

Monday 26 February 2024

Mr Andre Moore
Director
Advice and Investments Branch
Retirement Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

By email: financialadvice@treasury.gov.au

Dear Moore,

Submission: Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024 (“the Determination”)

The Determination is a welcome measure. However, as worded it will not solve for advisers whose degrees are not scheduled under the education requirements and the proposed transition period for tax (financial) advisers indirectly discriminates against advisers who left the workforce within the proposed period.

The FSC recommends the Determination is revised to:

1. Account for situations where certain financial planning degrees are not scheduled to allow for more discretion by amending new subsection 1A and amending subsection 2A.
2. Ensure the proposed transitional period for tax (financial) advisers applies to advisers who temporarily left the workforce to ensure they are not unintentionally discriminated against.
3. More expressly require the adviser to demonstrate they have met the requirements to the licensee.
4. Require the Tax Practitioners Board to keep a publicly available list of tax (financial) advisers from this period.

Our recommendations in detail are attached to this letter.

The FSC welcomes the Government’s policy intent that will be fully realised with amendments to the Determination in line with our recommendations.

Yours faithfully,



Zach Castles
Policy Director, Advice and Platforms

FSC Recommendations

Summary of Recommendations

1. Account for situations where certain financial planning degrees are not scheduled to allow for more discretion by amending new subsection 1A and amending subsection 2A.
2. Ensure the proposed transitional period for tax (financial) advisers applies to advisers who temporarily left the workforce to ensure they are not unintentionally discriminated against.
3. More expressly require the adviser to demonstrate they have met the requirements to the licensee.
4. Require the Tax Practitioners Board to keep a publicly available list of tax (financial) advisers from this period.

Schedule 1: Approved degrees and qualification

The proposed provision 2A will indeed make it easier for new entrants to demonstrate they have met existing the degree requirements in situations where a degree has not been awarded. However, it will not solve situations where a graduate undertakes a financial planning degree that is not listed on the schedule of approved courses and qualifications, despite the subjects meeting the education standards. We have provided the following scenario to illustrate the dilemma posed by the existing framework and that will persist if the final legislation is not amended.

Scenario: Adviser completed a relevant degree and all conditions of an approved degree

Adviser A was awarded Bachelor of Commerce (Finance) by the University of Wollongong in July 2017 – study commenced in 2014. This is not an Approved Degree (see definition below).

The courses studied include the following from item 60 in the table in **Schedule 1 – Degrees and qualifications** in *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021*:

- (i) LAW101 Introduction to Law
- (ii) ACCY228 Taxation for Financial Planners / Tax Planning
- (iii) FIN223 Investment Analysis
- (iv) FIN252 Personal Finance
- (v) FIN320 Risk and Insurance
- (vi) FIN323 Portfolio Analysis
- (vii) FIN328 Retirement and Estate Planning

The eighth subject requirement, FIN329 Advanced Financial Planning, was completed with the University of Wollongong after the degree was awarded, in Spring 2019, on a non-award basis, based on the verbal advice of staff at FASEA.

Adviser A has a statement, issued by the University of Wollongong, confirming that Adviser A has met each of the approved conditions in relation to an approved degree or qualification (item 60 in the table).

However, section 921B(2) requires a person to

- “complete a bachelor or higher degree, or equivalent qualification, approved by the Minister” (‘Approved Degree’) **and**
- satisfy “the conditions (if any) approved by the Minister for completing the degree or qualification, and has satisfied those conditions in a way (if any) approved by the Minister”.

Consequently, although the proposed s 6(2A) of the draft *Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024* attempts to address the above situation, it fails for Adviser A as Adviser A has not completed an Approved Degree, which must be satisfied

as a separate and additional obligation to satisfying the conditions.

Solution

To resolve this issue:

- S6(1) of the Determination, in approving degrees, should be broadened to specify what is approved as “equivalent” to the degrees set out in Schedule 1 of the Determination, not just the conditions which apply as a further requirement to having completed a degree specified in Schedule 1.
- S6(2A) should be revised slightly to deal with possible minor/technical discrepancies with the units of studies specified as conditions.¹
- The requirement under S6(2A) for the person to “have” a statement or transcript from the university rather than to “provide it” because it’s not clear to whom they must provide it to meet the requirement and we think having the statement or transcript should be sufficient.

Recommendation 1: Account for situations where certain financial planning degrees are not scheduled

The FSC welcomes the proposed change but suggests the following amendments to meet the bill’s policy intent and resolve the unintended consequences the existing legislation.

New sub-section (1A):

(1A) Under subsection 921B(6) of the Act, each of the following is approved as an equivalent degree and qualification of those specified in an item in Schedule 1 for the purposes of subparagraph 921B(2)(a)(i) of the Act:

(a) the person ~~provides~~ has one or more academic transcripts, issued by the provider of the approved degree or qualification, which demonstrates that the person has been awarded a [relevant degree] and has completed each of the approved conditions in relation to an approved degree or qualification;

(b) the person ~~provides~~ has one or more statements, issued by the provider of an approved degree or qualification, confirming that the person has been awarded a [relevant degree] and has completed each of the approved conditions in relation to an approved degree or qualification.

...

Revised sub-section (2A)

(2A) Under subsection 921B(6) of the Act, each of the following ways for satisfying the conditions approved under subsection (2) of this instrument is approved for the purposes of subparagraph 921B(2)(a)(ii) of the Act:

(a) the person ~~provides~~ has one or more academic transcripts, issued by the provider of the approved degree or qualification, which demonstrates that the person has [completed an equivalent unit of study to that specified in the condition in the item in Schedule 1]

(b) the person ~~provides~~ has one or more statements, issued by the provider of an approved degree or qualification, confirming that the person has [completed an equivalent unit of study to that specified in the condition in the item in Schedule 1]

¹ It is possible for example, that a university might change the name of a unit of study, while the content stays the same. In this case, the proposed s 6(2A) could be useful to permit a university or transcript to provide evidence that the substance of the subject has not changed. The university is the appropriate and best placed authority on whether a unit of study is equivalent to the ones listed in the Schedule.

Recommendation 2: Adviser responsibility to provide transcripts to the licensee

2A should make clear that the transcripts should be provided to the licensee.

Schedule 2 – Amendments to the transitional arrangements for relevant providers who provide tax (financial) advice services

The transitional timeframe for tax (financial) advisers is welcome but could unfairly discriminate against those who have taken leave from the workforce within the relevant period. We are concerned this only covers those registered as individuals. Some providers operate under a corporate registration model with the Tax Practitioners Board (TPB), this resulted on people who went on extended leave and weren't individually registered on the TPB.

Scenario regarding tax (financial) advice: Adviser on extended leave as at 31 December 2021 (based on case previously provided to FSC on 25 Aug 2022)

Adviser B has been authorised with Business X since 22/12/2015, and is authorised to provide financial product advice and tax (financial) advice in the following areas:

- Financial Planning
- Gearing
- Personal Insurance
- SMSF-tax (financial) advice
- Superannuation-tax (financial) advice

Adviser B regularly provided tax (financial) advice when interacting with clients prior to 1 January 2023.

In 2021 Adviser B went on maternity leave and was removed from the FAR for one year (10/03/2021 to 22/03/2022). This is in line with our current business position of removing advisers from the FAR if taking leave of more than 3 months. As a result, Adviser B was not a relevant provider immediately before 1 January 2022.

Taking maternity leave at this time means Adviser B cannot meet the transitional arrangements under 3-172 (as outlined in the Corporations (Relevant Providers-Education and Training Standards) Determination 2021), which would allow registration as a QTRP now and allow for Adviser B to have until 31 December 2025 to complete any required studies.

In addition, Adviser B doesn't meet the alternate transitional arrangements under 3-173 or 3-174, which would allow registration as a QTRP if the courses were completed before 1 January 2022.

As a result, based on the current law, from 1 January 2023 Adviser B was unable to provide TFA, and remains in that position until the tax and commercial law subjects have been completed.

As this adviser was not directly registered with the TPB, the proposed amendments in the draft *Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024* will have no impact on the situation.

A secondary issue is that advisers are expected to evidence when they were onboarded under the legislation. It would be more complete for the TPB to keep a publicly accessible register of the professionals providing tax (financial) advice given now this aspect of the financial advice professional is accountable to the TPB.

Recommendation 3: Transitional period

The FSC proposes the following amendment to the proposed transition period to ensure advisers who temporarily left the industry in the period it is designed to cover get the benefit of the government's amendment.

3-170 Transitional—persons who were a registered tax (financial) adviser on 31 December 2021 or were authorised to provide tax (financial) advice by a registered corporate tax (financial) adviser at any time in the period from 1 January 2020 to 31 December 2021

The requirements in Division 3 of Part 3 of this instrument do not apply to a person that is a relevant provider if the person:

- (i) was a registered tax (financial) adviser under subsection 20-5(1) of the Tax Agent Services Act 2009 as in force immediately before 1 January 2022, or*
- (ii) was authorised to provide tax (financial) advice at any time in the period from 1 January 2020 to 31 December 2021 (inclusive) by a corporate entity registered as a tax (financial) adviser*

Recommendation 4: Tax Practitioners Board

Tax Practitioners Board should make available a list of tax (financial) advisers who provided tax (financial) advice during the period.