



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:JvdPsb150922

15 September 2022

Ms Melissa Bray
Assistant Secretary
Advice and Investment Branch
Treasury
Langton Cres
Parkes ACT 2600

By email: FinancialAdvice@treasury.gov.au

Dear Ms Bray

Financial adviser professional standards

Thank you for the opportunity to comment on Treasury's Consultation Paper, *Financial adviser professional standards*. The Law Society's Business Law Committee has contributed to this submission.

The Law Society notes that the current education standards for financial advisers were introduced by the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017 (Cth) (the Act)*. The Act was intended to raise the education, training and ethical standards of financial advisers, and it included the requirement that financial advisers hold an approved bachelor's degree (or higher qualification). The education standards introduced by the Act were commended by Commissioner Hayne in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, who noted at the time:

...prevention of poor advice begins with education and training. Those who know why steps are prescribed are more likely to follow them than those who know only that the relevant manual says, 'do it'.

I believe that, as they come into effect, the new education requirements will improve the quality of advice that is given and improve the way that financial advisers manage the conflicts of interest with which they are faced.¹

The Consultation Paper sets out options to amend the current standards to implement the Government's election commitment to remove the requirement to undertake any additional formal study to meet the education standards for 'experienced advisers', namely existing

¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), Final Report vol 1, 171.

advisers with at least 10 years of full-time equivalent experience in Australia and a clean disciplinary record.

The Law Society is concerned that the proposed amendments may negatively impact the standards of competency and ethics in the financial services industry. While we recognise that individual financial advisers may have experience which is at least equivalent to AQF 7 (bachelor degree level), we note that experience is not always a reliable indicator of skill or training and, as such, there is no principled way to ensure that financial advisers would meet the required education standards by experience alone.

We consider that a consistent education requirement is in the financial service industry's long-term interest in giving the public confidence that there are baseline qualifications which financial advisers must undertake to discharge their duties. We consider that allowing financial advisers to not meet education requirements risks undermining trust in the financial adviser qualification system and potentially creating two classes of financial advisers, the qualified and the grand-fathered.

The value of on-the-job experience is not disregarded in the Act, which has transitional arrangements allowing for experienced financial advisers to complete an AQF 7 qualification or eight units of AQF 8 study by 1 January 2026. At the commencement of those requirements, this represented a period of just under nine years.

For the reasons set out above, we consider it premature to respond to the proposed questions set out by Treasury in the Consultation Paper. Instead, the Law Society recommends that the Treasury prepare the following:

1. A Regulatory Impact Statement which analyses the potential consequences for the financial services industry of the current education requirements vis-à-vis the proposed changes; and
2. A study as to the progress of existing financial advisers in meeting the current transitional education requirements i.e. how many existing advisers are unlikely to meet the education requirements under the Act due to lack of time, means or due to failure to obtain the relevant qualifications.

If you have any questions about this submission, please contact [REDACTED]

Yours faithfully,

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