

16 September 2022

Assistant Secretary

Advice and Investment Branch

The Treasury

Langton Crescent

PARKES ACT 2600

By email: FinancialAdvice@treasury.gov.au

RE: Public submission, Financial adviser education standards - Consultation paper

Dear Sir/Madam,

Please find attached herewith a public submission which addresses Questions 12 and 13 of the experience pathway section of the Consultation paper.

I have read the submission guidelines and now provide the requested detail.

After working in various positions in Financial Services and then Funds Management, since 2010 I have held positions in Financial Planning Practice Management and AFSL Governance (Risk & Compliance).

I hold a Bachelors' Degree in Economics from Monash University 1996 and a Graduate Diploma in Financial Planning 2014 as well as other qualifications. I am a CERTIFIED FINANCIAL PLANNER® Member of the Financial Planning Association of Australia (FPA). I passed the FASEA Adviser exam in 2019 and have been a relevant provider on the ASIC FAR (000296089) until earlier this year.

In this submission, I have only made two suggestions. If the experience pathway proceeds:

1. It becomes even more important to lift the standards for AFSL Management by requiring the Responsible Manager to be at least as qualified as an adviser, and
2. All advisers still ought to be required to complete an approved course in ethics by 1 January 2026 as was outlined in FS001 from FASEA.

I make this submission as an individual. This submission is wholly unrelated to my current employment. My Employer may not share the opinions I have expressed herein.

This submission is 3 pages in total, including this covering letter, and there are no attachments.

Yours faithfully,

██████████

Preliminary

In this document I have used the following terms:

Term	Definition
AFSL	In this submission, an AFSL is only that type which is authorised to provide financial product advice to retail clients
AQF	Australian Qualifications Framework
RG	An ASIC Regulatory Guide
RM	A Responsible Manager of an AFSL (RG 105)
SECT	A section from the Corporations Act 2001 (Cth)

12. What else may be required to ensure an appropriate level of consumer protection is maintained and any potential harm is minimised?

As I understand it, higher qualifications, at AQF 7 or above, were mandated for advisers by 1 January 2026 for the purpose of improving the quality of advice given to consumers. The range of qualifications currently held by advisers is very broad. It is generally in the range of a 4 subject Diploma at AQF 5 to an 8 subject Graduate Diploma at AQF 8.

There will be no minimum qualification required under the experience pathway proposed. This experience pathway increases the risk to consumers where AFSL Management, who will oversee eligible advisers, are not themselves both appropriately experienced and qualified. Therefore the experience pathway should not proceed unless the standards for AFSL Management are lifted.

The AFSL has an essential role to play in consumer protection. Through its policies and procedures, and also through its business culture, the AFSL directs and influences advisers and so the advice.

Currently, no Director or Officer of an AFSL is required to hold any particular level, or type, of qualification. A Director of an AFSL need only satisfy the Fit and Proper person tests of SECT 913BA. The RM of an AFSL need only satisfy one of the five options in Section C of RG 105 to demonstrate "appropriate knowledge and skills". The standard specified under each and all of these options is inadequate.

No Director, Officer or any RM of an AFSL is required to: currently be an adviser, have any advice experience, have passed the adviser exam or hold financial planning qualifications. Not being required to have done any of these things it should not be surprising that a number of them have not. The lack of experience and qualifications in Management is quite pronounced especially in some large AFSL.

The impression that might have been created from the Hayne Royal Commission is that poor advice and less than satisfactory consumer experiences and outcomes were largely the result of misconduct by many individual advisers. A much more compelling view is that the poor advice and unsatisfactory outcomes were, in the main, driven by failures in AFSL governance in the presence of conflicts of interest. The Interim Report Executive Summary supports that view.

Oversight by Management in other professions

A review of the leadership of any number of Law firms and Accounting Practices (from their public websites) shows us that Senior Management is ordinarily made up of qualified, highly experienced

practitioners. We know that Partners often oversee, and set the parameters for, the work to be done by employees at various levels, and also work that is completed by contractors. That could be described as a “top down” approach to enterprise professionalism.

In financial services, most changes in the Law and Regulations over many years have related to the administrative work an adviser must do. Our attention was then directed to what qualifications they must have. The issue of what credentials AFSL Management should have, given that they authorise and oversee advisers, seems largely to have escaped attention.

Where no Director, Officer or any RM of an AFSL has at least the same credentials as an adviser, the AFSL might suggest that it has “other employees” to satisfy the organisational competence obligations. This is not compelling. These other employees include Compliance and Risk Professionals who are not sufficiently senior as to be able to *substantially* influence decision making for the protection of consumers.

A suggestion for improvement in the quality of AFSL Management

The current requirements for an RM in RG 105 are not even as substantial as what an AFSL might ordinarily expect of an adviser.

The RM of an AFSL should at least meet the requirements for an existing adviser. That is, they should:

- Have passed the adviser exam and be current on the ASIC FAR, and
- Meet the requirements of the proposed experience pathway, and have completed an approved subject in ethics, or
- Hold an approved degree by 1 January 2026.

“Responsible Manager” is not defined in the Law and this role is a concept created by ASIC in RG 105. I also note that the RM role does not attract any liability in itself. These matters do not diminish the potential value of the RM role. All AFSL must appoint one or more persons to be an RM. Lifting the standards of AFSL Management by improving the requirements for an RM in RG 105 would be incredibly powerful in enhancing consumer protections. This would ensure that **at least one** suitably qualified and experienced person is involved in overseeing the operations of the AFSL and is contributing directly, in a meaningful way, to the risk culture.

Quality of Advice Review (QOAR)

If any of the substantial parts of the QOAR Consultation Paper – Proposals for Reform, August 2022 proceed, then personal advice to retail clients will be able to be given by an AFSL, where no fee is charged, without the need for them to have *any person* who meets the qualification and experience requirements. If Management of those AFSL are not adequately qualified and experienced, then I anticipate consumer harm is highly likely.

13. Would any further requirements be necessary for the experienced pathway to ensure the professionalisation of the industry is maintained?

In the guidance on the new education standards from FASEA (FPS 001, November 2018) it was indicated that all advisers must complete an approved subject in ethics by 1 January 2026. I suggest that this requirement remain.

End of submission