

CONSULTATION PAPER QUESTION

Question 1.1

What impact would the introduction of the PJC model have on the structure of the financial advice industry?

AFMA COMMENTS

A1.1

The introduction of the PJC model is likely to have a range of intended and unintended consequences for consumers, advisers, licensees and professional bodies.

Consumers will have greater confidence that the provider with whom they are dealing is trained and competent to a minimum (but nonetheless, high) standard that applies across the financial services sector, and is not dependent on the requirements that individual licensees subject their representatives to. For example, some licensees in private wealth advice already have significantly higher education requirements for their advisers (eg. the certified financial analyst qualification) while other licensees have minimal requirements. It is likely however, that compliance with the proposed framework is likely to result in some level of increased costs of advice for consumers.

It is expected that over time, the majority of advisers will readily accept and be able to meet the criteria in the proposed framework, subject to sensible transition arrangements that recognise the skills and experience of advisers who do not hold a relevant degree, and for whom it is not realistic to expect they will obtain one. This issue will decrease over time as it is likely the vast majority of people entering the financial services industry from this point are degree qualified.

Importantly, a framework that applies across the industry will create portability of qualifications for advisers.

<p>Question 1.2</p> <p>What are the practical implications of the PJC model applying to advisers from all sizes and types of firms?</p>	<p>Other advisers who are not able or do not want to meet the requirements of the proposed framework may choose to leave the industry.</p> <p>Implementation and maintenance of the proposed framework is likely to result in increased costs for licensees in terms of:</p> <ul style="list-style-type: none"> (a) funding of the proposed FPEC; and (b) compliance and oversight to ensure that advisers meet all of the requirements of the framework, including the supervision requirement. AFMA's submission is that this obligation should remain with licensees – see further below. <p>However, to the extent that a professional standards framework is expected to improve the competence and skills of advisers, improve the quality of financial advice and result in better outcomes for investors, there may also be a resultant reduction in compensation and remediation costs across the industry.</p> <p>Implementation of the framework will inevitably result in some change to the number and type of AFSL holders that operate in the industry.</p> <p>A1.2</p> <p>The practical implications of the PJC model applying to advisers from all sizes and types of firms is that some licensees will have the scale and resources to (a) implement the framework and (b) ensure that their advisers meet the requirements, while other licensees will not have the scale and resources or may have difficulty with some components – for example, the supervision requirement.</p>
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Question 1.3

Are the lines of responsibility clear under the PJC model?

This could mean for example, that an increasing number of advisers will start out their career in a large advice business and then over time, move to smaller or more bespoke licensees, or become a licensee in their own right. There is an analogy with law and accounting firms in this regard.

However, AFMA is of the view that the framework should apply to all providers who advise retail customers on Tier 1 products, regardless of the size or type of firm. Any other approach will potentially result in a bifurcation of training and competency standards, which is not in the best interests of consumers.

A1.3

AFMA supports the establishment of the proposed Finance Professionals Education Council (FPEC) as part of the professional standards framework. However, AFMA does not support the composition of the FPEC as proposed in the PJC model.

Accordingly, we do not support some of the responsibilities allocated to FPEC, to professional bodies, and to licensees under that model. Further detail is set out in responses to later questions (see A4.1 and A4.2).

Question 2.1

What are the practical implications of this overlapping of responsibilities? Would this shift have flow-on implications for other provisions in the Corporations Act, or any other parts of the licensing regime?

A2.1

AFMA is of the view that the legal obligation to ensure that advisers meet relevant training and competency standards should remain with AFSL holders. AFSL holders are best placed to judge the skills and performance of their advisers. AFMA believes it is appropriate to extend some obligations to individual advisers, to ensure that AFSL holders are able to satisfy their legal obligations.

ASIC should remain responsible for ensuring that licensees comply with the conditions of their AFSL, and should be responsible for compliance and enforcement action against AFSL holders and individual advisers as set out in the Corporations Act.

The role of professional associations should be to:

- (a) admit individuals as members;
- (b) provide or provide access to training and education to meet the curriculum set by the FPEC;
- (c) provide or provide access to a venue to undertake the proposed registration exam;
- (d) provide or provide access to continuing professional development; and
- (e) keep a central record of the training and professional development that each individual member undertakes and completes. This information could be made available to the individual, the licensee, FPEC and ASIC as required.

Professional associations should establish a code of ethics that members must abide by. If a member is found to have breached the code of ethics in a sufficiently serious manner, the member should be reprimanded, suspended or ejected from the association (depending on the severity of the matter). If the person is no longer a member of

<p>Question 2.2</p> <p>Should licensees maintain a legal obligation to ensure advisers meet relevant training and competency standards?</p>	<p>an appropriate professional association, then his or her registration on the Financial Adviser Register should be suspended or terminated.</p> <p>However, AFMA suggests that a professional association should clearly set out the circumstances in which it may reprimand, suspend or eject a member – for example, a licensee terminates their employment for cause, ASIC takes some form of action against the individual, the person is charged/convicted of a serious offence, becomes bankrupt or other similar event that is sufficiently serious to constitute a breach of ethics. AFMA does not support any proposal that professional associations should become the arbiters of such matters. Compliance and enforcement must remain the remit of ASIC.</p> <p>AFMA also believes that the important role of external dispute resolution should continue to be separate from professional associations.</p> <p>In AFMA’s view, it is not appropriate to assign any legal obligations that relate to supervising the conduct of an individual adviser to a professional association. These obligations should remain with the AFSL holder and should be enforced by ASIC.</p> <p>Any change or re-assignment of existing obligations under the Act would potentially require significant statutory reform, which will take considerable time. We have not considered the full extent of the implications of this as we do not support the Government going down this path.</p> <p>A2.2 Yes.</p>
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Question 3.1

How would the PJC model interact with existing regulatory regimes for specific types of advisers, for example stockbrokers and tax advisers?

A3.1

“Stockbrokers” that are market participants are subject to the Market Integrity Rules administered by ASIC. These rules go to the conduct of market participants and their representatives but do not create specific obligations in terms of training and competency of advisers. Providers who advise retail customers about Tier 1 financial products including securities, derivatives and other exchange-traded products should be subject to the professional standards framework. Advisers who provide advice on these products are already required to be registered on the Financial Advice Register.

The components of the professional standards framework should be flexible so that an adviser is able to undertake and complete modules that are relevant to their role and the types of financial products on which they provide advice.

“Stockbrokers” for example, may choose to undertake modules that are relevant only to securities, derivatives and other exchange-traded products. Or they may choose to undertake a broader range of modules to allow for career change.

There will be advisers who will be subject to both the professional standards framework and the TASA requirements ie. those that provide “tax (financial) advice services”. Broadly the TASA requirements comprise both education requirements and experience, as well as membership of a relevant professional association. In the initial stages of implementation of the professional standards framework, advisers who are already meeting the TASA requirements should receive “credit” for that towards the professional standards framework requirements. Advisers who have already met those requirements should not need to repeat that

<p>Question 3.2</p> <p>Is holding a relevant Bachelor Degree the appropriate minimum education requirement? What is a “relevant” Bachelor Degree? Would this requirement limit the ability of other degree-qualified individuals to become financial advisers?</p> <p>Question 3.3</p> <p>What are the practical implications of requiring advisers to hold a relevant Bachelor Degree?</p>	<p>process for the industry-wide framework, and hence the framework should be designed with the TASA requirements in mind.</p> <p>If the Government decides to take a staged approach to implementation of the framework, as has been suggested by other commentators, then over time the TASA requirements as they pertain specifically to tax financial advice could be brought within the scope of the broader framework as a specialist stream.</p> <p>There are transition arrangements under TASA for advisers who do not hold a relevant degree, which rely on the adviser having extensive relevant experience. The transition arrangements under TASA and the professional standards framework should be consistent, or at the very least not be mutually exclusive in relation to any aspect.</p> <p>A3.2, 3.3</p> <p>A bachelor-level qualification historically has been the minimum qualification required for entry to a profession. Whether a degree level qualification is appropriate for professional training is debatable. Some Australian universities are shifting to the US model of a liberal arts or science undergraduate degree, with professional qualifications only being offered at the graduate level e.g. Melbourne University.</p> <p>The question of what is a relevant degree is complex as, except in the case of financial planning (a number of universities offer a bachelor degree in financial planning) there is not a degree that is, strictly speaking, relevant for financial advisers. A business, accounting or</p>
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	<p>commerce degree by itself could not cover the necessary skills and knowledge to provide financial advice.</p> <p>A degree can provide a broad theoretical and technical knowledge of finance, and the acquisition of graduate attributes - ie. key generic skills in research and inquiry, information literacy, personal and intellectual autonomy, ethical, social and professional understanding and communication skills a student is expected to develop in their time at university.</p> <p>Given the broad range of subjects and majors students can undertake in undergraduate degrees it may not be reasonable to prescribe degrees. For example most Bachelor of Arts courses in Australia allow students to complete a major in economics. Instead, in defining a relevant degree it will necessary to prescribe the types of degree subjects that will be considered sufficient as a grounding for candidates to undertake the professional standards framework.</p> <p>AFMA supports sensible transition arrangements so that experienced existing advisers (at the time the framework commences operation) who do not hold a relevant degree are still able to meet the requirements through an alternative assessment path. In our view, this should include passing the registration exam and undertaking continuing professional development. Any person entering the industry as a graduate from the time the framework commences operation should be required to complete all of the components including the professional year.</p>
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Question 3.4

What are the practical implications of requiring new advisers to undertake a structured professional year at the outset of their careers as financial advisers, as a way to develop on-the-job skills?

A3.4

The PJC model becomes somewhat circular at this point. Under the model a person cannot be a financial adviser unless they are on the Financial Adviser Register. In order to be placed on the Register, the individual must meet all of the requirements of the framework under the PJC model.

However, in order for an individual to start developing the specific skills that are needed to provide financial advice, they need to be able to interact with clients. This would meet the definition of providing financial services under the Corporations Act. Under the PJC model, this could not happen as the individual is not yet on the Financial Adviser Register.

This issue needs to be addressed either by (a) setting the registration exam at an earlier stage in the professional standards framework so that an adviser can be placed on the Register, on the basis they have passed the registration exam, or (b) allowing an adviser to be entered on the Register on a probationary basis that is clearly flagged to a user of the Register, for the period of their “professional year” (at least). An adviser on probation will need to be directly supervised by a fully qualified adviser in all of their interactions with clients. It would need to be made clear to a client in documentation and discussions that an adviser is probationary and is being directly supervised. This is envisaged in the supervision requirement in any event. The adviser would then need to pass the registration exam at the end of the professional year in order to obtain an unrestricted registration on the Financial Adviser Register. This approach is analogous with law society requirements, where lawyers hold restricted or unrestricted practising certificates.

On balance, AFMA would support the approach outlined in (b).

	<p>Most professions that require individuals to undertake a structured professional year under supervision also require individuals to complete a formal study of a qualification in practice-related topics eg. the Institute of Chartered Accountants requires individuals to successfully complete the Graduate Diploma of Chartered Accounting as well as work-based supervision and mentoring.</p> <p>There is insufficient detail in the PJC model to know whether the PJC envisaged something similar in the “curriculum” to be set by the FPEC. AFMA assumes that it is intended that individuals who are in their professional year will undertake a structured learning program set by the FPEC (this is our interpretation of what is meant by “curriculum”.) The curriculum should be capable of being delivered by any appropriate training body (we suggest Registered Training Organisations regulated by ASQA) whose programs meet the parameters set by FPEC and deliver the outcomes needed to enable an individual to go on to successfully complete the registration exam. For this reason, we envisage the registration exam as setting a high bar. This will also help to ensure that only high quality training programs are available in the industry.</p>
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<p>Question 4.1</p> <p>What are the practical implications of FPEC performing this role? For example:</p> <ul style="list-style-type: none"> • how would FPEC interact with regulators and government agencies, such as ASIC, and education bodies? • would FPEC need to be supported by legislation in order to perform its role? • is the recommended FPEC membership appropriate? 	<p>A4.1, A4.2</p> <p>AFMA supports the elements of the PJC model to establish FPEC as the central body to set education standards, professional year requirements, registration exam content and ongoing professional development requirements.</p> <p>AFMA does not support the PJC recommendations that FPEC be funded by approved professional associations and be comprised of representatives from those associations, academics, consumer advocates and an ethicist.</p>
<p>Question 4.2</p> <p>Are there alternative arrangements that would be more appropriate or effective?</p>	<p>AFMA supports the establishment of a professional standards framework (including FPEC) that is enduring and which is not dependent on the continued and discretionary support of a group of professional associations. To achieve this, some form of statutory underpinning will be required that obliges licensees to ensure that their advisers meet the requirements. There should also be a statutory requirement that links the professional standards framework to registration on the Financial Advice Register.</p> <p>The governance and operation of the FPEC should be independent and free of influence/interference. The FPEC board should ideally be comprised of persons with substantial financial advice industry experience who are not aligned with any licensee, educators, consumer representatives, specialists in ethics and behaviour, specialists in financial products, and potentially other fields such as law and accounting with experience in the operation of a professional framework.</p> <p>FPEC should be funded through charges levied on licensees and/or advisers, and not via professional associations who would only be acting as a collection mechanism from their members in any event.</p>

	<p>This is analogous with the legal profession where the cost of practising certificates and continuing education is routinely paid by firms for their individual lawyers.</p>
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<p>Question 5.1</p> <p>What are the practical implications of requiring individuals to be registered in order to provide financial advice?</p>	<p>A5.1</p> <p>The practical implications are that an adviser must meet the requirements of the professional standards framework in order to be registered.</p>
<p>Question 5.2</p> <p>Should it be the role of professional associations to notify ASIC that all requirements have been met for an adviser's registration, and of factors which affect their subsequent fitness for registration?</p>	<p>A5.2</p> <p>AFMA believes that AFSL holders should have the notification obligations for their advisers, as they already do in relation to the Financial Adviser Register. AFSL holders could rely on the information contained in the association's central records (as suggested above) to notify ASIC that the requirements have been met. Placing the obligation on the licensee will help to maintain the integrity and timeliness of the register.</p> <p>Professional associations should notify ASIC if they reprimand, suspend or terminate the membership of an individual.</p>
<p>Question 5.3</p> <p>What are the practical implications of having these criteria listed on a public adviser register?</p>	<p>A5.3</p> <p>Consumers will have access to a greater level of information about the provider they are dealing with.</p> <p>We are not aware of any other implications beyond those that have already been considered in the establishment of the existing register.</p>
<p>Question 5.4</p> <p>Are there alternative or additional criteria that should be listed on the Register?</p>	<p>A5.4</p> <p>No.</p>

Question 5.5

What are the practical implications of having professional associations perform this role? For example, are professional associations sufficiently resourced and how would they interact with ASIC in relation to these requirements? Does this approach dilute the responsibility of licensees?

Question 5.6

Is legislative protection of the titles 'financial adviser' and 'financial planner' necessary?

A5.5

AFMA does not support shifting this responsibility to professional associations.

A5.6

A person should only be able to describe themselves as a financial adviser if they are registered on the Financial Adviser Register, either on a probationary or unrestricted basis.

More broadly, it is not clear that distinguishing between a "financial adviser" and a "financial planner" is meaningful to a consumer. Attaching different definitions to an adviser and a planner may actually be unnecessarily confusing for consumers. FOFA imposes clear obligations on all providers who give advice to retail customers to (a) act in the client's best interest, and (b) be clear about the nature of the advice that is being provided.

Question 6.1

Do you consider a registration exam should be a component of a framework to improve professional standards? Should the exam apply to both existing and new advisers?

A6.1

AFMA supports a registration exam as a component of the framework. Our members have indicated they would expect existing advisers to sit the exam. New advisers should be subject to the whole of the professional standards framework. Requiring all advisers to sit the exam will, at least in the minds of consumers, set a minimum baseline from which they can compare advisers. It is important to bear in mind that the purpose of the professional standards framework is to increase consumer confidence in the industry.

Question 6.2

What are the practical implications of the use of a registration exam?

A6.2

The registration exam will form one of several gateways through which an adviser must pass in order to be registered on the Financial Advice Register.

Question 6.3

What content should be covered in the exam?

A6.3

The content of the exam cannot be determined until it is clear what the exam is assessing. For example, will it assess practical knowledge gained through the professional year, theoretical and applied knowledge (of what and gained from what - training courses, the structured year?) or all of the above.

Alternatively, if the registration exam is set much earlier in the professional year, candidates will not have had the opportunity to develop higher order skills, and so the content of the exam would logically be different to the content of an exam at the end of the professional year.

<p>Question 6.4</p> <p>Is FPEC the appropriate body to set the exam? Who should be responsible for invigilating the exam? Who should be responsible for marking the exams?</p>	<p>A6.4</p> <p>Yes, FPEC should set the exam to ensure consistency across the industry. It could do this, for example, through sub-committees that set the content for a core module and for specialist modules.</p> <p>The delivery of the exam (making a venue or a secure online portal available), collecting a fee if applicable to sit the exam, collating and providing results and so on could be undertaken by any RTO that is acceptable to the FPEC. Who should mark the exam would depend on the nature of the exam – for example, multiple choice could be marked by computer. Exam questions that require written responses would need to be marked by individuals. This could be a group appointed by the FPEC or markers who are associated with an RTO.</p>
<p>Question 7.1</p> <p>What are the practical implications of the proposed ongoing professional development requirements?</p> <p>Question 7.2</p> <p>Are professional associations well-placed to administer ongoing professional development requirements?</p>	<p>A7.1</p> <p>Many AFSL holders already require their advisers to undertake continuing professional development. As such, this is unlikely to cause significant additional burden for industry. The current requirements vary from licensee to licensee and between industry bodies in terms of the hours per annum that are required and the nature of the CPD (generalistic, industry developments through to very specific product related training).</p> <p>A7.2</p> <p>Generally speaking, yes.</p>

Question 8.1

What are the practical implications of having each professional association create its own code of ethics? For example, what are the implications of having multiple codes as opposed to a single code?

Question 8.2

What are the practical implications of requiring that a code of ethics be approved by the PSC? Are there alternative approaches that would be more appropriate or effective?

A8.1

This depends on what the codes will be required to contain. Australia does not have a self-regulatory regime for financial services, and accordingly professional associations should not be expected to take on the role of the regulator to take disciplinary or enforcement action against their members. In a scenario where multiple codes are in operation, variances in how those codes are enforced against individuals would inevitably arise – for example, where one professional association would only reprimand an individual for particular conduct, another professional association might suspend or even eject an individual for the same conduct. Such variances would be a highly undesirable outcome for consumers.

Accordingly, while we agree that professional bodies are well able to set a code of ethics, we do not believe that professional bodies should be required to take enforcement or disciplinary action in relation to conduct issues. This is particularly the case where a client may be eligible for compensation or some other form of remediation. This is best dealt with under the statutory regime that includes ASIC, external dispute resolution and ultimately, the Courts.

A8.2

ASIC has a power to approve codes of conduct [section 1101A of the Corporations Act]. It is not clear whether the PJC model envisages a distinct process for approval of a code of *ethics*, as opposed to *conduct*. To the extent the Professional Standards Council has the skills and capacity to approve a code of ethics (and AFMA has not assessed this at all), we see no particular reason to object to the PSC having this role.

<p>Question 8.3 Is the PSC the appropriate body to drive improvements in professional standards in this industry? Are there alternative arrangements that would be more appropriate or effective?</p> <p>Question 8.4 What are the practical implications of having the PSC perform this role? For example, how would the PSC interact with ASIC?</p> <p>Question 8.5 What are the practical implications of requiring professional associations to hold a PSC-approved scheme?</p> <p>Question 8.6 Is it appropriate that liability in relation to financial advice/services be limited at this time? Is limitation of liability a necessary element for the operation of the PJC model?</p>	<p>However, in light of the comments above about the composition of FPEC - in particular, that we do not agree that FPEC should be comprised of professional associations that have been approved by the PSC - the role of the PSC in the overall process will be significantly diminished.</p> <p>A8.3 Responsibility for driving improvements in professional standards in the industry should rest with industry.</p> <p>A8.4 The PSC would need to advise ASIC about approval of codes of ethics as and when approval is given. Beyond that, it is not clear what other interaction would be needed.</p> <p>A8.5 The practical implications are the time and cost associated with the establishment of a PSC approved Professional Standards Scheme. AFMA is very concerned about the time that would be required to get approved schemes in place, and that this would hold up implementation of the framework.</p> <p>A8.6 Notwithstanding that limitation of liability could be set at an amount that is high enough to cover almost any claim by a retail investor, limitation of liability as an outcome of the professional standards framework will be viewed poorly by the community.</p>
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<p>Question 8.7 What are the practical implications of capping liability? For example, what changes to Commonwealth and/or state and territory legislation would be required?</p>	<p>A8.7 AFMA does not support this aspect.</p>
<p>Question 8.8 Would an alternative arrangement, under which a scheme’s approval would not limit liability, be practicable?</p>	<p>A8.8 See A8.6.</p>
<p>Question 8.9 What are the practical implications of mandating membership of a professional association? Are there implications arising from the increased responsibility on professional associations rather than on the licensee?</p>	<p>A8.9 AFMA does not support transferring responsibilities from licensees to professional associations.</p>

<p>Question 9.1 How could the PJC model interact with the existing Tier 2 adviser training and competency requirements?</p>	<p>A9.1 This can be considered more fully at a later stage.</p>
<p>Question 9.2 Do you consider FPEC to be the best entity to determine transitional arrangements for existing advisers and advisers wishing to move within the industry?</p>	<p>A9.2 Yes. AFMA supports sensible transition arrangements that recognise the skills and experience of advisers who do not hold a relevant degree, and for whom it is not realistic to expect they will obtain one. This issue will decrease over time as it is likely the vast majority of people entering the financial services industry from this point are degree qualified.</p>
<p>Question 9.3 Do you consider Recognised Prior Learning a suitable transitional arrangement for existing advisers?</p>	<p>A9.3 Yes.</p>
<p>Question 9.4 What is an appropriate timeframe over which existing advisers should transition to the new system?</p>	<p>A9.4 The timeframe proposed by the PJC could be shortened if a staged approach is adopted.</p>
<p>Question 9.5 Are there any alternative transitional arrangements that would be more appropriate or effective, for either new or existing advisers?</p>	<p>A9.5 No comment.</p>
<p>Question 9.6 Are there any particular elements of the PJC model that present timing challenges?</p>	<p>A9.6 Formation of the FPEC, comprised of professional associations approved by the PSC is problematic and not achievable in a short space of time. Accordingly, AFMA supports establishment of an independent FPEC.</p>

<p>Question 9.7 What timing or phasing would most effectively balance the recognised need to raise standards and competency in the short-term against practicalities of implementing a new model to raise standards of new and existing advisers over the longer term?</p>	<p>A9.7 Nothing further to add.</p>
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