



30 November 2018

Financial Adviser Standards and Ethics Authority

By email: [consultation@fasea.gov.au](mailto:consultation@fasea.gov.au)

Dear Colleagues,

**Provisional Relevant Provider Term – Legislative Instrument  
Work and Training Requirement – Legislative Instrument**

I refer to the Draft Legislative Instrument and Explanatory Memorandum relating to the Provisional Relevant Provider Term (“PRP Term”) and the Draft Legislative Instrument and Explanatory Memorandum relating to the Work and Training Requirement (the “Professional Year” or the “PY Year”), which were released for comment on 16 November 2018.

The Stockbrokers and Financial Advisers Association (“SAFAA”) provides the following comments on the respective Draft Legislative Instruments and Draft Explanatory Memoranda.

**The Provisional Relevant Provider Term**

In our Submission of 17 August on this issue, we advised that SAFAA Members did not support the term “Provisional Financial Adviser” as an appropriate term to define an adviser undertaking the Professional Year. Members were of the unanimous view that clients would be confused and uncertain as to what the implications of this wording meant, in terms of the client’s expectations of their interactions with the adviser.

Instead, we advised that there was strong support for the term, “Associate Financial Adviser.”

Members remain of this view and are disappointed that FASEA has chosen to specify the term “provisional financial adviser” as mandatory terminology.

### **The Professional Year – Work and Training Requirement**

SAFAA notes that in several aspects, the Draft Legislative Instrument and Explanatory Memorandum relating to the Work and Training Requirement for the Professional Year contain some improvements on the previous Consultation Draft. We welcome this.

However, the latest draft still contains key shortcomings and problems, having regard to the nature of stockbroking advice. SAFAA submits that the Legislative Instrument and Explanatory Memorandum are not appropriate to adopt, as currently worded.

We draw your attention to the following issues:

#### **1. Paragraph 10 (5) Notification**

We object to the proposed requirement for a licensee to provide a written notice to a retail client, prior to a provisional relevant provider having any direct or indirect interaction with a client.

This has not been referred to in previous consultation and would be a costly and superfluous bureaucratic process. The introduction of the prescribed terminology “provisional financial adviser” was intended to serve as a notification that the adviser was undertaking their Professional Year, and therefore under supervision. Requiring written notification to all clients serves no additional purpose and would be an administrative process that would be costly to implement.

Notifying the client of the name of the supervisor will not mean anything to the client and gives rise to further potential administrative processes should there be a need to change the supervisor, for whatever reason, during the period.

The key element in the framework is that the Provisional Adviser (PRP) as a matter of fact be subject to the appropriate level of supervision. Under the Legal Profession framework, lawyers are required to be supervised during their first two years of

practice, but notices are not required to be sent to clients naming the supervising partner. The lawyer must be supervised, and that is all. There is no reason why the framework for financial advisers should require the additional written notification.

SAFAA strongly submits that Paragraph 10(5) cannot be regarded as a “standard”, and therefore it is not a matter within FASEA’s remit. If such a requirement was considered integral to the framework, it should have been a matter for Parliament to deal with by specifying it in the legislation.

## **2. Indirect/Direct Supervision periods**

We note that the Provisional Year is now broken into two parts, with Q1 and Q2 being the period during which a PRP must work under direct supervision, and Q3 and Q4 being the period during which the PRP may move to work under indirect supervision.

This approach is far too rigid, and more flexibility should be afforded to a licensee. Also, this approach contradicts the approach to supervision that was outlined by the Minister’s office during the industry round table consultation leading up to the passage of the legislation.

The approach appears to be drafted entirely from a financial planning perspective and does not have regard to the nature of advice given in the stockbroking sector (and potentially other sectors too).

In SAFAA’s previous Submission on this issue, we highlighted that in our view, the FASEA approach generally has been framed with financial planners in mind and does not reflect the practice of the stockbroking sector.

SAFAA drew attention to the fact that in the case of stockbroking, advice to clients, and interaction with them, is quite different to the preparation of a financial plan. Stockbrokers usually provide advice limited to exchange-traded products, mainly listed equities.

When stockbrokers provide Personal Advice to their retail clients, they prepare a Statement of Advice (SOA) that covers the securities/industries relevant to the client and the client’s Personal Circumstances and the risks involved.

Stockbrokers often provide “further market related advice”, under an SOA. These discussions will include the “colour” of the market, such as international events and market movements, that might not translate into any advice, general or personal.

Lengthy detailed meetings with a client, such as a financial planner would have in discussing and preparing a financial plan, are not common. In general, after the initial meeting, communication with a Retail Client will be via a series of short, punchy communications throughout the day. Such communications are usually related to movements in markets and are often time sensitive (unlike a financial plan, which is a long-term financial strategy). It would be quite impractical for a call with a client to be put on hold each time, so that the PRP can get hold of the supervisor to participate in or monitor the call.

A PRP could be permitted to have with a market-related conversation with a client, without any danger to the client. Such communication could be covered quite adequately by indirect supervision. There is no reason why this should not be allowed to occur until after Q2 is completed.

SAFAA has a clear recollection that, during the industry consultation process prior to the passage of the legislation, the Government acknowledged that there should be flexibility in the means by which supervision would be carried out, particularly having regard to situations where a PRP worked in a smaller office, such as a regional location, or in a smaller firm which did not have the resources of a large institution. The current proposed standard removes much of the flexibility that industry was promised would exist in relation to supervision.

In our previous submission, SAFAA offered to work with FASEA to develop a set of parameters, and guidance on supervision, to apply in the stockbroking sector, that would operate in place of the Q1-Q4 model that was put forward in Consultation Paper 5.

SAFAA is disappointed that FASEA has not sought any further input from SAFAA, and that the current draft still represents supervision standards that are ill-suited to the nature of the stockbroking industry, and/or difficult for smaller and medium sized firms to comply with on an equal footing to larger firms.

### **3. Hours of Work/Training**

SAFAA members have no objection to the revision of the PY to consist of 1500 hours work and 100 hours training. This is preferable to the 1000 hours work/800 hours training split that was proposed in the previous Consultation Draft.

### **4. Period of Provisional Year**

Some members have expressed concern that the wording of Section 5(2) is not sufficiently clear in dealing with the duration of the PY for those who are not undertaking the PY on a full-time basis.

The intention would appear to be that the key requirement is that the specified 1500 hours work/100 hours training be completed, and that the PY is extended until such time as these criteria are met. There is no issue with this, but some have expressed concern that the clause could be interpreted to require that a PY is to be extended pro rata, for example, that a PRP working 2 days a week would have to undertake a PY that was 2.5 years in duration.

This could benefit from some additional clarification in Guidance or the Explanatory Memorandum.

A second area of uncertainty is the Period of the Provisional Year for a PRP who is assessed as qualifying for Accelerated Progression in Q1 and Q2. If a PRP in that situation completes the 1500 hours work/100 hours training in less than a calendar year, then there is no reason why the PY for that person should not be entitled to complete their PY in less than a calendar year, given that Q3 will have commenced at an earlier date (and if the 1500/100 hours thresholds are also met).

This scenario should be addressed in the Standard and the Legislative instrument.

## **5. Section 9 – PY Plan**

Paragraph (e) in Section 9 requires that a Professional Year Plan **must** “describe the resources and opportunities that the responsible licensee will make available ...”.

Our members are strongly of the view that this requirement is vague, and quite unnecessary to include in the PY Plan.

Exactly what resources are meant to be specified is not at all clear. Does this mean administrative resource, clerical support, IT resources, and so on? There is simply no reason for the PY Plan to be required to set these matters out.

These matters are likely to unfold and change throughout the year in any case, and including this requirement simply generates a high potential for the need for multiple variations of the PY Plan throughout the year, which generates administrative process but for no purpose.

We would be happy to discuss any issues arising from this submission.

Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email [psteppek@stockbrokers.org.au](mailto:psteppek@stockbrokers.org.au) .

Yours sincerely,

A handwritten signature in black ink that reads "Andrew Green". The signature is written in a cursive style with a large initial 'A' and 'G'.

**ANDREW GREEN**  
Chief Executive