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*By email: professionalstandards@treasury.gov.au*

20 June 2016

Dear Mr Hockey,

**AFA Submission – Revised Professional Standards Framework for Financial Advisers**

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for 69 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

## Introduction

The AFA welcomes the changes that have been made to the Professional Standards Framework contained within the draft *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016* (**the Revised Framework**) and we thank Treasury for taking on our feedback. We encourage the incoming Government to prioritise the passage of the legislation through the Parliament. It is imperative that the Standards Body be established promptly to allow the new professional standards to be developed and communicated.

**We support the Framework contained within the Exposure Draft Bill and Explanatory Memorandum – with some additional recommendations for further improvement and clarification**. The AFA recommendations are informed by consultation with members and directors, as well as discussions we have had with licensees and other professional, industry and consumer associations engaged in consensus group discussions. Our views are based on the principle that quality financial advice brings significant value to people's wellbeing.

In outlining our position, we refer to the AFA's submission dated 4 January 2016 on the first iteration of the Framework as well as the consensus submissions to which we have contributed.

## Summary of the AFA's position

Given the critical impact that decisions of the Standards Body will have on financial advice practitioners, it is imperative there is representation on the Board for the advisers who will be impacted – many of whom are in small business. **At least one director should have experience managing or advising in a small financial advice practice** and the remaining industry directors should have either **financial advice experience or been involved in a financial advice practice**.

We believe the Revised Framework and its associated Explanatory Memorandum address many of the matters we have previously raised however there remain some important outstanding issues. The advice profession needs to **retain the valuable skills, experience and knowledge of quality experienced advisers** to ensure quality financial advice is accessible to the majority of consumers.

It is important for the Standards Body to have the discretion and flexibility to adapt the standards to the different specialisations, experience, skills and background of advisers. **The legislation should permit the Standards Body to adjust and where unforeseen issues arise, to amend the framework** without re-entering the legislative processes that require passage through two Houses of Parliament. We recommend building appropriate **flexibility** into the process, to imbue the Standards Body with appropriate powers **to address future issues as well as consult** with all relevant stakeholders when making and reviewing the standards.

Likewise, it is important to get the provisions right surrounding **provisional advisers'** supervision to make it attractive for quality advisers to teach their craft to the next generation. This does not mean reducing the supervisory requirement. On the contrary, we support the Framework's provisions and recommend some clarification to avoid inconsistency with existing laws.

We maintain that professional associations are best positioned to improve, maintain, monitor and enforce standards and so recommend that **professional association membership be mandated**. To facilitate an effective Code compliance and monitoring scheme system, professional associations should be appropriately supported through legislation to investigate alleged Code breaches. Additionally, professional associations need to be informed by ASIC and/or an adviser's licensee when an adviser's Continuing Professional Development (**CPD**) targets have not been met in a CPD year.

With these amendments the AFA **encourages the incoming Government to prioritise the passage of the legislation through the Parliament** so the Standards Body can begin its work.

## Summary of the AFA recommendations

1. The Board of the Standards Body to have:
    a) all three industry directors with involvement in a financial advice business or in providing financial advice,
    b) at least one of these industry directors should also have been a manager or a financial adviser in a *small business* financial advice practice, and
    c) the academic director should have broad experience in the provision of education to financial advisers.
2. The words 'exam' and 'examination' be replaced in the Exposure Draft material with 'appropriate assessment' (or 'approved assessment') to ensure that the Standards Body has flexibility to establish appropriate assessment methods;
3. Section 921F(7)(c) to be amended to clarify how a supervisor's responsibility for the advice of provisional advisers sits alongside the licensee's ultimate responsibility under sections 917A to 917F;
4. Mandatory membership of a professional association and subscription to their Code compliance monitoring scheme (assuming choice of scheme if an adviser has multiple memberships);
5. The statutory 90-day investigation timeframe within section 921LA(5)(a) be conditional upon the respondent's cooperation with the investigation;
6. Licensees and/or ASIC to be required to notify an adviser's nominated Code scheme of alleged CPD failures;
7. Section 921P(1) to be amended to ensure that the Standards Body consults with all relevant stakeholders (including professional associations, such as the AFA and FPA) when making *and* reviewing standards and that the Tax Practitioners Board be included in the list of stakeholders as a 'relevant regulator'; and
8. The word 'principal' to be replaced with 'registered' in the provisions requiring an adviser's place of business to be listed on the financial adviser register.

## Detailed Feedback on the Revised Framework

### 1. Importance of the Standards Body having Directors with practical financial advice experience

The AFA supports the changes to the Board of the Standards Body as we believe this will bring good governance through diversity. Section 921R(2)(c) currently requires there to be three industry directors of the Board of the Standards Body with experience in carrying on a financial *services* business or providing a financial *service*. We consider that it is imperative that **all three industry directors must have practical experience involved in a financial *advice* business or providing financial *advice***.

Further, as a significant proportion of the adviser population are not aligned to an institutional licensee and are either self-licensed or with an independent licensee (a market segment that should be supported for competition and consumers' sake) at least one of these three directors from the industry should also have been a manager or financial adviser within a small business financial advice practice.

The impact of legislative changes is likely to be felt greatest within the ranks of small business advisory practices. The coal face experience and practical implications upon providing advice and client service will be integral to effective decision making of the standards setting body. Financial advisers are closest to the client-conversations and **the inclusion of at least one current or former member of the advice profession on the Board is both logical and essential for advisers to feel represented**.

Further, we support the appointment of an academic to the Board of the Standards Body and we consider that this position should be sought to be filled by someone with a quality, broad based background across Vocational Education Training and higher education. As with the recommendation above, this director should have relevant experience with education for financial advisers.

Specifically, we recommend that section 921R(2) be amended as following:

> ***921R Minister to declare a body corporate to be the standards body***
>
> *(2) The Minister may make a declaration under subsection (1) only if the following requirements are met:*
>
> *…*
>
> *(c) the body's constitution provides the following:*
>
> *…*
>
> *(iv) at least 3 directors (excluding the chair of the board of directors) must have experience ~~in carrying on~~ involved in a financial ~~services~~ advice business or providing ~~a~~ financial ~~service~~ advice, and at least 1 of these directors have experience in a small business financial advice practice;*
>
> *…*
>
> *(vii) at least one director (excluding the chair of the board of directors) must have experience in designing, or the requirements of, educational courses or qualifications relating to financial advice;*

**The AFA recommends that:**

- **all three industry directors of the Board of the Standards Body have experience in a financial advice business or providing a financial advice**
- **at least one industry director should also have been a manager or a financial adviser in a *small business* financial advice practice, and**
- **the academic director should have broad experience in the provision of education to financial advisers.**

**2. Advisers need to have their skills and knowledge appropriately assessed**

The AFA supports the proposal that financial advisers' competency be independently assessed just as other professionals' competency is assessed prior to admission to the profession. Independent assessments are an important part of any professional standards framework because it **instils a sense of confidence from consumers and other stakeholders** in the industry that the system will only permit entry to the profession to those who have been independently recognised as reaching the required levels of competency, knowledge and skills.

As other professions have core requirements, so too does financial advice ranging across cash flow management, retirement, risk management, wealth creation and asset acquisition/disposal. There are specialist financial advisers – like stockbrokers, investment analysts, life insurance advisers, general insurance brokers, self-managed superannuation fund specialists and business brokers – and there are also generalists or multi-sector advisers in the profession. This has parallels with other professions such as doctors, other medical professionals, accountants, engineers and lawyers. Financial advisers must also possess and develop soft skills (similar to medical professionals' soft skills) as these are also core for the role. Advisers' clients must be comfortable disclosing detailed medical information for insurance underwriting applications, as well as sharing their financial goals, in order for advisers to build plans and motivate clients to stay on track to achieve stated goals.

Each profession has core skills and different levels of specialisation. Although specialisations require particular knowledge and skills about the area of specialty, there is a **core curriculum of knowledge and skills required by each person who delivers financial advice**. For financial advice this includes:

- a solid understanding of the core financial systems, stakeholders and processes
- really knowing in a practical sense the key legal requirements of delivering financial advice (best interests and other rules)
- being capable and knowledgeable of common financial products and systems
- an ability to differentiate and see differences in financial products of the same product class
- being versed in technical and legal jargon commonly used in the sector
- being personable, good listeners and capable communicators
- having the emotional intelligence to assist a client prioritise outcomes between competing and equally valid ambitions
- capacity to create and adapt strategies and consider options for changing circumstances, and
- being effective in written and verbal communication to explain quite complex topics to clients that have varying levels of financial literacy.

These core skills and knowledge form the foundation for further specialties in financial advice to be developed. Professionals develop their skills and knowledge from academia and institutional learnings as well as from practical professional and peer-learning contexts. In our view assessments should be

specialisation agnostic as it would not be appropriate to ask investment and/or life insurance related questions to an adviser who is not a specialist in that area.

Accordingly, it is important that any assessment of a financial adviser's competency should assess the key skills and knowledge areas that are required in appropriately different ways to take into account the strategic areas of application. **The Standards Body should have discretion to establish appropriate adult-learning assessment methods to ensure that the competency standards are met**, rather than testing performance in a traditional school-like exam-setting, which is quite different to **the delivery of advice in practice**.

The AFA is concerned that the use of the words 'exam' and 'examination' in the Exposure Draft Bill and Explanatory Memorandum of the Revised Framework may restrict the Standards Body to just written examinations, or worse still, a single examination for all advisers regardless of areas of experience or speciality. The Australian Qualifications Framework (**AQF**) does not advocate for a single method of assessment or examination. Instead, the AQF is more concerned about the *application* of the skills and knowledge that students learning at a particular level should be able to demonstrate. The criteria that AQF uses to determine the level of each student's application of skills and knowledge are varying levels of:

- autonomy
- judgement
- adaptability and
- responsibility.

For example, AQF5 level courses are required to assess the student's application of knowledge and skills with demonstrable "autonomy, judgement and defined responsibility in known or changing contexts and within broad but established parameters."[1] AQF7 courses (i.e. Bachelor level courses) require:[2]

> *"[application] of knowledge and skills to demonstrate autonomy, well-developed judgement and responsibility:*
>
> - *in contexts that require self-directed work and learning*
> - *within broad parameters to provide specialist advice and functions."*

This is the level of education and learning that the Revised Framework requires of financial advisers in future. It is important to recognise that not every course/subject/unit that a Bachelor degree graduate completes will be completed at AQF7 level. In many cases with professional degrees, some courses are completed at lower levels (often the core and first year units), while the more specialised units are electives completed at higher AQF levels. They do so with the guidance and approval of the relevant professional bodies or other institutions who regulate the standards of professional competency and education to enter and be a part of professions.

Further, AQF requirements of Recognition of Prior Learning (**RPL**) do not require examinations, but instead **allow for adaptable assessments** to determine the level of the student's skills and knowledge as well as their ability to apply those skills and knowledge.[3] Alternative assessments beyond written and/or verbal examinations are already recognised as legitimate methods of assessing a student's application of skills and knowledge within other professions. The AFA considers that **the financial advice profession also requires assessments that go beyond examinations** in order to recognise experience and application of

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1 Australian Qualifications Framework, http://www.aqf.edu.au/aqf/in-detail/aqf-levels/

2 Australian Qualifications Framework, http://www.aqf.edu.au/aqf/in-detail/aqf-levels/

3 Australian Qualification Framework, http://www.aqf.edu.au/wp-content/uploads/2013/06/RPL-Explanation.pdf

skills and knowledge of existing advisers. This can also be applied to those who enter the industry after 1 January 2019 but who have come from an alternative pathway or have specialised within another career prior to coming to the advice profession.

An alternative professional education pathway that both meets the general principle of an improvement in education standards and would ultimately benefit consumers would be the consideration of a requirement for specialists to complete a designation offered by their professional association. For example, the **AFA's 'Fellow Chartered Financial Practitioner'** (**FChFP**) and the FPA's 'CFP'. These designations and industry certifications often require a minimum level of education to enrol and satisfy the provider that the adviser will be able to apply not only higher skills and knowledge to better serve their clients, but to demonstrate their application at higher levels of responsibility, judgement and adaptability.

For example, the FChFP courses cannot be enrolled in unless an adviser has completed an AQF6 level qualification in financial advice. The skills and learning delivered, however, are at an AQF9 level. FChFP graduates demonstrate their skills and knowledge above AQF7 level and we welcome the recognition of completion of prior courses, degrees and other courses such as the FChFP and CFP within section 1546B(2).

We consider that the Standards Body needs the same flexibility when considering training and education standard 3 (section 921B(3)) as it has to consider achievement of education and training standard 2 (section 921B(2)). We note that through section 1546BA the Standards Body has the ability to exempt advisers from the registration exam requirement, "*on a case-by-case basis, after taking into account the courses completed by the existing adviser*".[4] We further note that this flexibility is stated in the Explanatory Memorandum "*so that those advisers who are highly qualified experts in their field are not required to incur the unnecessary and costly compliance burden of passing the exam*." Hopefully this is not an indication that the registration exam requirement will impose a "*costly compliance burden*" on advisers who sit the exam/assessment.

**True flexibility will give the Standards Body the ability to adapt appropriate assessments**. This minor change in statutory language would also allow consideration by the Standards Body to determine which assessments and various education pathways are already of an appropriate standard. Having 'exams' as the method of assessing whether advisers can demonstrate that they can apply their higher skills and learning with the required levels of autonomy, judgement, responsibility and adaptability may not result in the outcomes sought by the framework. The ability to communicate and relate to people, as well as skills and knowledge recall, is critical.

Adaptability in the form of assessment is also why **we recommend that where the word 'assessment' is used, the words 'appropriate' or 'approved' always precede it**. To ensure that the Standards Body is empowered to adapt assessments as future circumstances may require, this language is critical to the Revised Framework.

**The AFA recommends that the words 'exam' and 'examination' be replaced in the Exposure Draft material with 'appropriate assessment' (or 'approved assessment') to ensure that the Standards Body has the flexibility it requires to establish appropriate assessment methods.**

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4 Explanatory Memorandum to the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2016*, para 6.15.

**3. Provisional advisers need to be supported to learn the craft**

The provisional advisers referred to in the Revised Framework need to be appropriately supervised and **supported to learn the craft of delivering high quality financial advice**; to experience those things that you only learn from experienced professionals while on the job, rather than from only traditional structured learning environments. This is why the FChFP course applies the higher learnings of the course into a practical sense involving their clients.

The AFA supports new entrants to the industry after 1 January 2019 being required to complete a professional year of supervised work. We also support the provisions surrounding this supervisory framework and would like to see these provisions not being reduced to allow provisional advisers to operate without appropriate supervision during the professional year.

In our view, this would require supervisors to:

- be present (including via the use of technology) for most client interactions during the professional year
- to conduct quality assurance over the provisional adviser's research and strategy development, and
- to co-sign provisional advisers' Statements of Advice.

We appreciate that there needs to be flexibility within the framework to permit supervisors to use their professional judgement to adapt supervision programs, as provisional advisers demonstrate competencies.

**One issue requires clarification**. Section 921F(7)(c) provides that a supervisor must tell a client that the supervisor is responsible for the provisional adviser's advice. On the face of it, this provision could potentially be in conflict with sections 917A to 917F (Division 6 of Part 7.6 of the Corporations Act) which cumulatively state that **a licensee is ultimately responsible for the conduct of representatives** – whether within authority or not – and extends to loss or damage suffered by a client.

We note that this is not what appears to have been intended, given that the earlier section 917F(2)(a) says that the supervisor has "*supervisory* responsibility" for the provisional adviser rather than complete responsibility (and liability) for someone else's financial advice. The additional aspect of this is that if the supervisor only has responsibility for the provisional adviser's financial advice, it remains unclear whether the supervisor is also responsible for the provisional adviser's other financial services (i.e. their 'dealing' services such as assisting a client to complete an application). Rather than create additional segmentation over the word 'responsibility', we consider that clarification of what a supervisor's 'responsibility' means is more important in the context of previous use of the word in the legislation.

**The AFA recommends that section 921F(7) should be amended as follows with insertion of a clarifying note after subsection (c):**

***921F Requirements relating to provisional relevant providers***

*….*

*(7) A supervisor of a provisional relevant provider must ensure that a retail client is informed:*

*(a) of the name of each supervisor of the provisional relevant provider (even if the retail client has been informed of the name of each previous supervisor); and*

*(b) that the provisional relevant provider is undertaking work and training in accordance with subsection 921B(4); and*

*(c) that each supervisor is responsible for any personal advice provided by the provisional relevant provider to the client in relation to a relevant financial product.*

*Note: Responsibility for the provisional relevant provider's personal advice does not affect the operation of Division 6 of Part 7.6 of the Act where the licensee is responsible for the conduct of representatives and this responsibility extends to any loss or damage sustained by the client.*

**The AFA recommends that section 921F(7)(c) be amended to clarify how a supervisor's responsibility for the advice of provisional advisers sits alongside the licensee's ultimate responsibility under sections 917A to 917F.**

## 4. Professional association membership to be mandated

The AFA acknowledges that the model code of ethics is to be standard across the industry, and that this can be embedded in the professional association codes that have already been developed and will be overseen and approved by ASIC. **As the role of professional associations includes upholding the highest standards of behaviour of its members, professional associations are best positioned to improve, maintain, monitor and enforce standards**. This is recognised by many licensees and organisations that have already given their support to mandatory professional association membership.

Given the costs involved to establish, monitor and enforce compliance with the future framework, it will be more cost-effective to build scale through professional association membership than to develop other monitoring and enforcement bodies. The full cost of developing parallel monitoring and enforcement bodies for non-members of professional associations should be borne fully by those financial advisers that intend to use those parallel providers. Members of professional associations should bear none of that cost.

**The AFA recommends mandatory membership of professional associations and subscription to their Code compliance monitoring schemes.**

## 5. Regulators to provide enforcement support to efficiently investigate alleged Code breaches

The Revised Framework makes it an offence – punishable by 10 penalty units – for an adviser or licensee subject to a Code compliance investigation to not provide information, documents or reasonable assistance when requested by a Code compliance monitoring scheme. **We recommend greater specificity in the drafting to clarify how this will be enforced and facilitated**.

The main difficulty with this provision is that Code schemes need to complete a Code compliance investigation within 90 days if the adviser being investigated lodges a notice stating that they wish to switch Code compliance monitoring scheme (section 921LA(5)(a)). If a recalcitrant or uncooperative respondent to an investigation is unwilling to provide requested information or assistance, it is conceivable that a full investigation will not be able to be completed in the 90-day timeframe without either:

| Options to support Code monitoring schemes | | Likely results |
|---|---|---|
| **1** | An ability to flexibly extend an investigation timeframe beyond the statutory 90 days if a respondent is being uncooperative | A good option for Code schemes but not without enforcement or interpretation issues |
| **2** | Further specified support from ASIC to enforce a Code scheme's request for information or assistance which would ensure the investigation to be completed within 90 days | Require a Code Monitoring Body to rely upon the already limited resources of ASIC to progress investigations under a Code scheme |
| **3** | Acceptance that investigations against uncooperative respondents could be completed by drawing adverse inference against the respondent for failure to provide requested information | Could result in incomplete investigations that have less integrity and are open to challenge on evidentiary grounds – i.e. for failing to consider relevant information |

**By building some flexibility into the statutory requirements surrounding a Code investigation (Option 1), Code schemes could be better supported to complete investigations of a high standard** despite the actions and conduct of the respondent. The difficulty is how to construct a 'flexibility' or 'extension of timeframe' mechanism into an investigation where there could be divergent interests – such as where:

- an uncooperative respondent seeks to hinder the course of an investigation
- there is a dispute between the monitoring body and respondent that preceded the investigation, or
- a dispute arises during the investigation as to whether the respondent has adequately provided the information or assistance requested.

This could open up several issues that could not only be leveraged by respondents who do not wish to be fully investigated or for monitoring bodies to overstep the bounds of their investigation by importing judgements on the types of information or assistance offered by respondents. It could otherwise result in Code schemes unreasonably controlling investigations to produce particular or predetermined outcomes through deciding whether requested evidence was of a satisfactory standard. Advisers need to have confidence that their Code scheme will treat them fairly in all the circumstances, but so too do Code schemes need to have faith that respondents will engage with the investigation in a meaningful and timely manner.

This is a similar issue faced by other decision-making bodies, such as courts, tribunals and dispute resolution schemes – how do you get uncooperative respondents to provide information that facilitates a fulsome investigation and a determination that complies with the evidentiary rule of procedural fairness while not impinging on the respondent's rights?

Code scheme monitoring bodies will not have the judicial powers of a court and we do not presume to seek enforceability powers akin to statutory tribunals or regulators. Given the lack of similar 'big stick' powers, the most likely option is for each Code scheme to find a way within the language of its Code and/or the operational guides to their Codes to facilitate the cooperation of respondents while reserving the ability to draw adverse inferences for repeated and/or long standing delays by respondents. Naturally, these processes would form part of ASIC's consideration and approval of Code schemes.

Nevertheless, the original problem would remain if an investigation into an uncooperative respondent who wished to switch Code schemes was required to be completed within 90 days. Accordingly, the AFA recommends that the 90-day timeframe under section 921LA(5) be conditional upon the respondent's cooperation with reasonable requests made by the monitoring body under section 921LA(3).

**Specifically, we recommend the following amendment be made:**

***921LA Investigations by monitoring body***

*…*

*Completion of investigation*

*(5) The monitoring body must make the determination:*

*(a) if the relevant provider notifies the monitoring body that the relevant provider intends to cause a notice to be lodged under section 922H stating that another compliance scheme is to cover the relevant provider, and the relevant provider has complied with all of the monitoring body's requests for information under section 921LA(3)—within 90 days of receiving the notice; or*

*(b) otherwise—within a reasonable period of becoming aware of a failure, or possible failure, by the relevant provider to comply with the Code of Ethics.*

*Note: A monitoring body that fails to comply with this subsection may commit an offence (see subsection 921LB(1)).*

**The AFA recommends that the statutory 90-day investigation timeframe within section 921LA(5)(a) be conditional upon the respondent's cooperation with the investigation**.

## 6. Code compliance monitoring schemes require transparent communication

Another way that the Code Monitoring Body can be supported to effectively operate a Code compliance monitoring scheme is to require reciprocity and transparency amongst stakeholders. Under the provisions of the Revised Code, a licensee is required to notify ASIC if an adviser fails to complete their CPD requirements, but **there is no requirement for ASIC to forward that notice to the adviser's nominated Code compliance monitoring scheme** (or for the licensee to also notify the Code scheme). In the AFA's view, this undermines the ability of the Code Monitoring Body to effectively operate a scheme.

Through peer learning and support and reviews, in addition to code enforcement and conduct remediation, professional associations who monitor Code compliance are best placed to support the breadth of advisers' professional development needs. This reinforces that a Code scheme run by a professional association is best positioned to assist an adviser to rectify a CPD failure.

**Specifically, we recommend that the following amendment be made to ensure that Code schemes are kept abreast of CPD failures:**

***922HB Obligation to notify ASIC of non-compliance with continuing professional development standard***

*(1) A notice must be lodged under this section, in accordance with section 922L, in relation to a person if, at the end of a financial services licensee's CPD year:*

*(a) the person:*

*(i) is the licensee; or*

*(ii) is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and*

*(b) the person is a relevant provider; and*

*(c) the relevant provider has not complied with section 921D during the licensee's CPD year.*

*Note 1: A financial services licensee may obtain information from a relevant provider under section 922N for the purposes of determining whether to lodge a notice under this section.*

*Note 2: Subsection 921D(1) requires certain relevant providers to meet the continuing professional development standard in subsection 921B(5).*

*(2) A copy of the notice must also be provided to the relevant provider's nominated Code of Ethics monitoring body within 30 days of the notice being lodged with ASIC.*

*(3) The notice must state that the relevant provider has not complied with section 921D during the licensee's CPD year.*

**The AFA recommends that licensees and/or ASIC should be required to notify an adviser's nominated Code scheme of alleged CPD failures**.

## 7. The Standards Body needs to be adequately informed when reviewing and setting standards

The AFA welcomes the inclusion of professional associations in the list of stakeholders for the Standards Body to consult when reviewing standards (s921P(1)(b)(iv)). We note, however, that the obligation to consult only appears to refer to reviews of standards – not for when *making* standards (s921P(1)(a)), which appears to be an oversight.

**Accordingly, we recommend that section 921P(1)(a) be amended to insert the words "in consultation with the stakeholders listed at (b)" at the end of the current wording of the subsection.**

Further, with other reforms currently in process to harmonise the rules and regulations applying to accountants and financial advisers, **it is important that the Standards Body has ongoing dialogue and works closely with the Tax Practitioners Board (TPB) when making and reviewing professional standards to align the regulatory requirements and ensure no inconsistency**.

For example, our members consider that it is important to ensure that the education requirements applying to tax (financial) advisers that have been determined by the TPB to ensure compliance with the Tax Agents Services Act's Code of Professional Conduct are encapsulated within the course syllabus for future advisers' Bachelor degrees and other appropriate qualification and designation courses. This is important because if the two education standards are not coordinated, financial advisers risk having two related but distinctly different systems to comply with which could result in duplication and additional cost – creating additional inefficiencies for the profession.

We consider that the same principle should apply to the bridging course requirements that the Standards Body requires existing financial advisers to complete to meet the education and training requirements at section 921B(2).

**To address both issues, we recommend the following amendment be made:**

***921P Functions of the standards body***

*(1) The functions of the standards body are:*

- *(a) to make the legislative instruments mentioned in subsections (2), (3) and (5) in consultations with the stakeholders listed at subsection (b); and*
- *(b) to review those instruments regularly, in consultation with:*
  - *(i) financial services licensees; and*
  - *(ii) relevant providers; and*
  - *(iii) associations representing consumers of financial services; and*
  - *(iv) professional associations; and*
  - *(v) relevant regulators (such as ASIC and the Tax Practitioners Board) and the Department; and*
  - *(vi) any other person or body that the standards body considers it appropriate to consult; and*
- *(c) if an exam approved for the purposes of subsection 921B(3) is to be administered by the standards body—to administer the exam; and*
- *(d) any other function prescribed by this Act.*

**The AFA recommends section 921P(1) be amended to ensure that the Standards Body consults with all relevant stakeholders (including professional associations, such as the AFA and FPA) when making *and* reviewing standards and that the Tax Practitioners Board be included in the list of stakeholders as a 'relevant regulator'.**

**8. Financial advisers' registered place of business should be disclosed on the register**

The AFA welcomes the Corporations Act provisions relating to the Register of Relevant Providers being proposed to be brought into legislation by the Revised Framework Bill. The register is an integral part of professionalising and supporting quality financial advisers and it should not reside within a disallowable instrument.

We note that along with advisers being required to list on the register their nominated Code compliance scheme, they are also proposed to be required to list their principal place of business. This is not a current requirement of the register. We support that an adviser should be contactable as other professions are required to, but we have concerns about the unintended consequences of requiring a principal place of business to be listed and publicised. The AFA considers that **the word 'principal' should be replaced with 'registered'** in all the relevant sections[5] to ensure that the adviser's registered place of business is listed on the register, not their principal place of business which could be their family home.

With advances in technology, it is becoming more attractive for financial advisers to implement new business models that allow flexibility in their work arrangements – such as primarily working from home with appropriate arrangements to meet with clients and store files. We consider that if an adviser was required to publicise their "principal" place of business it may lead to some financial advisers' home addresses being listed publicly. This is not only a privacy issue but also a security concern for the adviser and their family if a disgruntled client wishes to pursue an adviser outside of the adviser's licensee's Internal Dispute Resolution process.

We support the principle that all financial advisers should be able to be contacted, and if necessary served legal instruments, but only through their nominated contact details or through their licensee's Internal Dispute Resolution process. We do not support a Post Office Box being a registered place of business – it should be a physical office.

**The AFA recommends that the word 'principal' should be replaced with 'registered' in the provisions requiring their place of business to be listed on the financial adviser register.**

5 Sections 922E, 922F, 922Q, 1546J, and 1546V of the *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016.*

## Concluding comments

We encourage Treasury and the incoming government to continue the collaborative process with professional associations on this pivotal piece of legislation as we all look to drive the professionalism framework for financial advice. As quality financial advice brings significant value to people's wellbeing, we look forward to more Australians being supported by quality financial advice delivered by recognised professionals.

If you require clarification of anything in this submission, please contact us on 02 9267 4003.

Yours sincerely,

**Brad Fox**
Chief Executive Officer
Association of Financial Advisers Ltd