



FINANCIAL  
SERVICES  
COUNCIL

## Review of the Tax Practitioners Board (TPB Review)



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Mr Nick Westerink  
Individuals and Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**BY EMAIL:** [TPBreview@treasury.gov.au](mailto:TPBreview@treasury.gov.au)

Dear Mr Nick Westerink,

### **Review of the Tax Practitioners Board**

The Financial Services Council (**FSC**) is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 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 fourth largest pool of managed funds in the world.

We welcome the opportunity to make a submission to the Review of the Tax Practitioners Board. This review provides an important opportunity to align and streamline the two regulatory regimes applicable to financial advisers into a single regime for the benefit of financial advisers and consumers.

When the tax financial adviser regime (**TFA**) was first introduced for financial advisers, the professional education and standard requirements had not yet been introduced. As such, the opportunity to align the TFA regime with the professional standards and the Financial Adviser Standards Ethics Authority (**FASEA**) requirements was limited.

We believe that a single regulatory regime, which incorporates TFA requirements into the FASEA regime, benefits consumers and advisers alike. It provides consumer clarity and confidence that they need only engage with the FASEA regime should they have any concerns in relation to professional conduct breaches (instead of dealing with two separate bodies for the same advice) and reduces the regulator overlap and cost inefficiencies that arises from having two very separate but overlapping regimes.

We recommend that the TFA requirements be incorporated into the FASEA regime. Further consultation can identify the best way to incorporate TFA requirements and establish an ongoing TPB and FASEA engagement framework.

If the Government considers that it would be prudent to retain dual regimes, under TASA and FASEA for financial advisers, we strongly recommend that the TFA requirements and the FASEA regime be better integrated to support a single code, a single monitoring body, better alignment with the professional year and continuing professional education requirements.

We would welcome the opportunity to discuss this submission, please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

BIANCA RICHARDSON

Senior Policy Manager

## 1. Summary of Recommendations

**Recommendation 1 (Proposal 1):** There be a single regulatory and oversight regime for financial advisers which incorporates the TFA requirements into the FASEA regime. This will reduce duplication and the need to register with two separate bodies (e.g. TPB and separate registration proposed under the Royal Commission Final Report recommendation), adherence to two separate but overlapping codes (i.e. TPB and FASEA) and importantly reduce consumer confusion that arises from dealing with two separate bodies for the advice they have received.

**Recommendation 2 (Proposal 1) -** There should be consultation on how to best incorporate the TFA regime within FASEA, including a gap analysis of any requirements to be added to the FASEA regime and the establishment of a FASEA and TPB ongoing engagement framework.

**Recommendation 3 (Proposal 2):** There should be a single code, where the TFA Code is incorporated into the FASEA Code.

**Recommendation 4 (Proposal 2):** There should be a single monitoring body to oversee the single code which combines the TASA Code and FASEA Code requirements.

**Recommendation 5 (Proposal 2):** That there be alignment between the FASEA professional year and supervision requirements for TFAs. Completion of the FASEA Professional Year framework should be sufficient to meet the TPB “experience” requirement for new entrants.

**Recommendation 6 (Proposal 2):** There should be alignment between the TFA CPE hours allocated for reading and the FASEA CPD option of up to 4 hours professional/technical reading each CPD year.

## 2. Key Proposal – Single Regulatory Regime for Financial Advisers under FASEA

When the tax financial adviser regime (**TFA**) was first introduced for financial advisers, the enhanced professional, ethical and education requirements had not yet been introduced. As such, the opportunity to align the TFA regime with the professional standards and the Financial Adviser Standards Ethics Authority (**FASEA**) requirements was limited.

The review into the effectiveness of the Tax Practitioners Board and the operation of the *Tax Agent Services Act 2009* (**TASA**) and the *Tax Agent Services Regulations 2009* (referred to as the Review) provides an important opportunity to align and streamline the two regulatory regimes into a single regime and reduce consumer and practitioner confusion, as well as the operational cost and inefficiency that arises from adherence to two very separate but overlapping regimes.

In the first instance we support having a single regulatory regime that applies to financial advisers. The new professional standards framework for financial advisers, FASEA establishes a high requirement for financial advisers with new;

- Education requirements – bachelor degree for all new entrants and AQF level 7 degree equivalent education requirements for existing advisers (in contrast, someone can become a TFA with a diploma or higher award, only needing to complete a tax law and commercial law subject);
- A professional year for new entrants (in contrast, to become a TFA a person needs to have 12 months experience where they have a relevant degree or 18 months experience where they have a diploma award);
- All advisers to complete an exam (no equivalent for TFAs);
- Ongoing continuing professional development (40 hours each year under FASEA compared to 60 hours over a three year for TFAs);
- Adherence to a Code of Ethics (similar Code requirements for TFAs); and
- Oversight from a new monitoring body (to be established) which requires proactive oversight of adherence to the Code of Ethics (there is no comparable oversight for TFAs – code breaches can be reported to the Tax Practitioners Board (**TPB**) however the oversight requirements are not proactive or as stringent as required for financial advisers).

The professional standards regime commenced in January this year, with all new advisers needing to complete a bachelor degree, undertake a 12 month professional year and pass the national exam before commencing Q3 of their professional year.

Existing advisers will need to meet AQF level 7 degree equivalence or above by 1 January 2024. All advisers will also need to pass the national exam as well as adhere to similar obligations, as the Code applicable to TFAs, under a new code of ethics from 1 January 2020 if they are to remain giving personal financial advice to retail clients. It should also be noted that FASEA have also incorporated

the tax law and commercial law requirements of a TFA into their curriculum requirements for accrediting approved degrees.

These extensive professional standards requirements exceed the general requirements under TASA for TFAs. As such, we recommend that TFA requirements be incorporated into the FASEA regime, so that there is a single regime (FASEA) and single body that has oversight of financial advisers (Code Monitoring Body).

This will provide simplicity and clarity to consumers who should be easily able to identify the Code an adviser adheres to and which body to raise concerns with, compared to dealing with two codes and two bodies for the advice provided.

The rationale for consolidating TFA requirements into the FASEA regime is further supported by the consideration that all financial advisers are subject to the FASEA regime however not all financial advisers are TFAs. As such, it makes sense to consolidate the TFA regime into FASEA such that the requirements apply to all advisers.

We envisage that this would not result in a lessening of standards required for TFA's, it would simply be incorporated into the FASEA regime. This will require consultation to identify, as well as how to best close, the gaps between the FASEA and TFA regime, which would identify the additional requirements that need to be brought into FASEA such as;

- Completion of tax law and commercial law subject<sup>1</sup>;
- Requirement for a person to have their personal tax affairs in order<sup>2</sup>;
- Explicit requirement to maintain confidentiality of client information<sup>3</sup>.

An appropriate transition period would need to be given to enable persons to complete the tax law and commercial law subject whilst at the same time meeting AQF level 7 requirements for existing advisers under the FASEA transitional regime. To a large extent we anticipate that FASEA bridging course requirements for existing advisers will address any potential gaps, and courses undertaken by new entrants to financial planning will similarly address traditional TASA education requirements.

We consider that there is precedent to support a single regime for financial advisers that does not require separate registration with the TPB or under TASA. Lawyers are able to provide tax advice in a range of areas without requiring registration with the TPB. There is no explicit requirement for Lawyers to complete tax law subjects in undergraduate degrees (which may often be offered as an

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<sup>1</sup> Completion of tax law and commercial law subjects is a requirement for approved degrees for new advisers under FASEA. It is not dissimilar to TFA requirement given TFAs with 5/8 years experience do not need to complete this.

<sup>2</sup> FASEA Code obligations include the requirement to act with applicable laws which would encompass having tax affairs in order.

<sup>3</sup> As identified by the TPB when comparing TFA and financial adviser requirements there is a general obligation to maintain confidentiality under the Privacy Act but there is no explicit obligation under the FASEA Code. If FASEA considers that this is important an explicit obligation can be incorporated into the FASEA code.

elective subject but is not core to the undergraduate degree<sup>4</sup>). We do not propose to seek an exemption from the TFA requirements, we simply propose that they be fully incorporated into FASEA such that there is only one regime for financial advisers and one body and regime for consumers to be aware of and engage with.

To ensure that TASA regime requirements are incorporated into the FASEA regime not only on an initial but an ongoing basis, we recommend that FASEA and the TPB establish a suitable engagement framework going forwards. This for example could be through a TPB/FASEA sub-committee, including representatives from both organisations, that reports into FASEA and makes recommendations for how to incorporate and have regard to TASA requirements within the FASEA regime or have a TPB representative on the FASEA Board.

**Recommendation 1 (Proposal 1):** There be a single regulatory and oversight regime for financial advisers which incorporates the TFA requirements into the FASEA regime. This will reduce duplication and the need to register with two separate bodies (e.g. TPB and separate registration proposed under the Royal Commission Final Report recommendation), adherence to two separate but overlapping codes (i.e. TPB and FASEA) and importantly reduce consumer confusion that arises from dealing with two separate bodies for the advice they have received.

**Recommendation 2 (Proposal 1)** - There should be consultation on how to best incorporate the TFA regime within FASEA, including a gap analysis of any requirements to be added to the FASEA regime and the establishment of a FASEA and TPB ongoing engagement framework.

We strongly urge consideration of the recommendation to fully incorporate TFA requirements into FASEA and have one regulatory regime governing financial advisers. This will provide much needed clarity and remove consumer confusion as well as reduce regulatory costs associated with having two regimes.

This is relevant to the subject of the Terms of Reference of this consultation which are considering whether the legislative and governance framework is operating as intended and is fit for purpose (see Terms of Reference 1 and 2). We consider that combining the two regimes into one for financial advisers will meet the objectives of TASA however provides a better regime for consumers and one which is fit for purpose for financial advisers. This provides a superior regime than two separate but overlapping regulatory frameworks.

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<sup>4</sup> See for example Undergraduate Law Degree at Bond University ([https://bond.edu.au/program/bachelor-laws#structure\\_and\\_subjects](https://bond.edu.au/program/bachelor-laws#structure_and_subjects)), or at UNSW (<https://www.handbook.unsw.edu.au/undergraduate/programs/2019/4782>)



### 3. Proposal 2 – Better integration of TFA requirements and the FASEA regime

Should Recommendations 1 and 2 not be supported and a decision be made to retain dual regimes under TASA and FASEA, we strongly recommend that the following proposals to better integrate the TFA requirements and the FASEA regime.

#### 3.1 Single Code

If the view is that applicable advisers should be registered under the TPB whilst also being subject to FASEA, we recommend that there be a mechanism to bring together the TASA Code of Professional Conduct (**TASA Code**) with the FASEA Financial Planners and Advisers Code of Ethics 2019 (**FASEA Code**). Whilst not likely to be in conflict, the difficulty for tax financial advisers is adherence to two separate codes under TASA and FASEA that have legislative enforcement (as opposed to an association’s code which is only voluntary by decision to maintain membership). Of note, the Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry (**Royal Commission**) has recommended (see Recommendation 2.10) that the law should be amended to establish a new disciplinary system for financial advisers that provides for a single, central, disciplinary body; and allows clients and other stakeholders to report information about the conduct of financial advisers to the disciplinary body. The Government’s response to the Royal Commission Report supports the introduction of a new disciplinary regime for financial advisers.

Having a single code that incorporates TFA Code and the FASEA Code will greatly assist consumers to identify code breaches from a single code, instead of dealing with two separate codes and identifying which applicable code regime (the TASA or the FASEA) is applicable to the advice they have received. It will also reduce the regulatory burden for financial advisers from adhering to, and licensees supervising and monitoring against, two separate regimes.

**Recommendation 3 (Proposal 2):** There should be a single code, where the TFA Code is incorporated into the FASEA Code.

#### Merging two separate codes

We appreciate that there is a single TASA Code for all tax practitioners, of which TFAs are one subset, which may on face value make it difficult to consolidate the obligations into a single code. There is however already a significant overlap between the TASA Code and the FASEA Code obligations which may enable the TASA regime to recognise that adherence to the relevant FASEA Code obligations also satisfies the relevant TASA Code obligations. For example, Honesty and Competency are included in both Codes. Independence is an explicit value of the TASA Code whilst it is embodied within the Ethical Behaviour Standards 2 and 3 of the FASEA Code.

For example:

Code requirement	TPB/TASA	FASEA
<b>Fundamental principles of the Code</b>	Honesty & Integrity	Honesty
		Trustworthiness
	Independence	Fairness
	Competence	Competence
	Confidentiality	Diligence
Ethical Standards		<p>The FASEA Code also supplements the above values with specific ETHICS standards such as <b>Ethical Behaviour</b> which requires</p> <p><i>Standard 2:</i> You must act with integrity and in the best interests of each of your clients.</p> <p><i>Standard 3:</i> You must not advise, refer or act in any other manner where you have a conflict of interest or duty.</p>

Further, to the extent that there are any TASA Code obligations which the Tax Practitioners Board forms the view is not sufficiently explicit or reflected within the FASEA Code further amendments could be made to the FASEA Code to add additional obligations. For example, the confidentiality requirement or the requirement for TFA's to comply with taxation laws in the conduct of their personal affairs could be added as specific FASEA Code obligations.

### 3.2 Single Monitoring Body

Further to having a single code for tax financial advisers/financial advisers, we also support a single monitoring body to oversee the single code which combines the TASA Code and FASEA Code requirements. Having a single monitoring body is consistent with Recommendation 2.10 of the Royal Commission which supports legislative amendment to establish a single central disciplinary body for financial advisers.

Under this proposal the Monitoring Body would have regard to TASA Code obligations as applicable to TFAs, in addition to an adviser's obligations under the FASEA Code.

This would allow clients to report information about the conduct of financial advisers to a single central disciplinary body. This would reduce consumer complexity or confusion as to which body to deal with in relation to any concerns they have.

**Recommendation 4 (Proposal 2):** There should be a single monitoring body to oversee the single code which combines the TASA Code and FASEA Code requirements.

### 3.3 Professional Year alignment between FASEA and TASA

The professional year and supervision requirements for TFAs and the FASEA regime do not align. Supervision requirements for TASA are scaled depending on the education requirements of the individual – requiring 12 months for someone with a university degree or 18 months for someone with a diploma or above<sup>5</sup>.

In contrast, the FASEA professional standards framework requires new entrants to complete a professional year and supervision framework – with the requirements being both comprehensive and detailed.

We support amending the TASA experience requirements for TFAs to one year to align with the FASEA regime. During the professional year, individuals acting as “provisional relevant providers” cannot provide personal advice under their own name, only under the name of their supervisor who is a “relevant provider”. This means that they cannot earn income in their own right for the business. In the current environment of rising compliance costs and reducing revenues (e.g. the life insurance remuneration commission reforms and proposed banning of grandfathered remuneration), any further cost impost or revenue restrictions will result in a reduction in the employment opportunities for new graduates or career changers entering the financial advice industry. Anecdotal evidence suggests that licensees are avoiding the employment of provisional relevant providers, and/or deferring the development of supervisory frameworks for the professional year due to more pressing priorities such as finalising the education pathways for their existing advisers and planning for their advisers to undertake the FASEA exam within the relatively short timeframes.

FASEA have provided fairly strict guidance on the professional year framework, with a number of steps and hurdles included before the provisional relevant provider can move onto the next phase (there are 4 phases over a 12 month period). We believe that given a provisional relevant provider:

- will require a FASEA approved degree just to enter into a professional year;
- needs to undertake an additional exam during the year;
- is subject to a strict supervisory framework during the professional year; and
- the licensee has to provide sufficient evidence of the competence, along with a fit and proper assessment, of the provisional relevant provider before they are “released” from their provisional status

we consider that this comprehensive “supervisory” requirement is sufficient and that the provisional relevant provider will attain appropriate competence to provide tax (financial) services in their own right after a 12 month period.

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<sup>5</sup> <https://www.tpb.gov.au/relevant-experience-tax-financial-advisers-tpb-information-sheet-tpbi-242015>

To extend this beyond 12 months would act both as a disincentive to employment for potential applicants (particularly career changers) and as a disincentive for licensees to provide employment opportunities, particularly for small or self-licensed licensees who do not have the resources of large licenses to manage such a program.

**Recommendation 5 (Proposal 2):** That there be alignment between the FASEA professional year and supervision requirements for TFAs. Completion of the FASEA Professional Year framework should be sufficient to meet the TPB “experience” requirement for new entrants.

### 3.4 Continuing Professional Education (CPE)

TFA’s are required to complete a minimum of 60 hours of CPE over three years, with a minimum of 7 hours each year. Within this a maximum of 25% (that is 15 hours over 3 years) may be reading.

However under FASEA’s Continuing Professional Development (CPD) professional reading is limited to 4 hours per year (equivalent to 12 hours over 3 years).

This means, that if a TFA follows the TPB CPE standard and undertakes 15 hours of professional reading over three years, even where all the reading content also relates to financial advice, they may erroneously assume that they will receive credit for the 15 hours under FASEA, when in fact they may only be able to obtain a maximum of 12 hours credit. This could inadvertently result in the adviser failing to meet their CPD requirements for the year and breach reporting to ASIC which is an adverse and undesirable outcome resulting in a permanent entry being made on their Financial Advisers Register record (which is publicly available).

To reduce the risk of confusion and non-alignment, it would be helpful if the TPB could reduce the maximum CPE hours for reading to 20% (which would be 12 hours over three years) for tax financial advisers. This would then ensure that there is no confusion for financial advisers that the CPE reading hours completed under TASA, can also receive full recognition under FASEA where the content is tax financial advice related.

**Recommendation 6 (Proposal 2):** There should be alignment between the TFA CPE hours allocated for reading and the FASEA CPD option of up to 4 hours professional/technical reading each CPD year.