



Financial Adviser Education Standards - Consultation Paper 2022

AIOFP Response

Dear Minister,

The Association of Independently Owned Financial Professionals (AIOFP) welcomes the opportunity to provide to Treasury and the Minister commentary on the proposals relating to the education standards of financial advisers.

The AIOFP membership includes self-employed Advisers, employee Advisers, Self-Licensed advisers and mid to large AFSL's who are non- institutionally aligned. The Association wholly supports professional and educational standards and is proud that its members have specialist skills and knowledge which benefit the public.

The AIOFP supports the legislative instrument providing for the financial education standards be amended. The current standards do not recognise experienced advisers who may be towards the end of their career. These advisers have years of experience including significant market events such as the 80's crash, tech crash of the 90's, the GFC and the recent Covid market fall.

It is important to preserve the experience within the profession so that lessons from the past can be taught and not repeated. The AIOFP support recognition of experience to be qualified by agreed checks and balances to allow these advisers to pass on their knowledge and experience to the next generation of advisers.

Background

The Financial Adviser Ethics and Standards Authority (FASEA) was established in 2017 to oversee the educational and ethical standards of financial advisers. On 1 January 2022, it was disbanded, and its functions were split between ASIC and Treasury.

S921E Corporations Act 2001 (Cth) provided for a legislative instrument requiring financial advisers to comply with the FASEA *Code of Ethics*, consisting of 12 Standards and 4 Values. For financial advisers, Standard 10 informs that an adviser must develop, maintain, and apply a high level of relevant knowledge, and skill. This requires an ethical duty and a continuous professional development duty. Supplementing *s921E, s912A(a)(c) Corporations Act 2001* (Cth) relevantly provides a duty in the 'General Obligations' for Licensees (and financial advisers) to act 'efficiently, honestly and fairly' and act in accordance with financial services laws.

There is a duty then, under the *Corporations Act*, to ensure that financial advisers have a level of education and competence, consistent with their obligations at law and more generally to the consumer.



Education of Financial Advisers

In executing its new role, ASIC contracted the Australian Council for Educational Research (ACER) to further develop and administer the exam. This is consistent with the legislation requiring a financial adviser to comply with the specified education and training standards.¹ This legislation requires that a new financial adviser must possess an approved degree before booking to sit the FASEA exam.

The Better Advice Act ² requires ASIC to administer the Act in accordance with principles approved by the Minister. It is the Minister who prescribes the format of the FASEA exam.³

The AIOFP recognizes the high level of Ministerial discretion available in relation to the education of financial advisers. It is confident the current Minister will exercise such discretion to implement an education policy and pathway that is sufficiently flexible to recognize the elements of formal education, experience, and recognition of prior learning (RPL) to enable financial planners to meet their legislative and ethical obligations and to provide quality advice to consumers.

Policy Objective

The AIOFP supports the transition of financial planning from an industry to a profession. There are significant advantages for consumers being well served by the provision of quality advice from well qualified, ethical professionals. To date, the evidence has been that the current inflexible education pathway has proven to be ineffective in retaining many experienced and ethical financial advisers.⁴ Coupled with the existing onerous and costly compliance regime, many advisers are finding it untenable to operate within the current environment resulting in large numbers of advisers exiting the industry.

The AIOFP has advocated for changes to the education pathway to reduce the exodus of experienced advisers.

AIOFP Position

Existing Adviser- Experienced Pathway

AIOFP derives its position after consultation with members. This distinction is important as AIOFP is member driven and takes a position that professional support of its members results in enhanced outcomes for consumers. In support of the proposed legislative amendments, AIOFP focuses its consultation comments on the following areas:

¹ *Corporations Act 2001 (Cth)*, s 921B.

² *The Financial Sector Reform (Hayne Royal Commission Response-Better Advice) Act 2021*.

³ *Corporations (relevant Providers-Education and Training Standards) Determination 2021*.

⁴ [Financialnewswire.com.au/financial-planning/52-pass-adviser-exam/](https://financialnewswire.com.au/financial-planning/52-pass-adviser-exam/)



The AIOFP believes there is no benefit in disregarding the decades long experience, training and education of many existing advisers. To do so is a detriment to the succession and longevity of financial advisers and with disadvantage clients in need of advice. The past five years have seen an unprecedented departure of advisers from the industry with adviser numbers dropping from approximately 34,000 in 2017 to less than 16,000 by August 2022.⁵

10 Years' Experience

The AIOFP support the period of experience of 10 years (fulltime equivalent) for advisers who have been registered on the FAR from 1 January 2004. We propose that the period should be extended through to 1 January 2026, to be in line with the current education deadline. The AIOFP also propose a sunset clause of 10 years from 1 January 2026, meaning that those who intend to remain as an Adviser after this period must have completed a relevant degree or they will no longer be permitted to practice as an Adviser. We support the recognition of experience however we do not encourage or support circumventing the purpose of this recognition and providing a loophole which could see more recent advisers avoiding the requirement to do the education while remaining working as an adviser for a further 20-30 years.

Advisers can prove they have 10 years' experience through time on the FAR, continuation of CPD and confirmation of time served through AFSL confirmation, Auditor sign off if self-licenced or statutory declaration.

Clear Record

The AIOFP does not support the inclusion of AFCA complaints or Professional body disciplinary action which may be biased due to opinion, internal conflict, vendettas and politics and may not be based on the technicality of advice or bad advice. We strongly support recognition *disciplinary* action recorded against an adviser on the financial advice register (FAR) as the measure of "clean record".

This can be supplemented by ASIC providing details of banning orders and enforceable undertakings. ASIC has sweeping powers under the provisions of s920A and s920B. This is further supplemented by the fact that the document history of RG 98 dates to 26 April 2006.⁶ Moreover, s920C (1) relevantly provides that a person against whom a banning order is made cannot be granted an Australian financial services licence.⁷ Accordingly, AIOFP reinforces its position that the FAR be the relevant source of determining a 'clean record' of a financial adviser as the powers of ASIC to deal with the misdemeanours of financial advisers' date back

⁵ Oksana Patron, Money Management, 'Adviser numbers fall back again,' 22 February 2022.

<<https://www.moneymanagement.com.au/financial-planning-/adviser-numbers-fall-back-again>>.

⁶ RG98, "ASIC's powers to suspend, cancel and vary licenses and make banning orders". This Regulatory Guide has a documenting history dating from 26 April 2006; being updated on 18 November 2010 and reissued on 28 July 2012 and 30 July 2013.

⁷ *Corporations Act 2001* (Cth), s 920C (1) - Effect of banning orders.



to 2006, and the *Corporations Act* provides the regulator significant powers to deal with conduct by financial advisers contrary to the best interests of consumers.

If Professional body disciplinary action is to be included as a measure of 'clear record' a threshold must be adopted and conduct should be classified as minor, trivial, isolated, or severe. Advisers should also have access to an independent appeal process if professional body disciplinary action is included to ensure that the adviser was provided with a fair and just process.

AFCA complaints that relate to client losses due to fund manager failure should not be considered as their current process for clients is to make a complaint against the adviser regardless of fault or quality of advice. Due to the nature of these complaints PI insurers are quick to respond with cheques as the cost to compensate outweighs the cost to fight the complaint. This supports our broader statement that all AFCA complaints should not be included as part of clear record.

Assessment of Eligibility

The AIOFP support self-declarations of eligibility in the form of a statutory declaration along with supporting evidence of courses completed. We believe that ASIC as the body who manages the FAR should take responsibility for recording and accepting this self-declaration.

Future Misconduct

The AIOFP propose that the single disciplinary body deal with advisers who access the experienced pathways and who have future misconduct ruling against them. The future misconduct should be treated the same way for all advisers regardless of their pathway to education or recognition.

The *Corporations Act* provides the regulator significant powers to deal with conduct by financial advisers contrary to the best interests of consumers, this should be a reasonable deterrent for future misconduct.

Other

The AIOFP propose that the Ethics unit be mandatory for all advisers accessing the experience pathway. Many of our members have reported that they found the Ethics unit to be educational and assisted them to be better informed for their role as an adviser.

The AIOFP position is that it is appropriate for education providers to assess foreign qualifications at a AQF 7 level or above as to how these education standards meet the requirements and what if any further education is required. The education providers should assess the foreign qualifications for RPL as they would any other qualifications.



The assessment should be done to ensure that the qualification covers the core areas of competency required. We do not support licensees performing this assessment as this is not within their usual business activity.

The AIOFP expect that the number of advisers seeking to access the experienced pathway to be limited, we do not have a quantitative number of how many of our members will be accessing this, however those who we expect to be most reliant on this pathway are towards the end of their career.

New Entrants

This consultation submission subscribes to the idea that New Entrants should; possess at least an approved Bachelors' Degree (AQF 7) and undertake a Professional Year.⁸ However AIOFP questions the need for a FASEA exam given the tertiary nature of study and subjects to be undertaken at AQF 7, (or an even higher) level. The AIOFP draws to the attention of Treasury and the Minister, that CPD requirements are mandated at 40 hours, per annum for Financial Advisers compared with such professional development hours for members of the legal profession are promulgated as being 10 CPD hours per annum.⁹ AIOFP posits there is a case to review and streamline CPD hours for the financial planning industry.

Formal Education and Exam

Core Knowledge Areas

The proposal to streamline the *core* knowledge areas from 11 to 5 is supported by the AIOFP. This is not to suggest that elective studies in topics such as superannuation, insurance and estate planning, should not be undertaken. The Association takes this opportunity to reflect the feedback from members that the study of ethics be fastidiously maintained as a core knowledge area. AIOFP also stresses that along with the technical education in taxation and commerce, emphasis must be placed on a formal study of regulatory obligations. To that extent, the AIOFP's position is that Tertiary Institutions and relevant accredited Registered Training Organizations (RTO) be able to self – declare their compliance with teaching the core knowledge areas.

The AIOFP also takes the view that the core and other knowledge should be independently assessed by the Tertiary Institutions and RTO's.

⁸ See [https://www.treasury.gov.au <fas.treasury.gov.au/who-am-i/new-entrant>](https://www.treasury.gov.au/fas.treasury.gov.au/who-am-i/new-entrant).

⁹ Although there is an absence of uniform regulation, the 10 hours of CPD for the Legal Profession is consistent across all States and Territories. For NSW and Victoria, they have agreed to be bound by the *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (CPD Rules)*.



FASEA Exam

AIOFP questions the requirement of an exam for new entrants who have completed a AQF 7 level qualification. The AIOFP supports the abandonment of the exam. However, if this is not an option, the AIOFP propose a significant review of the current exam questions and format. The AIOFP propose the following changes to the FASEA exam:

- If components within the exam are passed yet an overall failure is the result the entire exam should not have to be re-sit, only the failed components.
- More transparency on failed areas
- A clarification as to the purpose of the exam, is it testing competency or exam technique
- Consideration for alternative ways to sit the exam to allow for technical disadvantage, sight impairment, learning challenges and other impairments making the current exam format discriminatory.

The AIOFP propose alternative ways to sit the exam such as an oral exam, role play, and paper based.

Supporting the abandonment of the FASEA exam:

- The Wallis Report of 1996 made recommendations for consumer protections. Amongst those recommendations was the need for financial planners to have 'minimum standards for competency and ethical behaviour'.¹⁰ There was no suggestion or requirement for a national public exam.
- The current genesis of FASEA can be found in the Ripoll Inquiry of 2009. This report recommended the establishment of an independent professional standards board (Recommendation 9), through consultation with industry, to 'oversee nomenclature, and competency and conduct standards for financial advisers'.¹¹
- The AIOFP observes that with the introduction of the FASEA exam, it is the first time in Australia that an existing professional practitioner would be required to pass an exam to continue to practice. Such a requirement does not exist in the allied professions such as accounting, law, or actuarial studies.
- A review of the literature by AIOFP serves to highlight the previous position. World Bank manager and author Vincent Greaney and consultant Thomas Kellaghan, caution about 'high stakes public examinations' and addresses current issues in administering, scoring and usage of public examinations.¹² Their studious perspective makes no provision for the 'high stakes' occasioned by the stress of

¹⁰ Financial System Inquiry (1996) Final Report (Wallis Inquiry). Chapter 7.

¹¹ Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, (2009) Recommendation 9.

¹² Vincent Greaney and Thomas Kellaghan, 2019, 'Public Examinations Examined', Washington DC: World Bank <https://openknowledge.worldbank.org/handle/10986/32352>.



undertaking such a national exam by an existing practitioner. In this regard, Australia is unique in making such demands on a particular industry and its practitioners.

AIOFP submits there is no public benefit in maintaining such a contentious exam. Given the loss of advisers and the current requirements for professional technical and ethical education, the imperative to continue with such a national exam no longer exists. Consumers are now better served by a cohort of professional advisers who actively subscribe to minimum competency standards and ethical behaviors.

Professional Year

The AIOFP support the proposal of the professional year. Our members identify this as a “high risk year” as additional responsibility for training and the possibility of compliance breaches due to inexperience.

The AIOFP propose that the PY can also be completed over a period of two year and support that if the exam is to remain it should be able to be sat at any time.

Conclusion

Consumers have been at the heart of reforms from Wallis (1996), through to Ripoll (2009), to Murray (2014),¹³ and finally to Hayne in the Banking Royal Commission of 2019. AIOFP in this submission underpins its arguments that benefits to financial advisers are allied to benefits to consumers, as those benefits can only be provided by independently owned professional advisers whose skills and knowledge serve the public good.

AIOFP welcomes the opportunity to provide feedback on the proposed reforms. The experienced pathway is key to the availability of affordable financial advice. Our proposal of extending the period of experience measure to 1 January 2026 with a 10-year sunset clause will capture an additional period of significant market movement while ensuring that the public remains protected, can be confirmed they are receiving quality advice while ensuring that there is not a sudden and unsustainable drop in the already reducing adviser numbers. The Association submits that disciplinary action against an adviser as recorded on the FAR be the mechanism to determine the ‘clean record’ of an adviser is sufficient.

The members of the Association support continued education, especially the streamlining to five core subjects, and believe in the value of formal tertiary education in ethics. Similarly, there is support for AQF7 standards of education for new advisers. There is also support for external assessment of educational achievements by Tertiary Institutions and RTO’s. There is nevertheless a case to be made to review and streamline the demands of the 40 hours of annual CPD.

¹³ Financial System Inquiry Final Report. November 2014. (The Murray Report).



The AIOFP does not consider its proposal to abandon the FASEA exam to be controversial. The FASEA exam is redundant for new entrants as they are all completing formal education at a AQF 7 level for this reason a national exam of practitioners is no longer justified. The burden of an Exam to test competency and knowledge for no additional accreditation or recognition is not present in any other industry or profession. When compared to other common law countries, Australia has acted alone in this regard.