitor and enforce compliance with standards.

In developing welfare modules for QA programs and participating in development of new Australian Standards, livestock industries must commit to the principle that (minimum) standards must be verifiable (by measurement or audit) and therefore legally enforceable in order to ensure the integrity and credibility of the compliance system. Other requirements and recommendations on welfare will be referred to as guidelines in Australian Standards and Guidelines documents, which will not be legally enforceable but may represent industry best practice or recommended pathways to meeting legal standards. Published in nationally endorsed Standards and Guidelines documents they will be available for reference by courts considering charges of cruelty and for inclusion in QA programs at the discretion of industry.

<sup>65</sup><http://www.alrc.gov.au/publications/7-who-should-classify-content/industry-bodies-and-their-relationship-regulator>

<sup>66</sup>[http://www.daff.gov.au/animal-plant-health/welfare/aaws/aaws\\_international\\_animal\\_welfare\\_conference/a\\_co-regulatory\\_approach\\_to\\_farm\\_animal\\_welfare\\_in\\_australia](http://www.daff.gov.au/animal-plant-health/welfare/aaws/aaws_international_animal_welfare_conference/a_co-regulatory_approach_to_farm_animal_welfare_in_australia)

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## By Country

### *UK Model*

The Institute of Financial Planning is a professional body for those committed to the development of the multi-disciplinary profession of Financial Planning. It is also an Accredited Body, appointed by the Financial Conduct Authority (FCA) to issue statements of professional standing (SPS) to members who meet the requirements. There are eight professional bodies who have been accredited by the FCA.

To operate as an adviser in the UK, one needs to hold a valid accreditation.

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## Attachment 4: Recognised professional bodies

The FPA offers the following examples of possible criteria for establishing Regulator approved professional bodies, based on the:

1. Tax Agent Services model
2. Proposed FSA criteria

### *Tax Agent Services model*

The following wording reflects the provisions in the Tax Agent Services Regulations Schedule 2, Part 3, Division 1 Recognised tax (financial) adviser association.

301 The organisation is a non-profit organisation.

302 The organisation has adequate corporate governance and operational procedures to ensure that:

- (a) it is properly managed; and
- (b) its internal rules are enforced.

303 The organisation has professional and ethical standards for its voting members, including terms to the effect that:

- (a) voting members must undertake an appropriate number of hours of continuing professional education each year, having regard to the circumstances and requirements of the members; and
- (b) voting members must be of good fame, integrity and character; and
- (c) each voting member is subject to rules controlling the member's conduct in the practice of his or her profession; and
- (d) each voting member is subject to discipline for breaches of those rules; and
- (e) if a voting member is permitted by that organisation to be in public practice, the voting member has professional indemnity insurance.

Note. The appropriate number of hours of education each year may differ for members who have particular qualifications, areas of expertise or professional experience.

304 The organisation has satisfactory arrangements in place for:

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- (a) notifying clients of its members, or of members of its member bodies, about how to make complaints; and
- (b) receiving, hearing and deciding those complaints; and
- (c) taking disciplinary action if complaints are justified.

305 The organisation has satisfactory arrangements in place for publishing annual statistics about:

- (a) the kinds and frequency of complaints made to the organisation (except complaints under the Act about entities registered under the Act); and
- (b) findings made as a result of the complaints; and
- (c) action taken as a result of those findings.

306 The organisation is able to pay its debts as they fall due.

307 The management of the organisation:

- (a) is required to be accountable to its members; and
- (b) is required to abide by the corporate governance and operational procedures of the organisation.

308 An organisation is taken to have arrangements that comply with a requirement in item 303, 304 or 305 if the organisation is, or its members are, subject to:

- (a) a law of a State or Territory; or
- (b) a rule or other instrument of a body created by or under a law of a State or Territory;

that sets out a requirement in terms that are the same as, or that have a similar effect to, the requirement in item 303, 304 or 305.

309 The organisation has at least 1000 voting members, of whom at least 500 are registered tax (financial) advisers.

310 Each voting member of the organisation is required to comply with at least 1 of the following requirements:

- (a) the member has been awarded a degree or a post-graduate award from:
  - (i) an Australian tertiary institution; or
  - (ii) an equivalent institution;

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in a relevant discipline (within the meaning of item 305 Schedule 2);

(b) the member has been awarded a diploma or higher award from:

- (i) a registered training organisation; or
- (ii) an equivalent institution;

in a relevant discipline (within the meaning of item 305 Schedule 2);

(c) the member has the equivalent of 6 years of full-time experience in providing tax (financial) advice services in the past 8 years.

## *FCA model*

Prior to becoming two separate regulatory authorities - Financial Conduct Authority and the Prudential Regulation Authority – the Financial Services Authority in the UK developed the following criteria requirements<sup>67</sup> which professional bodies must meet to be granted ‘FSA recognised’ status.

1. has adequate resources (including financial resources) and systems and controls;
2. is controlled by a governing body comprising persons of good repute;
3. acts in the publics interest so that its activities and those of its members contribute to raising consumer confidence and trust in financial planning;
4. provides ASIC with regular independent reports on its activities in respect of financial planners;
5. shares information, including that about individual members, and co-operates with ASIC in an open and transparent manner;
6. leads the professional development of financial planners;
7. has and is effective in promoting standards of professionalism for financial planners at least equivalent to those of ASIC;
8. provides help and guidance in meeting those standards;
9. has effective arrangements for monitoring members’ compliance with standards; and
10. has effective arrangements for disciplinary measures against its members

The FSA has also drafted criteria for professional bodies to be accredited:<sup>68</sup>

<sup>67</sup> Financial Services Authority, *Delivering the Retail Distribution Review: Professionalism; Corporate pensions; and Applicability of RDR proposals to pure protection advice* (CP 09/31), December 2009 ([http://www.fsa.gov.uk/pubs/cp/cp09\\_31.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_31.pdf))

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## Acting in the public interest and furthering the development of the profession

10. The *FSA* will expect an *accredited body* to have an objective to act in the public interest, to contribute to raising consumer confidence and professional standards in the retail investment advice market and promoting the profession and act in a way that is consistent with that objective.

## Carrying out effective verification services

11. If independent verification of a *retail adviser's* professional standards has been carried out by an *accredited body*, the *FSA* will expect the *accredited body* to provide the *retail adviser* with evidence of that verification in a *durable medium* and in a form agreed by the *FSA*.

12. The *FSA* will expect an *accredited body* to have in place effective procedures for carrying out its verification activities. This should include:

(1) verifying that each *retail adviser* who is a member of or subscriber to the *accredited body's* verification service has made an annual declaration in writing that the *retail adviser* has, in the preceding 12 *months*, complied with *APER* and completed the continuing professional development required under *TC 2.1.14R*;

(2) verifying annually the continuing professional development records of no less than 10% of the *retail advisers* who have used its service in the previous 12 *months* to ensure that the records are accurate and the continuing professional development completed by the *retail advisers* is appropriate; and

(3) verifying that, if required by *TC*, the *retail advisers* who use its services have attained an *appropriate qualification*. This should include, where relevant, checking that appropriate qualification gap fill activities have been completed by a *retail adviser*.

13. The *FSA* will not expect an *accredited body* to carry out the verification in paragraph 12(3) if a *retail adviser* provides the *accredited body* with evidence in a *durable medium* which demonstrates that another *accredited body* has previously verified the *retail adviser's appropriate qualification*.

14. The *FSA* will expect an *accredited body* to make it a contractual condition of membership (where a *retail adviser* is a member of the *accredited body*) or of using its verification service (where a *retail adviser* is not a member of the *accredited body*) that, as a minimum, the *accredited body* will not continue to verify a *retail adviser's* standards and will withdraw its independent verification of those standards if the *accredited body* is provided with false or inaccurate information in relation to a *retail adviser's* qualifications or

<sup>68</sup> Financial Services Authority, *Delivering the RDR: Professionalism, including its applicability to pure protection advice, with feedback to CP09/18 and CP09/31* (CP10/14), June 2010, p. 75 ([http://www.fsa.gov.uk/pubs/cp/cp10\\_14.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_14.pdf))

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continuing professional development or a false declaration in relation to a *retail adviser's* compliance with *APER*. In this regard, an *accredited body* must have in place appropriate decision-making procedures with a suitable degree of independence and transparency. Having appropriate systems and controls in place and providing evidence to the *FSA* of continuing effectiveness

15. The *FSA* will expect an *accredited body* to ensure that it has adequate resources and systems and controls in place.

16. The *FSA* will expect an *accredited body* to have effective procedures in place for the management of conflicts of interest and have a well-balanced board with at least one independent board member.

17. The *FSA* will expect an *accredited body* to have a code of ethics and to ensure that its code of ethics and verification service terms and conditions do not contain any provisions that conflict with *APER*.

## Ongoing cooperation with the *FSA*

18. The *FSA* will expect an *accredited body* to provide the *FSA* with such documents and information as the *FSA* reasonably requires and cooperate with the *FSA* in an open and transparent manner.

19. The *FSA* will expect an *accredited body* to share information with the *FSA* (subject to any legal constraints) in relation to the professional standards of the *retail advisers* who use its service as appropriate. Examples might include conduct issues, complaints, falsification of qualifications or continuing professional development or a failure to complete appropriate continuing professional development.

20. The *FSA* will expect an *accredited body* to submit to the *FSA* an annual report by a suitable independent auditor which sets out that auditor's assessment of the body's satisfaction of the criteria in paragraphs 10 to 19 in the preceding 12 *months* and whether, in the auditor's view, the body is capable of satisfying the criteria in the subsequent 12 *months*. The *FSA* will expect this annual report to be submitted to the *FSA* within three *months* of the anniversary of the date on which the *accredited body* was added to the *Glossary* definition of *accredited body*.