

7 May 2015

Ms Meghan Quinn
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Markets Group
The Treasury
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Lifting the professional, ethical and education standards in the financial services industry

Dear Ms Quinn,

The Financial Services Council (FSC) welcomes the opportunity to comment on the consultation relating to lifting the professional, ethical and education standards in the financial services industry.

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 120 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC is highly supportive of these reforms which lay the foundation for the advice industry to transform itself into a profession. Implemented prudently, they will improve the quality of advice and associated consumer outcomes well into the future.

In our submission to the PJC Inquiry, we submitted that advised clients feel more in control of their finances, have lower levels of stress and feel a greater sense of well-being. An important aspect of quality financial advice is adviser competency. The FSC supports increasing competency standards for financial advisers. This is reflected by many of our members' commitment to increasing adviser qualification and competency requirements of their financial advisers.

The FSC supports many components proposed under the consultation paper that forms the overall framework for lifting the professionalism of financial advisers. We agree with the PJC model that the new framework introduced ought to ensure that the education and training standards are for financial advisers providing financial advice on tier 1 financial products. For confidence to be restored, and indeed, raised in the financial advice industry, we submit that:

- Financial advisers must increase their education and training levels to meet significantly higher standards prescribed by an independent standards setting body;

- The body responsible for setting the curriculum, administering the national exam and establishing professional pathway must be credible. This means that they ought to be established independently and maintain this independence in undertaking their responsibilities;
- The registration exam must form the gateway to the adviser profession to ensure all advisers meet the required standard prior to delivering advice;
- There must be a consistent program of ongoing development that's relevant to the profession; and
- There must be a robust and efficient registration and monitoring system to ensure the advice profession meets its obligations on an ongoing basis.

Our submission responds to the more detailed considerations of the various components of the PJC model raised in the consultation paper. It references and should be read in conjunction with FSC's Financial System Inquiry (FSI) submission where we initially responded to the PJC recommendations.

We welcome the opportunity to consult further with you in relation to these matters. Please feel free to contact me on [REDACTED] to discuss this submission.

Yours sincerely,

[REDACTED]
SENIOR POLICY MANAGER - ADVICE

1. THE PJC MODEL

1.1 WHAT IMPACT WOULD THE INTRODUCTION OF THE PJC MODEL HAVE ON THE STRUCTURE OF THE FINANCIAL ADVICE INDUSTRY?

The approach to transition and the final standards set by the Independent Body may influence the structure of the advice industry, depending on the approach taken. To promote access to high quality advice, it will be particularly important to support of the existing adviser base in making the transition to higher standards.

Unintended structural impacts could adversely impact upon advice delivery. On the other hand, minimising disruption will promote confidence and competition in advice and drive accessible, affordable for consumers. Successful implementation can be achieved across a broad range of advice business structures, particularly through the adoption of:

Appropriate transitional arrangements - Whilst we would like to see the new model implemented efficiently and speedily, adjustments to the proposed transition timeframe may be necessary. The FSC proposes that the relevant dates be linked to the establishment of the Independent Body and proposes the implementation timeframe set out in its FSI submission¹.

Recognition of existing and transitioning adviser experience and competency – Appropriately recognising levels of experience and competency within the existing adviser base will support the retention of experienced planners in the industry. Their ongoing contribution to the delivery of quality advice is critical and includes the provision of valuable and at times complex advice plus mentoring and oversight of new advisers during and beyond the professional year. The FSC’s specific proposals detailing appropriate education and competency requirements for existing and transitioning advisers are contained in its FSI submission².

1.2 WHAT ARE THE PRACTICAL IMPLICATIONS OF THE PJC MODEL APPLYING TO ADVISERS FROM ALL SIZES AND TYPES OF FIRMS?

The practical implications upon the spectrum of licensees will depend on the final model established by the Independent Body. There may be separate issues dependant on licensee demographics, current education levels and pathways. The model can be designed so as to promote competitive neutrality and ensure all licensees and advisers have reasonable opportunity to transition to the new model, regardless of current practices which vary across industry. Elements of the framework critical to practical implication include:

Appropriate transitional arrangements – In addition to the structural concerns noted in response to question 1.1, this will support practical implementation across the broad spectrum of licensees. Whilst some licensees and advisers have unilaterally raised their own educational and competency standards, this is not the case for the entire industry. All licensees and advisers should be afforded reasonable opportunity to transition once new standards have been set by the Independent Body and not in advance of this.

Due recognition for existing and transitioning adviser experience and competency – In addition to the structural concerns noted in response to question 1.1, this is critical to achieving practical implementation

¹ FSC FSI submission pp. 32-34, response to PJC recommendation 14

² FSC FSI submission pp. 22-26, response to PJC recommendation 7

for existing advisers. It is impractical to mandate that experienced industry practitioners undertake degree qualifications (where they have not already attained these), due to the significant level of responsibility associated with running advice businesses and servicing existing clients. It is also appropriate to recognise their experience and competency is at a level above that of new entrants to the industry, and practical to test their technical competence via a registration exam to ensure they meet the increased benchmark. We recommend that the registration exam is set at a standard equivalent level to an AQF level seven qualification.

Licensee contribution to standards - The Independent Body should incorporate a mechanism for licensees (as well as other relevant stakeholders) to provide input into initial and ongoing education requirements through a variety of sub-committees. Regard should be given to the regulatory framework which places ultimate responsibility upon licensees for adviser conduct and compliance with regulatory requirements when providing advice. Given these responsibilities and the associated practical implications for licensees in implementing the new framework, they are in a position to provide unique insights and add value to the ongoing development of standards.

Professional Year - Development of the professional year framework should consider both consumer and practical considerations that may impact advice delivery. Licensees are required to have supervision and monitoring frameworks in place to ensure that advice is appropriate. The role of the senior adviser should be one of ongoing mentoring and oversight during the professional year. The professional year should also be flexibly designed such that other suitably qualified staff within the licensee can carry out the mentoring of new advisers and meet the requirements set by the independent body for the professional year. It should not however subsume elements of supervision and monitoring more appropriately and efficiently performed elsewhere within the licensees framework. As recommended by the PJC and noted in the transitional schedule, we anticipate the Independent Body will develop the professional year framework.

1.3 ARE THE LINES OF RESPONSIBILITY CLEAR UNDER THE PJC MODEL?

The lines of responsibility, particularly between licensees and professional associations, need to be clarified. Licensees are responsible for the regulatory and licensing framework applicable to them and their advisers. They are obligated to ensure representatives are adequately trained and competent to perform their duties. Under the PJC proposals, certain licensee functions would become the responsibility of professional associations.

For example, licensees currently contribute to management of a member's professional year by providing support including mentoring and guidance from senior advisers and file review and monitoring performed by risk management teams. Under the proposed model professional associations will be responsible for managing a member's professional year and ongoing professional development³.

There may be overlap between licensees and professional association responsibilities to provide education and training, monitor compliance and report to ASIC. The model should stipulate how licensees, professional bodies and other stakeholders should interact as a result of this overlap. To avoid duplication, mechanisms to enhance efficiency should be developed. For example, it may be more efficient to adopt structured two-way reporting obligations between professional bodies and licensees, with ASIC breach reporting and adviser registration to remain a licensee responsibility.

³ p.5 Lifting the professional, ethical and education standards in the financial services industry

To support the important role of professional associations in the new structure there should be clear accountability to the Independent Body standards and to other parties as is appropriate, and a governance structure that facilitates this. It may be appropriate to provide a 'safe harbour' for licensees where they appropriately rely on professional associations to fulfil their regulatory responsibilities under the new model.

Clear accountabilities and governance structures, in addition to Professional Standards Council requirements being applied to professional associations operating as schemes, will ensure a robust model and support a wholesale increase in standards across the advice sector. In combination, this will require that professional associations operate to a high standard and offer services that comply with the standards set by the Independent Body. This reduces the potential for conflicts that could lead to "association shopping" by licensees or advisers.

Because of licensees regulatory responsibilities they should maintain the ability to make recommendations to ASIC (and the Independent Body) about the registration of advisers. We do not support the restriction that only Professional Associations can provide recommendations to ASIC and the Independent Body in relation to this. We recommend that this obligation continues to rest with the licensee and not the professional association.

2. CURRENT REGULATORY FRAMEWORK

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?

ASIC, licensees and professional associations each have a role to play to ensure compliance under the proposed model. The responsibilities of ASIC and licensees are embedded in legislation and we do not propose that these are diminished. The responsibilities and accountability of professional associations should be clarified and governance structures within the model should support this.

Practically there is likely to be overlap between licensees and professional association responsibilities. For example, both may be required to report to ASIC in relation to adviser compliance issues. By clarifying responsibilities and accountabilities, it will be possible to delineate tasks, reduce overlap and create efficiencies within the model. For example, as the licensee has ultimate responsibility for adviser conduct and is obliged to report significant breaches to ASIC, it may be more efficient to have professional associations report standards compliance issues to licensees who would retain their existing ASIC reporting obligations.

A systematic approach could be adopted to clarify participant's distinct responsibilities within the new model. All participants should also have a responsibility to reinforce and support the objective of increased standards across the advice sector. High levels of collaboration between participants will be required to achieve the best outcomes for consumers and industry. For example, currently licensees can only access information from professional associations where they fund the adviser's membership. On the other hand, professional associations do not always have current data on which licensee their adviser members are attached to. Amendments to current industry practice will be required if the new model is to lift standards in an efficient, holistic manner.

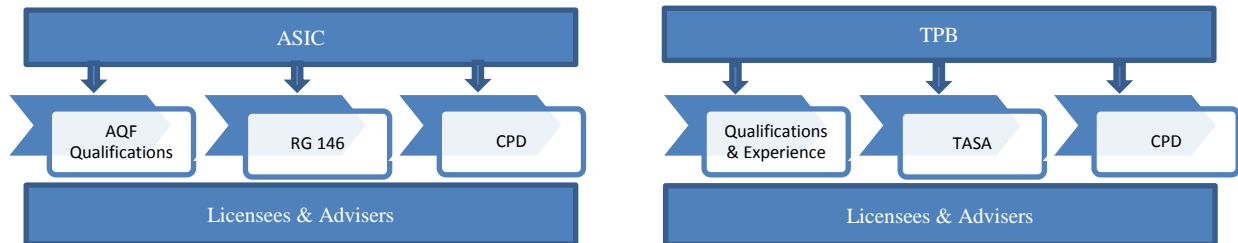
Another important practical example is incorporating both ASIC and TPB regulated advice to promote advice sector efficiency through a single set of standards. The Independent Body will be responsible for setting standards whilst ASIC and TPB will be responsible for regulation and enforcement.

Other practical implications of overlapping of responsibilities of would include:

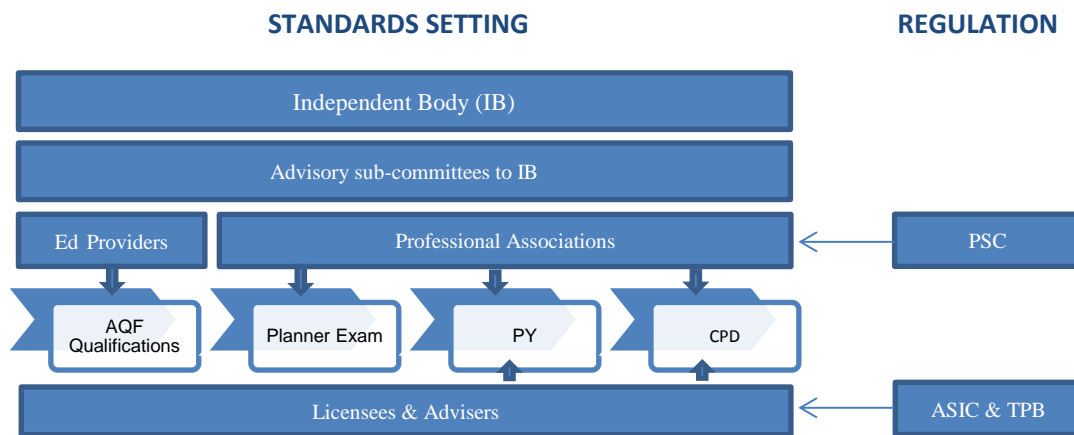
- The potential for confusion amongst stakeholders and systemic breakdowns where areas of responsibility and accountability are unclear.
- Agencies will need to be considerate of downstream impact when making changes to education or training requirements.
- Increased administration and reporting requirements will add stress to the system and impacted stakeholders including regulators, licensees and professional bodies, unless a systematic approach is taken to ensure efficiency in the model.
- Duplication and inefficiency may increase the cost of advice for consumers.
- It is unclear whether ASIC be responsible for consolidating all data and will this be required to be displayed as part of the FAR register.

The below diagram demonstrates the current and proposed standards setting models and reinforces the need for clearly defined responsibility, accountability and governance amongst participants within the proposed model:

CURRENT MODEL – DUAL STANDARDS



PROPOSED MODEL – SINGLE STANDARD



2.2 SHOULD LICENSEES MAINTAIN A LEGAL OBLIGATION TO ENSURE ADVISERS MEET RELEVANT TRAINING AND COMPETENCY STANDARDS?

Yes, licensees should maintain a legal obligation and we support advisers being individually responsible for meeting the obligations. Professional associations may also require more specific obligations and accountabilities as they have a greater degree of responsibility under the proposed model.

3. EDUCATION AND TRAINING STANDARDS OF FINANCIAL ADVISERS

3.1 HOW WOULD THE PJC MODEL INTERACT WITH EXISTING REGULATORY REGIMES FOR SPECIFIC TYPES OF ADVISERS, FOR EXAMPLE STOCKBROKERS AND TAX ADVISERS?

The FSC supports increasing minimum education requirements for those who provide personal advice to retail clients on tier 1 products (or 'relevant financial products').⁴ The requirements for specific types of advisers including stockbrokers providing advice on equities investment, risk advisers providing advice on life insurance, or advisers providing tax financial advice (regulated by the Tax Practitioners Board) should be incorporated within the framework.

This will achieve a wholesale increase in standards where personal advice is provided (apart from in relation to simpler tier 2 products) and promote high quality advice across all subject matters and areas of specialisation. This approach will also be important to prevent unintended consequences that may undermine a holistic increase in standards, such as the proliferation of advice practices that avoid higher standards due to product or sector specific carve outs.

As per the PJC recommendations, we expect that the Independent Body would set both core and sector specific requirements for Australian Qualifications Framework level seven courses. All advisers should be required to undertake the relevant core requirements whereas sector specific requirements would be undertaken dependent on the nature of advice provided.

To bring together disparate regimes and avoid duplication and overlap, it is of critical importance that the minimum education requirements for tax (financial) advisers are integrated into the new model. The opportunity to incorporate both ASIC and TPB regulated advice should be taken to promote efficiency in the sector by facilitating a single minimum education and competency framework.

3.2 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?

New Advisers

The FSC is supportive of increasing requirements for new advisers which involves the completion of a relevant degree at AQF level seven or above. From an operational perspective, it has been the experience of our members that validating the completion of knowledge areas for degrees can be very challenging. While many students will stick to one training institution to complete their initial competency requirements, others will use multiple registered training organisations. It is often further complicated for students completing university degrees as many do not complete a specific financial planning subjects as part of their degree stream (or even complete degrees through one university anymore), and it is often challenging to validate that they meet the standards required.

⁴ Those who provide advice on 'relevant financial products' are included on the new Financial Adviser Register. Relevant Financial Products is defined in the *Corporations Amendment (Register of Relevant Providers) Regulation 2015* which means financial products other than: basic banking products, general insurance products, consumer credit insurance or a combination of any of these products.

We recommend that a facility is developed through the Independent Body (working closely with universities) to assess whether new entrants meet the minimum competency requirements to assist a licensee, particularly as the Independent Body will be able to hold a central database of relevant subjects.

The standards should incorporate a variety of educational pathways to becoming an adviser with the Independent Body determining what is appropriate. There should be options for new advisers to, for example, undertake bridging courses where they possess other degrees, relevant qualifications and experience that enable them to meet the required standards as tested via the registration exam. Offering these pathways will ensure those who are transitioning careers can still enter the financial services industry but only upon successful completion of the registration exam.

It is important this “career transition” door remains open to support the ongoing supply of advisers to the market. Often these people are mature in age and therefore can relate to client life experiences – both of which increase levels of consumer trust and the provision of quality advice. In addition, some universities are shutting down financial planning specialist degrees due to lack of demand, therefore if these bridging courses are not offered there may be a decline in future adviser numbers which could impact access to advice by limiting the ability of the sector to provide advice to more people in the community.

Existing Advisers

There will be circumstances where current advisers possess non-degree qualifications and significant industry experience that enable them to meet the required standards of the registration exam without completing a relevant degree. These advisers may be older learners who have not studied for a number of years but have complied with ongoing CPD requirements and have a long track record of delivering high quality advice to their customers.

Under the proposed model, they will need to devote significant time and attention to passing the registration exam to demonstrate that they meet the required standard. We do not believe their educational pathway should be prescribed as a relevant degree. The focus should be on providing them with suitable pathways to pass the registration exam whilst supporting them to continue running their practice, advising clients and mentoring new advisers coming through the ranks.

3.3 WHAT ARE THE PRACTICAL IMPLICATIONS OF REQUIRING ADVISERS TO HOLD A RELEVANT BACHELOR DEGREE?

Existing advisers – recognition and support

It is impractical to mandate that experienced industry practitioners undertake degree qualifications (where they have not already attained these), due to the significant level of responsibility associated with running advice businesses and servicing existing clients. It is also appropriate to recognise their experience and competency is at a level above that of new entrants to the industry, and practical to test their technical competence via a registration exam to ensure they meet the increased benchmark. We recommend that the registration exam is set at a standard equivalent level to an AQF level seven qualification.

The model should provide enough support for study by existing advisers to enable them to pass the national exam whilst maintaining their livelihood. For many this will be a significant uplift, as most will have not done any further formal study since their initial qualification, and to be able to study for and pass an exam at AQF level seven could be quite daunting.

Comprehensive support structures need to be established that provide for flexible content delivery in order to support geographical diversity, whilst enabling advisers to continue to run their business and secure client’s financial futures. Examples of support structures include alternative educational pathways, online

learning, study groups, study notes, practice exams with answers, peer study groups and live or recorded webinars.

Existing advisers should be allowed multiple attempts to pass the national exam. If they remain unsuccessful after those attempts have transpired, further licensee and professional association support should be provided to upskill the adviser where development is required prior to reattempting the exam.

If adequate support is not established advisers could find it difficult to pass such a high benchmark whilst running an advice practice and servicing clients. It would be a significant loss to clients and the industry if experienced planners are forced to exit due to a lack of support within the new model.

New adviser pipeline - accessibility of advice

Another practical implication of requiring advisers to hold a relevant bachelor degree is a significant reduction in the pipeline of future potential planners which could impact access to advice, as discussed in our response to question 3.2.

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?

FSC supports the concept of a structured professional year. The registration exam should be a gate opener for the professional year and a pre-requisite for providing advice. This will support the consistent delivery of high quality in clients' best interests.

Licensees should maintain primary responsibility for administering the professional year. Professional associations may not be adequately resourced to undertake this responsibility for larger licensees. Smaller licensees may require professional associations to perform this function. The model should allow for flexibility to enable efficient administration.

A principle based approach to standardising the professional year should be taken to enable advisers within different business models to be appropriately supervised. By way of example, this is an issue for single planner practices and smaller licensees. Many existing advisers operate single planner practices and in the foreseeable future this is unlikely to change. The professional year should be developed in a manner that enables these practices to be supervised by the licensee, financial planning business, or professional association.

4. STRUCTURE AND ROLE OF A STANDARD-SETTING BODY

4.1 WHAT ARE THE PRACTICAL IMPLICATIONS OF FPEC PERFORMING THIS ROLE? FOR EXAMPLE:

A) HOW WOULD FPEC INTERACT WITH REGULATORS AND GOVERNMENT AGENCIES, SUCH AS ASIC, AND EDUCATION BODIES?

Independent Body Interaction with Regulators

Both ASIC and TPB should relinquish their role in setting educational standards for financial advice and tax financial advice respectively to the Independent Body. Existing frameworks will act as a baseline for the independent body to work from in developing new standards for the advice industry.

The Independent Body will be responsible for setting standards whilst ASIC and TPB will be responsible for regulation and enforcement. Each agency is appropriately specialising to perform appropriate roles.

Independent Body Interaction with Professional Associations and Education Providers

Professional Associations should be accountable to the Independent Body framework and standards, in addition to the Professional Standards Council (see diagram 'Proposed Model – Single Standard' at question 2.1).

Clear accountabilities and governance structures, in addition to Professional Standards Council requirements being applied to professional associations operating as schemes, will ensure a robust model and support a wholesale increase in standards across the advice sector. In combination, this will require that professional associations operate to a high standard and that their offerings comply with the framework and standards set by the Independent Body.

Independent Body Interaction with stakeholder groups

The FSC recommends that the Independent Body should incorporate a mechanism for stakeholders such as professional associations, education providers, licensees and consumers groups to provide input into initial and ongoing education requirements through a variety of sub-committees (see diagram 'Proposed Model – Single Standard' at question 2.1).

B) WOULD FPEC NEED TO BE SUPPORTED BY LEGISLATION IN ORDER TO PERFORM ITS ROLE?

Corporations Act

Legislative support is an important element that can act as the “glue” for the model and ensure its sustainability. We recommend that compliance with Independent Body standards is prescribed in legislation. A regulatory amendment that builds on current general licensee requirements in relation to training and competency will drive a sustainable market solution.

Under the proposed model there is no mechanism to ensure that licensees or professional associations comply with Independent Body standards. Mandating that licensees must comply with Independent Body standards in order to meet their general duties in relation to training and competency will ensure that licensees only select professional associations who meet these requirements. It will also provide an imperative for associations to comply on an enduring basis.

Licensees should maintain the legal obligation and we support advisers being individually responsible for meeting the obligations. Legislation also supports across the board participation and the requisite ownership of obligations and compliance by regulated entities and individuals.

Tax Agent Services Act

To achieve the proposed model (see diagram 'Proposed Model – Single Standard' at question 2.1) amendments to the Tax Agent Services Act and regulations may be required. The qualifications and experience requirements for tax (financial) advisers are set out in legislation and regulations⁵. Under the proposed model the Independent Body would set these standards to increase efficiency through the creation of a single standards and educational model for advisers.

Overseas Qualifications

It is important to recognise equivalent overseas qualifications for individuals entering the industry. Due to the complex nature of qualification mapping it is important that strict guidelines are developed by the Independent Body. This approach could be championed by the professional associations on a fee for service basis, funded by individuals seeking to have their overseas qualifications mapped and recognised.

C) IS THE RECOMMENDED FPEC MEMBERSHIP APPROPRIATE?

It will be necessary to build upon the current proposal to ensure appropriate governance and composition of the Independent Body. The FSC recommends that the Independent Body consist of:

- Education providers with knowledge of financial advice;
- Experienced individuals with prior experience in the advice industry;
- An ethicist; and
- An independent chair such as an academic.

To maintain integrity and independence, we recommend Ministerial appointments to the Independent Body Board. This will promote a high degree of integrity by decoupling parties who are subject to the Independent Body standards from the Board selection process. Subsequent to its appointment, the Independent Body Board should appoint a management, administration, and secretariat function comprising staff of its own choosing to run the operations of the Independent Body on an ongoing basis, including administration of the sub-committees.

The current proposal includes a role for professional associations as members of the Independent Body. We believe it is inappropriate to have professional associations form part of the body as they will be accountable to apply and uphold the standards through their own frameworks and this creates a situation of conflict. Current licensees and advisers should not be members for similar reasons. As previously discussed, the Independent Body should incorporate a mechanism for regulators, professional associations, licensees and consumer representatives to provide input into initial and ongoing education requirements through a variety of sub-committees which include these stakeholders.

⁵ The qualification and experience requirements in the standard option for tax (financial) advisers are set out in Schedule 2, Part 3 of the *Tax Agent Services Regulations 2009* (TASR). The experience requirements in the transitional option for tax (financial) advisers are set out in item 50 in Schedule 1 to the *Tax Laws Amendment (2013 Measures No. 3) Act 2013*.

4.2 ARE THERE ALTERNATIVE ARRANGEMENTS THAT WOULD BE MORE APPROPRIATE OR EFFECTIVE?

Please see response to question 4.1(c) for details of alternative Independent Body composition.

Regarding funding, the current framework envisages that the Independent Body would be funded by professional associations who have been approved by the Professional Standards Council. We understand that approval by the Professional Standards Council can be a lengthy process which can take over 12 months. Given the lengthy registration process, we would be concerned that there may not be adequate funding for the new body for quite a period of time. There may also be gaps between scheme approvals dependent on how far progressed professional associations are in obtaining this.

It is not foreseeable funding could occur through professional associations in the near term. Funding of the new Independent Body is essential to ensure it can carry out its functions. To help provide appropriate funding the FSC is supportive of a revised ASIC levy meeting initial funding requirements. This levy will be issued across the entire advice community on a scale basis. This is the most appropriate form of initial funding to ensure the integrity of the funding model and Independent Body establishment process.

5. REGISTRATION

5.1 WHAT ARE THE PRACTICAL IMPLICATIONS OF REQUIRING INDIVIDUALS TO BE REGISTERED IN ORDER TO PROVIDE FINANCIAL ADVICE?

The key practical implication is that licensees will need to provisionally register advisers once they have passed the national exam but prior to the completion of their professional year. This “P-Plater” approach to registration will facilitate the delivery of supervised advice during the professional year, an essential component to build soft skills and experience for new advisers. To ensure transparency for consumers the register should reflect that the adviser is provisionally registered.

Professional associations should confirm to licensees once the professional year has been passed in accordance with their standards. Licensees will then be responsible for updating the ASIC database to reflect this.

5.2 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?

We are supportive of ASIC adding financial advisers to the register when they have met the minimum requirements and passed the registration exam. For new advisers, it should be clear that are provisionally registered until they complete their professional year. It is expected that existing advisers will already be included on the new financial adviser register which commences March 2015.

Given their regulatory responsibilities and current practices, licensees are best placed to register advisers with ASIC.

5.3 WHAT ARE THE PRACTICAL IMPLICATIONS OF HAVING THESE CRITERIA LISTED ON A PUBLIC ADVISER REGISTER?

The FSC supports these criteria being included in the register. In particular, the benefits of including material censures supports informed decision making by consumers when choosing an adviser. These will also provide an early warning system for licensees and prevent advisers from moving within the industry where their conduct is below the required level.

The FSC recommends undertaking a targeted consultation on including material censures or limitations imposed by licensees, professional associations or ASIC (other than bans, disqualifications and enforceable undertakings which should be, and will be, included on the financial adviser register) to ensure further disclosure is meaningful to consumers.

There will be practical implications for licensees and professional associations in providing this information and for consumers in assimilating it through the register. The process for providing the information to ASIC should be administratively efficient whilst disclosing all material information to consumers.

5.4 ARE THERE ALTERNATIVE OR ADDITIONAL CRITERIA THAT SHOULD BE LISTED ON THE REGISTER?

In relation to the individual items to be included on the register, the FSC makes the following comments:

- a) The FSC is strongly supportive of the new financial adviser register which will enhance transparency and act as a useful consumer tool.
- b) The FSC is supportive of a unique identifier being implemented which follows an adviser throughout their career. The FSC considers it important that the unique identifier also follow the person where they have a gap in their career and then re-joins as an adviser at a later stage. This would ensure that the adviser's history/details are not lost because of any breaks or gaps taken from the role of being an adviser.
- c) The FSC is supportive of the register including higher qualifications awarded by a professional association to the adviser.
- d) The FSC is supportive of the adviser register including information from ASIC on bans, disqualifications or enforceable undertakings against a financial adviser which will be included in the adviser register.
- e) There is merit in including censures and limitations placed on an adviser by a professional body or licensee provided that the censure or limitation is material and meaningful to consumers.
- f) The FSC is supportive of the register noting that an adviser is no longer authorised to provide personal advice if the adviser has their membership of the nominated professional body suspended or revoked.

The FSC believes these items provide comprehensive information to consumers and that it is unnecessary to include additional items on the register.

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?

It will be more efficient and effective for licensees to continue notifying ASIC. Licensees have the resources, expertise and record keeping processes to enable this type of reporting. Licensees must keep records of adviser training and competency in order to meet regulatory requirements. Having professional associations perform this role may lead to duplication and overlap.

To facilitate registration, bodies delivering the registration exam should inform licensees when an adviser has passed and professional associations should inform licensees when an adviser has met their professional year requirements.

5.6 IS LEGISLATIVE PROTECTION OF THE TITLES ‘FINANCIAL ADVISER’ AND ‘FINANCIAL PLANNER’ NECESSARY?

Legislative protection of the terms ‘financial adviser’ and financial planner’ is necessary to promote system integrity and consumer transparency. The FSC is supportive of restricting both terms to those who:

- provide personal advice to retail clients on tier 1 products;
- are included on the new financial adviser register; and
- meet minimum education and competency requirements

To ensure effective protection both terms should be regulated to prevent use by parties not providing personal advice at the required standard. This will eliminate risk that consumers could be misled if only one of the terms was protected.

Advisers should also be free to refer to themselves in alternative terms, provided it is an accurate description of the service being delivered. For example, insurance advisers and stockbrokers should continue to be free to refer to themselves by these labels.

6. EXAM

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?

The FSC is supportive of a registration exam being a component of the framework. The registration exam should be mandatory for new advisers post the transitional period. For existing advisers, we support completion of the registration exam to demonstrate competency.

6.2 WHAT ARE THE PRACTICAL IMPLICATIONS OF THE USE OF A REGISTRATION EXAM?

The registration exam should be a gate opener for the professional year and a pre-requisite for providing advice. This will support advice delivery in clients' best interests. Consistent with other professions, a single registration exam to demonstrate competency is practical and appropriate. Advisers effectively achieve admission to the profession via the exam pathway.

We have discussed the practical implications for existing advisers in our response to questions 1.2 and 3.3.

6.3 WHAT CONTENT SHOULD BE COVERED IN THE EXAM?

The content should include core knowledge and specialised subject areas. The current FPEC curriculum provides a sound starting point for consideration and includes:

Core body of knowledge:

- intro to finance/personal financial planning
- client relationships
- superannuation and retirement
- estate planning
- insurance
- financial plan construction
- taxation
- investments

Specialist knowledge areas:

- advanced investments and fund analysis
- business economics
- commercial law
- business statistics
- advanced tax
- basic accounting
- superannuation 2 and research
- marketing for services

Further consultation should be undertaken by the Independent Body, through its relevant subcommittee, to determine content requirements.

6.4 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?

The Independent Body is the appropriate body to set the exam. They should set a single examination so that education providers can prepare appropriate educational pathways to facilitate completion of the exam by advisers.

The administration and marking of the exam may be outsourced to educational providers, professional associations or other bodies as is appropriate; however there should be a single exam for all advisers. Consistency in marking is crucial if multiple exam providers are assigned, as otherwise the integrity of the central exam could be inadvertently compromised by subjectivity in the marking process.

7. ONGOING PROFESSIONAL DEVELOPMENT

7.1 WHAT ARE THE PRACTICAL IMPLICATIONS OF THE PROPOSED ONGOING PROFESSIONAL DEVELOPMENT REQUIREMENTS?

The FSC is supportive of advisers undertaking ongoing professional development set by the professional association, with the Independent Body facilitating cross industry standardisation.

The FSC envisages that the CPD framework would include core requirements to be completed by all advisers and areas of specialisation relevant to particular advisers e.g. SMSF, Risk Insurance.

The CPD framework should incorporate Tax (Financial) Advice⁶ as a core requirement. There must be a single, holistic educational framework for advisers set by the Independent Body. Maintaining the dual regulatory approach is unnecessarily burdensome, will perpetuate inefficiency and negate benefits naturally flowing from the new model.

7.2 ARE PROFESSIONAL ASSOCIATIONS WELL-PLACED TO ADMINISTER ONGOING PROFESSIONAL DEVELOPMENT REQUIREMENTS?

Licensees should continue to administer ongoing CPD in line with professional association requirements as they are adequately resourced to perform this role. Licensees should inform professional associations when CPD requirements have been met by advisers or where they have failed to meet their obligations.

The Independent Body facilitating cross industry standardisation is a critical step to achieving a CPD model that consistently raises standards across the advice community. Principles based guidance will ensure a degree of consistency across the professional associations. The Independent Body should consider what is appropriate for both core and specialist advice.

In particular, the Independent Body should standardise assessment criteria for CPD. This will enable efficient administration and monitoring of CPD and eliminate the need for divergent processes resulting from a lack of standardisation. Currently this is a major issue for licensees as ASIC, TPB and professional associations have variable assessment criteria.

⁶ As defined in the Tax Agent Services Act 2009 (TASA)

8. PROFESSIONAL AND ETHICAL STANDARDS

CODE OF ETHICS

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?

Similar to CPD, industry will be able to manage multiple codes of ethics provided the Independent Body facilitates cross industry standardisation. The codes will be extremely important to establishing appropriate standards of conduct across industry as well as setting membership conditions for professional associations.

Ethical conduct is an issue that the industry is considering in detail. Through the Independent Body sub-committees, licensees can make a valuable contribution to the development of appropriate standards.

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?

The FSC is supportive of advisers being members of a professional association operating under a Professional Standards Scheme recognised by the PSC. To progress towards higher standards of conduct sooner, the FSC recommends that the PSC approve codes of ethics independently of any application to approve a Professional Association.

The PSC is the best agency to approve codes of ethics. They are the independent statutory body responsible for promoting professional standards and consumer protection and already work with associations to develop self-regulation initiatives. This approval role aligns with PSC's core skills and responsibilities.

ASIC are the other agency who may be able to perform this role, particularly in the near term as ASIC is the main industry regulator and already has the capacity to approve codes⁷. This approach could effectively advance the professionalisation of the industry in a more timely manner. However, in the longer term it is more appropriate for ASIC to focus on their core responsibility of regulating conduct in the advice industry.

ROLE OF THE PSC

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?

The PSC will play a key role in driving improvement in professional standards and transforming the industry into a profession. Scheme recognition is a key component in driving increased standards as it will strengthen the governance, risk management and professionalism of associations. This is essential to the effective operation of the co-regulatory model and will protect consumers.

The Independent Body will also drive improvements in professional standards by creating minimum standards for industry to abide by and professional associations to follow.

⁷ Under section 1101A of the Corporations Act

8.4 WHAT ARE THE PRACTICAL IMPLICATIONS OF HAVING THE PSC PERFORM THIS ROLE? FOR EXAMPLE, HOW WOULD THE PSC INTERACT WITH ASIC?

As an independent statutory body, the role of PSC is distinct from ASIC. To promote efficiency and integrity in the framework, each agency should play its dedicated role. PSC are the best agency to help lift professional standards. Being a recognised PSC Scheme distinguishes associations and their members as a recognised profession. Schemes are regulated under professional standards legislation and are required to uphold high standards of consumer protection.

ASIC should focus on supervision and enforcement where advisers fail to meet the required standards. This demarcation will achieve the best outcomes for consumers. The one exception is that ASIC may be able to approve codes of ethics, particularly in the near term as ASIC is the main industry regulator and already has the capacity to approve codes. This approach could effectively advance the professionalisation of the industry in a more timely manner.

8.5 WHAT ARE THE PRACTICAL IMPLICATIONS OF REQUIRING PROFESSIONAL ASSOCIATIONS TO HOLD A PSC-APPROVED SCHEME?

The FSC is supportive of professional associations establishing Professional Standards Schemes under the PSC. We understand that establishing Professional Standards Schemes can take time, and that the implementation timeframe should be subject to guidance from the PSC on the time required to have the scheme up and running. As noted above, to progress towards higher standards of conduct sooner, the FSC recommends that the PSC approve codes of ethics independently of any application to approve a Professional Association. Alternatively, ASIC may also be able to approve codes of ethics, particularly in the near term as ASIC is the main industry regulator and already has the capacity to approve codes. This approach could effectively advance the professionalisation of the industry in a more timely manner.

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?

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?

8.8 WOULD AN ALTERNATIVE ARRANGEMENT, UNDER WHICH A SCHEME'S APPROVAL WOULD NOT LIMIT LIABILITY, BE PRACTICABLE?

Limitation of liability flows from being an approved Professional Standards Scheme. The PSC criteria and process for scheme approval and maintenance is rigorous. Limited liability is appropriate under these circumstances, as is the case for associations operating as schemes in other industries.

At this point in time there are no approved Professional Standards Schemes operating in the advice industry. Whilst it is not a necessary element of the PJC model, there is no reasonable basis to deny this benefit to associations and members who have met the relevant requirements. To do so may negatively impact the creation of schemes and availability of associations in the market, which the model relies upon to be effective in lifting standards across the entire sector.

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?

Mandating membership of professional associations does not present any major practical challenges for most parts of the advice industry. Many licensees have unilaterally moved towards mandatory membership in advance of these increased standards.

However one important consideration is whether there will be a broad enough cross section of professional associations on the market to meet the needs of the entire adviser community, including specialist advisers such as stockbrokers. This is an important dynamic in the overall equation, as it is problematic to mandate compulsory membership in circumstances where appropriate professional associations for specialist advisers are not available on the market.

There are implications arising from the increased responsibility on professional associations rather than the licensee, and we have discussed these in response to previous questions. Licensees should maintain their compliance obligations and administer the professional year and CPD in line with professional association requirements.

Professional associations and licensees will need to communicate effectively to facilitate licensees updating the ASIC register, to achieve on-going compliance with the various elements of the model, and to satisfy requirements for association membership renewal on a regular basis.

9. OTHER ISSUES FOR CONSIDERATION

ADVICE ON TIER 2 PRODUCTS

9.1 HOW COULD THE PJC MODEL INTERACT WITH THE EXISTING TIER 2 ADVISER TRAINING AND COMPETENCY REQUIREMENTS?

FSC considers tier 2 adviser training and competency requirements to be appropriate. Additional interaction between the two models is not essential as the rationale for distinguishing tier 1 and tier 2 related advice remains unchanged.

TRANSITIONAL ARRANGEMENTS

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?

As noted in response to question 1.1 and 1.2, there are important structural and practical implications directly related to appropriate transitional arrangements. We believe the Government has some a role to play in initially establishing an appropriate timetable, as well as constituting the Independent Body, as an outcome of this consultative process.

Whilst we would like to see the new advice framework implemented efficiently and speedily, adjustments to the currently proposed transition timeframe may be necessary. We suggest that the relevant dates be linked to the establishment of the Independent Body and propose the implementation timeframe set out in FSC's FSI submission⁸.

⁸ FSC FSI submission pp. 32-34, response to PJC recommendation 14

9.3 DO YOU CONSIDER RECOGNISED PRIOR LEARNING A SUITABLE TRANSITIONAL ARRANGEMENT FOR EXISTING ADVISERS?

We have discussed the practical implications and potential alternatives for existing advisers in our response to questions 1.2, 3.2 and 3.3. It is also appropriate to set requirements for those currently transitioning to become advisers that recognise their relevant training, experience and competency.

9.4 WHAT IS AN APPROPRIATE TIMEFRAME OVER WHICH EXISTING ADVISERS SHOULD TRANSITION TO THE NEW SYSTEM?

The FSC proposes that the relevant dates be linked to the establishment of the Independent Body and proposes the implementation timeframe set out in its FSI submission⁹.

9.5 ARE THERE ANY ALTERNATIVE TRANSITIONAL ARRANGEMENTS THAT WOULD BE MORE APPROPRIATE OR EFFECTIVE, FOR EITHER NEW OR EXISTING ADVISERS?

Please see responses to questions 9.2-9.4.

TIMING

9.6 ARE THERE ANY PARTICULAR ELEMENTS OF THE PJC MODEL THAT PRESENT TIMING CHALLENGES?

The FSC would like to see the new advice framework implemented promptly and efficiently, however recognises that implementation of the many recommendations will require time and proposes that the timeframes be linked to the establishment of the new Independent Body and proposes the implementation timeframe set out in its FSI submission¹⁰, including appropriate transitional arrangements for existing and transitioning advisers as already discussed.

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?

It is important to be cognisant of recent major regulatory change in the wealth management industry where transitional timeframes have been inadequate leading to increased implementation costs and ongoing uncertainty for industry participants. FSC believes it is important to provide sufficient time to enable both new and existing advisers to transition to the new model. Individuals currently studying or transitioning to become advisers need to be considered in this equation.

All licensees and advisers should be afforded reasonable opportunity to transition once new standards have been set by the Independent Body and not in advance of this. By the end of the transitional period all advisers will need to have achieved the higher benchmark standards and demonstrate their competence by passing the registration exam. The FSC recommends that the relevant dates be linked to the establishment of the Independent Body and proposes the implementation timeframe set out in its FSI submission¹¹

⁹ FSC FSI submission pp. 32-34, response to PJC recommendation 14

¹⁰ FSC FSI submission pp. 32-34, response to PJC recommendation 14

¹¹ FSC FSI submission pp. 32-34, response to PJC recommendation 14