



16 September 2022

Assistant Secretary
Advice and Investment Branch
The Treasury
Langton Crescent
PARKES ACT 2600

Email: FinancialAdvice@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – FINANCIAL ADVISER EDUCATION STANDARDS

The SMSF Association welcomes the opportunity to provide this submission in response to the Government's Financial Advisers Education Standards consultation paper. Two essential elements of the Association's mission are professionalism and integrity. This is underpinned by our core beliefs which includes education and accreditation for advisers operating in the SMSF sector.

The adoption of an experience only pathway to satisfy the education requirements does not meet the original policy intent of enhancing professional standards and moving financial advisory services towards becoming a true profession.

We acknowledge the concern surrounding declining financial adviser numbers and the importance of retaining experienced financial advisers in the industry. However, a model, such as the one proposed, would not have been needed were a more consultative approach taken with industry and appropriate model introduced from the outset. We remain optimistic, noting that there is still a window of opportunity within which to adopt more appropriate settings whilst achieving the desired outcome.

Essential Elements

To be fit for purpose and satisfy the original policy objectives, the education standards and professional year program require:

1. An industry led framework underpinned by core competencies and knowledge areas.
2. Recognition of the variety of industry participants, not all of whom are comprehensive financial advisers, and the need for specific education requirements.
3. An ability to apply recognised prior learning ("RPL") in accordance with established standards under the Australian Qualifications Framework ("AQF") published by the Australian Qualifications Framework Council or guidelines set by the Technical Education and Quality Standards Agency ("TEQSA").
4. Recognition that not all entrants into the sector choose to become financial advisers as their first career. This cohort of more experienced financial advisers often hold related degrees (accounting, economics, finance, or MBAs), and other related work experience.



Any amendments to the education standards should reflect the following objectives:

1. Upholding the standards of a profession; and
2. Maintaining a consumer centric framework that considers the needs and protection of consumers of financial services

The above objectives are pertinent to both the experienced adviser pathways and for new entrants. Any dilution of standards puts at risk other crucial sector reforms.

Quality of Advice Review

Consideration must be given to the findings and recommendations that are yet to come from the Quality of Advice Review. The tenor of the '*proposals for reform*' consultation paper appears to recognise the professionalisation of the sector. Such reforms are essential if the financial advice sector is to be able to deliver timely, cost effective, quality advice under a consumer centric model.

Specialist Advice Standards

The SMSF Association has consistently advocated for and promoted the need for strong education and advice standards. The need for specialisation and specialist education sits at the heart of our mission and beliefs. Given the risk of harm to consumers, we have consistently called for professional standards that require specialist accreditation.

We would support any measure that seeks to increase the education standards required for SMSF advisers. Raising of education standards of SMSF advisers will increase their knowledge relating to specific and complex legislation. It would also discourage advisers who wish to give SMSF advice but have not undertaken specialist SMSF training.

Introducing an SMSF education requirement, would also limit advisers who are licensed but have poor knowledge of SMSFs and limited recourse borrowing arrangements from advising on the product. In turn it then would discourage property spruikers from entering the SMSF advice market as the education requirement could be too high.

Whilst education cannot prevent poor and misleading advice, enhanced education requirements, together with the implementation of other policy measures will provide a safeguard for SMSF members from advisers who potentially lack the required knowledge to provide the specialist advice needed for SMSFs.

Furthermore, a requirement to seek specialist SMSF advice would restrict the current practice we see in 'one-stop property shops' which the ASIC Report 575 notes as a detrimental path to inappropriate limited recourse borrowing arrangements.

ASIC's Report 575 (2018) also stated:

We believe these results indicate a need to increase the education and training requirements for advice providers who provide personal advice on SMSFs.

To improve the quality of SMSF advice, we will be engaging in discussions with FASEA about a specific SMSF qualification for advice providers wishing to provide SMSF advice.



The Productivity Commission noted ASIC's stated position above and supported specialist training for those advising on SMSFs.¹

We note that no guidance or framework was produced by FASEA for consultation prior to its cessation, despite the urging of ASIC and the Productivity Commission as far back as 2018.

Transitional Measures – Qualified Tax Relevant Providers (QTRP)

Under the current legislation there exists a legislative anomaly in relation to the education requirements and the application of transitional measures. This will impact a number of advisers on the transfer of a financial adviser's tax registration from the Tax Practitioners Board ("TPB") to ASIC under the single disciplinary model.

The legislation does not recognise individuals who were at the relevant time:

1. Registered tax agents
2. Existing tax (financial) advisers who were deauthorised on the financial adviser register ("FAR") due to a change of licensee

These advisers are excluded from the grandfathering provisions.

This outcome appears to be an unintended consequence. We therefore ask that the law be amended to ensure that they are appropriately included in the transitional measures and therefore do not need to complete additional study in the areas of tax and commercial law.

Consultation Questions

Responses to the questions set out in the consultation paper can be found in the attached appendices:

1. Appendix A: Experienced pathway
2. Appendix B: New entrants
 - a. Formal education and exam
 - b. Professional year

If you have any questions about our submission, please do not hesitate to contact us. We thank you again for the opportunity to provide this submission.

Yours sincerely,

A large black rectangular redaction box covering the signature and name of the sender.

¹ Productivity Commission 2018, *Superannuation: Assessing Efficiency and Competitiveness*, Report no. 91



ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.



Appendix A: Experienced Pathway

The SMSF Association does not support the experience pathway. We acknowledge the Government's pre-election commitment to this proposal. We therefore seek to provide feedback on how the proposed measures, if adopted can be made fit for purpose, achieve the desired standard, and incorporate appropriate consumer protections.

10 years' experience

1. Is the proposed window for determining 10 years' experience (between 1 January 2004 and 1 January 2019) appropriate? If not, what alternative period could be considered?

The duration of a person's authorisation under an AFSL is not an indicator of the level of experience, knowledge skill or expertise as a financial adviser.

Under an experience pathway, the adviser needs to have been actively advising clients during the relevant period.

A sunset clause of not more than 10 years should apply. This removes any unintended consequences whereby an adviser who has a career still ahead of them, to remain without complying with the education standards. Further, it ensures that experienced advisers, to whom this proposal is intended to apply, are retained in the system. It will allow them to conclude their careers, and plan for their retirement in an environment in a dignified way, rather than in the fire sale conditions that currently exist.

2. If required (for example, due to an audit of their eligibility), how can advisers prove they have 10 years' full-time equivalent experience?

The passage of time, change of employers or licensee coupled with the sale, merger and cessation of businesses makes this challenging. Further, privacy laws also present challenges.

Consideration would also need to be given to those who have lost records, or their records have been compromised, for example due to a natural disaster. Noting the significant flooding and bush fire events that have occurred in recent years.

Clean record

3. Are the proposed sources for determining a clean record appropriate? Why/why not?
4. What other sources could advisers rely on to indicate that they have a clean record?
5. If required, what evidence can advisers rely on to prove they have a clean record?
6. What threshold should be adopted to identify whether conduct is minor, trivial, and isolated?
7. Is the non-time limited clean record requirement appropriate? If not, for what period should an adviser be expected to maintain a clean record to access this pathway?



Q3-7:

This is the most challenging aspect of these proposals. Access to the relevant records, coupled with an environment that is seeing complaints with AFCA settled by licensees, compensation for fee for no service paid by financial services entities in blanket settlements that capture compliant advisers, and advisers being terminated by licensees simply because they no longer fit their business model.

We do not support the exclusion of an adviser due to a shortfall in CPD. Advisers complete many hours of CPD across a wide range of areas. A shortfall of a few hours in a particular area, or due to a significant life event, should not be punitive unless the non-compliance is significant. Rather they should be supported in doing what is required to remediate and remain on track.

Existing models should be explored, such as the ASIC reference checking protocol. Section 3 “Conduct of the Representative”.

Assessment of eligibility

8. [What should self-declaration of eligibility require? For example, should an adviser have to make a statutory declaration?](#)

Advisers seeking to use this pathway should carry the personal, professional, and ethical obligation to self-declare their eligibility. This should be by way of statutory declaration given the weight attached to such a document and the penalty for giving of a false statement is a criminal offence.

A range of other penalties should also be included. Where a breach occurs, these would allow ASIC as the regulator, to refer a matter to the FSCP who would have the ability issue a range of sanctions.

Future misconduct

9. [Are new tools required to specifically deal with advisers accessing the experienced pathway whose future conduct amounts to misconduct? Why/why not?](#)

Where an adviser is deemed to meet the education requirements, no matter how that has been achieved, should be treated as one and the same. A separate penalty regime for advisers using different education pathways risks creating a different class of advisers with a different set of rules.

The existing disciplinary framework available to ASIC, the use of the FSCP, and available sanctions can then be applied, noting the FSCP has a range of sanctions available to it.

An education directive could be given where the FSCP identifies in the matter before them, a deficiency in the adviser’s knowledge or the need for re-education on a particular knowledge area. Such matters should be addressed on a case-by-case basis regardless of the adviser’s education pathway.

Other

10. [For existing advisers not eligible for the experienced pathway but who have a foreign qualification at AQF 7 level or above, is it practical and appropriate for education providers or licensees to assess how these qualifications meet the education standard and what additional study may be required, rather than the Minister? Why/why not?](#)



We have received feedback from some of our members that upon the change of licensee, a different interpretation of the existing education requirements is sometimes being applied. The previous licensee has confirmed that the FASEA education requirements have been met. However, the new licensee has now determined that further study is required.

Under the previous RG 146 model, this was a common issue, with previously approved accreditation disregarded and recertification on specified areas required, often using the licensees approved education provider. This should not be permitted to take a foothold and is a practice that needs to cease. Once accredited and approved, the relevant education requirements should be deemed to have been met.

Licensees do not have the necessary skills or expertise to assess the suitability of degree courses either in Australia or from overseas.

The assessment of degrees and pathways should be made by an industry lead committee or organisation in conjunction with tertiary education providers. This would be in line with the core knowledge areas and competencies as defined by that same group.

The opportunity now exists for the profession to have greater involvement in the regulation of the sector, in line with other professions.

11. [How many existing advisers do you expect to access the experienced pathway? How many of those have already started to undertake formal education to align with the current existing adviser requirements?](#)

We expect that this will affect only a very small number of our members. The vast majority of our members have already completed, or are on track to complete, their required education.

Any model adopted should be limited to ensure retention of the specific cohort of experienced, mature advisers only.

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

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

Q12-13:

The Tax Practitioners Board (“TPB”) under the *Tax Agent Services Act 2009* and the *Tax Agent Services Regulations 2022* has an experience pathway available to registered tax agents. This is one of a range of education pathways available. Where the tax agent has at least 8 out of 10 years relevant experience and is a voting member of a recognised tax agent association, and they meet a fit and proper person test, they are deemed to have met the education requirements.

If the experience pathway were to proceed, a model similar to that of the TPB should be adopted. Approved professional associations would be required to meet prescribed criteria including:

- Codes of conduct, ethics, or professional standards
- Disciplinary procedures



- Mandatory CPD obligations

Where the individual does not hold a voting membership with an approved professional association, completion of an approved ethics course as required under the current pathways by 1 January 2026 should be a requirement.



Appendix B: New Entrants

Formal education and exam

1. Are the proposed core knowledge areas appropriate for the financial advice profession? If not, what is missing and why is that area important?
2. Are there any specific areas under each core knowledge area that should be prioritised or emphasised? For example, a particular element of taxation or commercial law?

Q1-2:

We welcome the proposal for a core set of units that must be completed by all advisers, regardless of their role within the financial advice ecosystem, to be prescribed. Electives or professional qualifications could then be used to fill the specific knowledge areas that apply to the adviser and their role.

The proposed group of five (5) units are not fit for purpose and need further consideration.

A more detailed review of the relevant knowledge areas and core competencies is needed.

Such a review should be undertaken by an industry lead committee or organisation in conjunction with tertiary education providers in partnership with Government. This group should also have transferred to it the responsibility for the approval of education pathways, degrees, tertiary units, and recognition of prior learning frameworks.

3. Would proposed changes to core knowledge areas necessitate changes to the exam content? Why/why not?

The financial adviser exam should be removed.

All necessary assessments should be undertaken within the relevant degree. Incorporated into the professional year should be a capstone style education that allows advisers to apply their knowledge with their work experience. Ethics and professionalism would be more ideally suited to this latter stage of an adviser's education as it allows for issues to be better considered in an advice practice context.

4. Is it practical and appropriate to allow education providers to self-declare that their degrees teach the core knowledge areas? Why/why not?
5. What form should education providers' assurance to Government take?
6. If self-declaration is not appropriate, what alternatives could be adopted to streamline the degree approval process?
7. Is it practical and appropriate for education providers or licensees to evaluate a new entrants completed tertiary courses against the new core knowledge areas to assess whether they have met the education standard, or what additional study may be required? Why/why not? What oversight of education providers or licensees making this assessment, if any, is necessary?



8. Is it practical and appropriate for education providers or licensees to also evaluate foreign qualifications against the new core knowledge areas and assess what additional study may be required, rather than the Minister? Why/why not?

Q4-8:

We do not support self-accreditation by tertiary providers or the assessment of the suitability of courses by licensees.

Approval of degrees should be undertaken by an industry lead committee or organisation in conjunction with tertiary education providers in partnership with Government.

We hold concerns that the quality of degrees or courses on offer over time, would cease to meet the requirements of the profession. The former RG 146 model provides an important case study. It was noted that the level of oversight and resulting quality of courses significantly diminished over time.

9. Should new entrants whose existing qualifications don't fully meet the education standard be able to 'top-up' their qualification by completing individual units, rather than a full qualification? Why/why not?

Yes.

An accountant who does not meet the education requirements to be registered as a tax agent with the TPB has the ability to complete the requisite units in order to meet their education requirements. Financial advisers should not be any different.

Many advisers have come into the profession from a variety of pathways. This coupled with a system that currently does not adequately allow for the assessment and application of the recognition of prior learning needs to change.

Consideration of the type of advice and authorisation sought should also influence the type of education required. For example, a qualified accountant who is seeking to be authorised under a limited licence would be different to someone seeking to become a full comprehensive financial adviser.

10. What other changes should be made to the education requirements for new entrants? How do your proposed changes support the professionalisation of the financial advice industry and ensure consumer protection?

There is a need for a variety of education pathways that cater for specialist areas that the adviser may wish to give advice on. For the same reason we would not expect a doctor who is a general practitioner to have the same educational qualifications as a heart surgeon, we should not expect a financial adviser who has not undertaken extra training around SMSFs, risk or aged care, to be able to provide advice in these areas.

Education pathways need to be fit for purpose and relevant to the adviser's role.



Professional year

11. How else could the professional year be amended to ensure it remains fit for purpose, ensuring appropriate supervision of graduate financial advisers without creating unnecessary barriers to entry?
12. In what ways do the professional year requirements create a barrier to entering the financial advice profession?

Q11-12:

We have concerns with the current model and the ability for accountants to become authorised under a limited licence. Unless their firm has a financial planner or a licensed accountant within the practice who is eligible to supervise that individual, accountants currently have no ability to complete a supervised professional year program.

Consideration should be given to a capstone education model that is fit for purpose, noting that many licensees already have robust processes in place to pre-vet new advisers written advice and files.

For financial advisers, the biggest issue is having the time to commit to the supervision requirements under the professional year program. We have had several experiences shared with us where a new entrant has completed an approved degree but has been unable to secure a probationary adviser role.

Whilst the demand for new entrants is high, the current environment and regulatory burden means that many firms and their advisers do not have capacity to commit to a probationary adviser.

13. What are the risks and benefits of the possible amendments?

Pragmatic changes carry little risk. Rather the result is an education program and pathway that is fit for purpose and will better educate and equip future advisers.

14. Will allowing integration of the professional year with tertiary study streamline the transition between education and work? Why/why not?
15. If the professional year is integrated into tertiary study, how many professional year work hours should be completed as part of a degree?
16. What role does industry play in encouraging new entrants into the industry?
17. Should the exam format be changed for new entrants? If so, how?

Q14-17:

The professional year needs to be flexible enough to recognise core competencies that are already met by the adviser. This should consider their previous work experience and education and where capabilities are clearly observed by and demonstrated to the supervising adviser.

We support the removal of the financial adviser exam. Instead, core competencies should be appropriately assessed within the relevant education.

In lieu of the exam, a capstone style course would be of more benefit to the adviser. It would allow them to apply their knowledge and the work experience. Further, it is a more appropriate time in



which to complete the requisite ethics and professionalism education as it will allow for it to be relatable to their working environment rather than being purely academic.

The integration of the professional year into the education phase would be particularly beneficial for those advisers who:

- a) Are re-entering the profession and are required to complete the new entrant pathway;
- b) Have experience in a related technical or support role such as a paraplanner; or
- c) Come from a related profession such as accounting.