

11 January 2019

Stephen Glenfield  
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Sydney NSW 2000

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Dear Mr Glenfield,

**RE: Corporations (Relevant Providers Exams Standard) Determination 2019 (Determination)**

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.

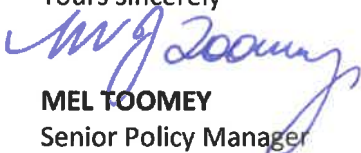
We welcome the opportunity to make a submission to the Financial Adviser Standards and Ethics Authority (**FASEA**) on:

- its Determination;
- the Explanatory Statement to the Determination; and
- FSP006 Examination Policy

(collectively referred to as the "**Draft Consultation Documents**").

Should you wish to discuss this submission further, please call me on (02) 9299 3022.

Yours sincerely



**MEL TOOMEY**  
Senior Policy Manager

**FASEA LEGISLATIVE INSTRUMENT AND EXPLANATORY  
STATEMENT: EXAM STANDARD**

**Generally**

The FSC and its members support the lifting of educational, training and professional standards which we consider will occur once the amendments to the Corporations Act relating to professional standards of financial advisers come into effect. To assist FASEA in finalising the Draft Consultation Documents, we make the below comments.

**Context**

Section 9 of the Explanatory Statement states as follows:

*'Exams are expected to be scheduled quarterly for all candidates from mid-2019'*  
and  
*'Exams will also be scheduled bi-monthly in 2020'.*

FSC members seek clarity on the meaning of the word "bi-monthly" (that is, it is unclear whether it means twice in one month, or every second month).

The Examination Policy indicates that exams will be held in Sydney, Canberra, Melbourne, Brisbane, Townsville, Adelaide, Darwin, Perth and Hobart. It is unclear whether the language in the Explanatory Statement means that there will be one date per location, or multiple dates in each location. It could be interpreted, from the language in the Explanatory Statement, that there will be eight exams scheduled in each of the nine locations over an 18-month period (that is, an exam held in each of the last two quarters of 2019, and an exam held every second month in 2020). This would mean 72 exams during the 18-month period advisers have to pass the exam. Given a potential exam cohort of 28,000 existing financial advisers, this equates to approximately 390 advisers per exam sitting. However, we would expect much larger numbers of advisers for exams held in locations with a higher population of advisers. Further, this estimate was reached without considering new advisers, or those advisers who are re-sitting the exam. The FSC therefore submits that the proposed exam scheduling on a quarterly basis from mid-2019 and bi-monthly in 2020 is insufficient, and ought be much more frequent during this critical 18-month period.

We ask FASEA to specify if dates are subject to minimum/maximum registrations, and whether additional dates/times would be added if maximum capacity is reached in a location at any point in time.

We understand that, should an adviser fail to pass the exam by 1 January 2021, he/she will no longer be treated as an "existing adviser" under the Corporations Act. Instead he/she will be deemed a "new entrant" and may be obliged to obtain a full approved degree, undertake the professional year, and pass the exam in order to continue to provide advice to clients. We consider that industry should attempt to avoid advisers who genuinely attempt to pass the exam from falling into this category. Therefore, we believe FASEA needs to provide these advisers with sufficient opportunity to pass the exam.

Further, the Explanatory Statement provides that the first exam will be held in mid-2019. FASEA has provided the industry with no explanation as to why it has shortened the effective time for existing advisers to complete the exam from two years<sup>1</sup> to 18 months.

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<sup>1</sup> See Press Release of the Honourable Kelly O'Dwyer of 9 February 2017 where the Minister indicated that advisers would be given two years to pass the exam: <http://kmo.ministers.treasury.gov.au/media-release/006-2017/>

**Recommendation 1:** Exams be held more frequently during the period 1 July 2019 to 31 December 2020; and clarification be given regarding wording and scope of section 9. Consideration be given as to whether exams can be held before the middle of 2019. If that is not possible, consideration ought be given as to whether a No Action position can be obtained from ASIC with respect to advisers who do not pass the exam before July 2021, giving advisers the full two years to pass the exam, as the Government intended.

Further, we ask that FASEA provide the timetable of exam dates on its website a minimum of three months prior to the first exam date, and that the timetable be published for a 12-month period.

## **Definitions**

### **1. "Invigilator"**

The term "invigilator" is used throughout the draft Determination, however it has not been defined.

**Recommendation 2:** Add a plain-English definition of "invigilator" to the Definitions section of the Determination.

### **2. "Eligible Candidate"**

Subsection (a) of this definition provides as one of the alternatives that the person has completed study overseas "*that is assessed by FASEA as substantially equivalent to an approved qualification*". In our submission to FASEA regarding the Foreign Qualifications Policy, the FSC questioned the need for a foreign qualifications assessment by FASEA in circumstances where the existing adviser intended to meet the FASEA qualification standard via the "non-relevant degree" or "no degree" pathway, that is, the applicant has received approval from a Department of Education and Training (DET) approved body and does not want an assessment from FASEA of his/her qualification as he/she wishes to complete a new qualification.

**Recommendation 3:** Existing advisers who have obtained a DET assessment of their foreign qualifications and do not wish to obtain a FASEA qualification assessment as they want to take the "non-relevant degree pathway" or "no degree pathway" should not be excluded from the definition of "eligible candidate".

Further, we submit that there is a drafting error in Section 4(2)(a)(i) of the Determination. The draft Determination indicates that a person is only an eligible candidate if on 1 January 2019 he/she appeared on the Financial Advice Register (FAR). The definition of "existing provider" in section 1546A of the Corporations Act refers to a person who was "*a relevant provider at any time between 1 January 2016 and 1 January 2019*". The explanation in the Examination Policy is consistent with the Corporations Act.

Subsection (c) of the definition of "eligible candidate" has the effect that, where advisers fail the exam, they must wait three months before they can register to re-sit it. While the FSC's members agree that advisers should wait until they are completely ready to re-sit the exam, we submit that the registration cost and time involved in re-studying alone would act as a disincentive to candidates re-sitting the exam until they are adequately prepared. Further, given the limited number of proposed exam venues and exam scheduling; and the fact that the effective time to complete the exam by existing advisers has been shortened to 18 months, we consider that no time period should be mandated for advisers to wait to re-sit the exam, or if a time period is mandated, it ought be substantially less than three months.

We also understand that it may take FASEA up to six weeks to notify candidates of their exam results<sup>2</sup>. Further, both the Determination and the Explanatory Statement provide that the adviser must register for the exam before he/she is eligible to sit the exam. It is not clear from the Draft Consultation Documents how far before the exam date an adviser must register to sit the exam. Taken in combination, FASEA's exam policy may unintentionally lead to significant delays in advisers passing the exam. We highlight this problem with an example. An adviser sits the exam on 1 July 2019. If it takes six weeks for him/her to receive the results, he/she will not know whether he/she has passed the exam until 15 August 2019. In the unfortunate event that the adviser fails his/her first attempt at the exam, he/she cannot, based on the wording of the Determination, register for the next exam until 15 October 2019. Assuming there is a lead time between registration and sitting of two weeks, if the next round of exams is scheduled in the first two weeks of October, the adviser would miss that round, and would only be able to re-sit the exam in January 2020 (as exams are only held quarterly in 2019), having the effect that the whole process has taken him/her six months. This delay becomes even more problematic for advisers who wait to sit the exam until the second half of 2020. If the same result was achieved and the same time periods applied, the adviser would not have passed the exam by 1 January 2021 and would be deemed a "new entrant".

Recommendation 4: No time period should be mandated for advisers to wait to re-sit the exam, or if a time period is mandated, it ought be substantially less than three months. Further, consideration should be given to aligning this period with the scheduling of exams.

Recommendation 5: The registration period should be extremely short. We recommend a 48-hour period.

Recommendation 6: Advisers should be able to register to re-sit an exam during the period mandated for advisers to wait to re-sit the exam (that is, during the three-month period under the draft Determination).

Recommendation 7: The Draft Consultation Documents should prescribe a maximum period within which candidates will be notified of their exam results. We submit that this period should be no more than four weeks.

## **Knowledge and skills areas**

### *Financial advice regulatory and legal obligations area*

Standard 6 details the areas the exam will be designed to test. The *financial advice regulatory and legal obligations area* specifically includes:

*"Australian taxation law and commercial law, as covered in relevant courses approved by the Tax Practitioners Board".*

As part of the requirement to be registered as a tax (financial) adviser with the Tax Agent Services Act (TASA), many advisers were obliged to complete a TPB-approved course in taxation law and commercial law. Since that time, these advisers were obliged to meet the mandatory Continuing Professional Education (CPE) standards under TASA of 60 CPE hours over three years. Therefore, a requirement to include taxation law and commercial law in the exam would replicate the obligations in TASA. Additionally, we believe that the bridging course and FASEA-approved Graduate Diploma, which form part of some of FASEA's education pathways, may also cover taxation law and commercial law.

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<sup>2</sup> See FASEA Consultation Paper CP003 - Examination Standard. We note the Draft Consultation Documents are silent on the amount of time it will take to deliver exam results to candidates.

Further, most employed advisers are not registered under TASA as they are in a supervised role. As such, this knowledge sub-area may have more limited application to employed advisers.

**Recommendation 8:** Removal of “Australian taxation law and commercial law, as covered in relevant courses approved by the Tax Practitioners Board” from the exam content.

Additionally, the Note at the end of Standard 6 states that “*courses referred to in subparagraph (a)(iv), were available at <https://www.tpb.gov.au/board-approved-courses-tax-agents>” however this link relates to courses for “*tax agents*” rather than “*tax (financial) advisers*”. We believe this to be an oversight that requires amendment as most financial advisers are not “*tax agents*”.*

#### *Financial advice construction area*

The Determination provides that the *financial advice construction area* will test advisers on: “

*...the knowledge and skills needed to construct suitable financial product advice through an understanding of:*

*...*

*(iii) population and community profiles at a retail client level; and*

*....*

*(v) the advice strategies suitable for different retail clients.”*

The safe harbour steps set out in section 961B(2) of the Corporations Act which an adviser must take to satisfy his/her duty to act in the best interests of clients are at an individual client level. FSC members are concerned that the wording of Standard 6 (3)(c) (iii) and (v) may be seen to encourage an adviser to take the approach of providing a cohort of his/her clients with the same or similar advice to save the adviser’s time and resources, without taking into account the individual client’s objectives, financial situation or needs. We consider that such an approach would be in breach of the best interests duty.

It appears that the intention of this area was to focus on financial advice construction and suitability of advice more generally, and if so, we suggest re-wording the provision to remove any confusion. We suggest the following wording: “*suitable advice strategies considering the different objectives, financial situation and needs of individual clients*”.

**Recommendation 9:** The wording of Standard 6(3)(iii) and (v) be amended so that it is clear the adviser must focus on the individual needs of the client, not on cohorts of clients.

#### **Exam questions**

Regarding Standard 7, we seek the following clarification:

- that each of the knowledge and skills areas will have equal weighting with respect to the marks allocated, that is, 33%; and
- a breakdown of the proportion of marks awarded to the multiple-choice questions and the written response questions.

Further, we question why it is stated that the exam must be at least 70 questions; and at least 64 multiple choice questions and at least 6 written response questions. In the interests of fairness, the breakdown between multiple choice and written responses questions should always be the same. Otherwise, the situation could arise that different candidates are

undertaking exams of a different nature. Given the level of stress that already exists among advisers regarding the exam, it would be preferable if FASEA could indicate the exact number of questions in total, and the exact breakdown between multiple choice and written response questions. This could be achieved by expressing the amount of each type of question as a percentage of the total questions.

Recommendation 10: Further clarification and certainty be given regarding the exam questions.

### **Duration of exam**

Regarding Standard 8, we seek clarification that a candidate can make notes during the 30-minute time allocated to reading only.

### **Terms of registration for sitting exams**

#### *Fee*

FASEA's website states *"...the exam ... will attract a fee of \$540 excluding GST per student."* We believe that this fee is too high, especially given candidates are unable to seek alternative providers of the exam if they are unhappy with the price or service provided through FASEA. The fee is particularly high given FASEA does not intend to provide candidates with any feedback about their performance in the exam, other than whether they have passed to a credit level. We seek further information as to how FASEA determined the exam fee. The \$594 fee is a significant amount of money to the adviser, especially when combined with the cost away from his/her business to study and sit the exam (not to mention travel and accommodation costs for advisers who are not located near one of the nine exam locations).

Further, by including the words "per student", FSC members assume the fee is a one-off cost, regardless of how many times the adviser sits the exam. Finally, we seek that the cost of the exam is incorporated into the Examination Policy so that licensees and advisers can have certainty that the exam fee will not increase before 1 January 2021.

Recommendation 11: Further information regarding the exam fee is required. The exam fee should be reduced.

Additionally, none of the Draft Consultation Documents make provision for a refund of the exam fee should an adviser decide to withdraw from sitting the exam after registration. This is particularly important given many advice practices are businesses employing two or three advisers who do not have alternative resources to assist them should unforeseen circumstances occur while an adviser is preparing to sit the exam.

Recommendation 12: Make provision for a refund of the exam fee should an adviser withdraw within a reasonable timeframe.

#### *Details of Exam Results*

Standard 10 provides that candidates will only be informed as to whether they have passed the exam to a credit level. Our members are very concerned with such little information being made available.

We submit that FASEA should make more information available for the following reasons:

- further information will provide guidance to candidates who fail as to the areas they need to improve upon before they attempt to re-sit the exam.
- it may inform a candidate who fails as to whether a re-sit is viable, and if so, how much time they should dedicate to study before the exam;

- it will assist the candidate to determine whether he/she should apply for a review of the marking of the exam, given section 10(17) of the Determination only allows candidates to seek a review of the marking of the written response style questions; and
- if advisers' results were made available to licensees, this would assist licensees to work with their advisers to remedy any deficiencies that may have been identified, and to develop approaches to ensure higher success rates in the exam.

Recommendation 13: FASEA should make more information regarding exam results available to both advisers and their licensees.

#### *Pass to a Credit Level*

Standard 10 provides that candidates must pass the exam to a credit level. What constitutes the awarding of the grade of a credit varies from one university to another. Therefore, the term "credit level" should be defined in the Determination to avoid confusion.

Additionally, we seek clarification as to whether the candidate must obtain a credit in all three knowledge and skills areas individually, or whether the attainment of a credit overall is sufficient.

Recommendation 14: FASEA should set the pass mark at a specific percentage and clarify whether that pass mark is required overall or for each knowledge area.

#### *Review of Exam Results*

Standard 10 allows candidates to have their exam results reviewed by an exam administrator for a fee.

Recommendation 15: We expect that the exam administrator will charge his/her fee on a cost recovery basis only. Further, we expect that the candidate, once the fee has been paid, will receive the outcome of the review within a short time. We suggest no more than 14 days. We reiterate our concerns under "Eligible Candidate" above regarding the extended time frames and delays already embedded in the exam process. Awaiting a review of a mark would only exacerbate this problem.

#### *Resit of Exam*

Recommendation 16: FASEA to confirm that a candidate can re-sit the exam as many times as necessary in order to pass the exam by 1 January 2021.

#### *Deferral of exam for exceptional circumstances*

We consider the exceptional circumstances which must arise to enable a candidate to defer sitting the exam which are contained in section 10(18) of the Determination should be broadened. The first circumstance, namely "*acute illness (including hospital admission)*" is overly restrictive, as an adviser is required to do much more than simply be present at the exam. The adviser is required to pass to a credit level a 3.5-hour exam, upon which his/her future livelihood is based. Further, it is impossible to predict every situation which is beyond the control of the adviser which should give rise to the adviser being able to defer.

Recommendation 17: The following exceptional circumstances should be added to section 10(18):

- illness that precludes a candidate from undertaking the exam, as assessed by a healthcare professional; and
- other exceptional circumstances, as assessed by the exam administrator on a case by case basis.

### *Alternative arrangements*

We note in the Examination Policy that the exam will be delivered in Sydney, Canberra, Melbourne, Brisbane, Townsville, Adelaide, Darwin, Perth and Hobart. We consider that the exam locations may discriminate against advisers who are based in regional areas that may not be classified as “remote”. Depending on the regional location, the costs of travel and accommodation may be prohibitive.

We are also concerned that the alternative arrangements set out in the Determination only commence from 1 January 2020, meaning that advisers in remote locations will only have one year within which to pass the exam. There will likely be many advisers who simply cannot travel to an exam centre due to, for example, family commitments. These advisers would be unfairly discriminated against.

Recommendation 18: Where an adviser can show that return economy flight and accommodation costs are greater than the exam fee, or that their personal circumstances preclude them from travelling to an exam centre, the exam administrator should approve arrangements for the candidate to sit the exam in their home location online.

Recommendation 19: Alternative arrangements should commence on 1 July 2019.