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Dear Ms Wilkinson

CORPORATIONS AMENDMENT (PROFESSIONAL STANDARDS OF FINANCIAL ADVISERS) BILL 2015

CPA Australia represents the diverse interests of more than 155,000 members in 120 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

CPA Australia has long been committed to lifting education and professional standards for financial planners, necessary to deliver better quality advice consistently and in the best interests of the consumer. This is vital to rebuilding community confidence and trust, with a view to replicating the trusted relationship that generally exists between a client and other professionals such as professional accountants.

The accounting profession also has a long history of upholding the public interest, reflected in our education framework that meets international standards and our professional standards set by an independent professional and ethical standards board.

Operating for 130 years, CPA Australia has put in place a robust education framework which includes mandatory ongoing professional development, as well as professional and ethical obligations which influence all advice and services provided to consumers.

This extensive experience means we understand what it takes to build such a framework and it is from our position of experience that we have identified significant issues of concern with the new model proposed in the *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015* exposure draft (ED).

The areas that we believe need immediate amendment include:

- consultation and implementation timeframe
- education and training standards
- transition provisions for existing advisers, and
- the code of ethics framework.

We also have further concerns with the proposed monitoring of the Register of Relevant Providers, the Standards Body and definitions.

If these issues are not addressed, we believe the model, as drafted, will fail to deliver on the important policy objectives of lifting consumer trust and confidence and will have significant detrimental consequences for existing financial planners, and importantly, their clients.

CPA Australia cannot support the proposed model without appropriate amendments being made to the timeline for implementation, transition provisions for existing financial planners and the code of ethics framework, including promoting the role of professional associations. Our detailed comments follow.

1. Consultation and implementation timeframe

The timeframe for consultation is inadequate and places at risk the success of a new education and professional standards model.

Allowing only a month, which includes the Christmas/New Year period, to review and consider these changes constrains the ability of stakeholders to evaluate the model in detail and determine whether it can achieve the objectives outlined in the ED Explanatory Memorandum.

Further, the model has moved significantly from that recommended by the *Parliamentary Joint Committee on Corporations and Financial Services*. It is noted that the Government undertook a six week consultation to seek views on the core elements of the PJC model, importantly including how these elements could be implemented.

While the Government has stated it intends to introduce legislation early in 2016, we believe rushing to legislate the model without the necessary due diligence risks its future success.

As proposed, the model creates a number of operational, practical and legal challenges for both new and existing financial planners, as well as the stakeholders to implement the elements of the new model. Without an appropriate time to consider the proposed legislation in detail, it is also difficult to fully identify potential consequences and conflicts with other existing obligations.

We also believe the proposed timeline for implementation is unachievable and will have detrimental consequences.

For example, the new model will require existing advisers to complete a course or courses to bring their education level to a degree equivalent. Currently the minimum education requirement set under ASIC Regulatory Guide 146 *Licensing: Training of financial product advisers* is diploma level equivalent. This means that there will be financial planners who will have completed a number of short courses, but these courses will not equate to a diploma. There will also be experienced financial planners who completed courses that at the time were considered to be the industry standard, however were completed before the introduction of the Australian Qualifications Training Framework.

Under the transition requirements as drafted, these financial planners will need to complete a degree within a two year period. This is not only unrealistic, given that a degree takes on average three years full time to complete, it completely disregards any other qualifications, experience or designations that the financial planner may have attained during their career. Further significant concerns with the proposed transition arrangements are further discussed in section 3.

CPA Australia strongly recommends an extension of the consultation period to consider the exposure draft and further engagement with the sector to identify and address key issues. Following this process, we recommend a new timeline for implementation is developed in consultation with all relevant stakeholders.

Recommendations:

- 1. The proposed period for consultation on *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015* exposure draft is extended by at least four weeks.**

- 2. Following the consultation period, the Government consults further with the sector to discuss and agree to key issues identified in the model.**
- 3. A new timeline for implementation is then developed in consultation with all relevant stakeholders.**

It is understood that this will likely result in legislation being introduced later than the Government has publicly stated, however we believe these steps are critical to ensure the success of a new education and professional standards model.

In addition, the proposed model only applies to individuals who provide personal financial advice to retail clients on relevant financial products. However, questions remain around the appropriateness of the current tests to define a wholesale client despite industry consultation nearly five years ago.

2. Education and Training

CPA Australia believes increased education standards are fundamental to lifting the competency of the industry. Entry level formal qualifications are also a common characteristic of a profession.

However, the overarching driver of lifting education standards should not focus just on the holding of a specific qualification but more importantly it should ensure that an individual has the appropriate level of technical expertise and skill to provide quality financial advice.

2.1 Completion of a bachelor degree, or equivalent qualification

CPA Australia recommends that the first standard of the new education and training standards should be amended from 'bachelor degree, or equivalent qualification' to 'minimum Australian Qualification Framework (AQF) 7 – Bachelor Degree or equivalent course or competency'.

The role of the proposed new Standards Body will be instrumental in developing a new curriculum which clearly articulates the curriculum detail and the specific learning outcomes for each core area identified for financial planners and importantly other advisory services captured under the AFS licensing regime. Importantly, this curriculum should then be used as the basis to develop AQF 7 – Bachelor Degree to AQF 9 – Masters Degree level or equivalent courses or competency for the financial advice sector.

Setting a minimum education level would provide multiple pathways and greater flexibility to enter the industry, as different individuals could complete different qualifications based on their previous education and experience to meet the set education standards. Examples of possible qualifications would include Bachelor Degree, Bachelor Honours Degree, Graduate Certificate, Graduate Diploma or Masters.

This would provide the necessary flexibility for individuals looking for a career change who may have a relevant degree or relevant experience, providing flexibility for them to enter the industry.

An appropriate transitional period will be necessary to allow academia and students already enrolled in existing programs not to be unfairly disadvantaged.

Appropriate time must be provided to allow higher education providers in Australia to develop and seek approval of new education programs that meet the standards and to inform existing higher education providers in Australia of the professional standards to be met for professional accreditation of any new or revised program/s they may be planning.

This would be necessary to avoid, for example, the requirement for an individual who wishes to become a professional accountant and a financial planner to complete a double degree, which may not be a practical solution and would introduce unnecessary barriers to entry.

2.2 Professional Year

CPA Australia believes that the introduction of a professional year will deliver benefits to both new financial planners and consumers seeking advice.

This requirement will be valuable in developing financial adviser skills and to embed at the beginning of a person's career the attributes of a code of professional conduct and culture. Further, it is an opportunity to help the new adviser further develop their knowledge and skills to provide quality advice and importantly how to build a trusting and valuable relationship with the client.

However, the framework as drafted will prohibit a new financial planner gaining many of these skills if they cannot be licensed to provide advice during this first year.

To address this, consideration needs to be given to either the order of the education and training standards or how a new financial planner could become licensed to provide advice during their professional year of experience.

The professional year should be completed under supervision, to ensure the quality of all advice provided. However, a degree of flexibility will be required to ensure this proposal can be successfully implemented in recognition of the different licensing models that exist in the sector.

For example, it is common for a professional accountant to complete training to become licensed in order to provide financial product advice to their clients. The professional accountant often already has an established practice and the Australian financial services licensee they are authorised under may be located in another state. Given that these practices are often located in regional and rural areas, flexibility in how they can complete their professional year is needed so this model can continue to operate under the new obligations.

Further, the use of technology within practices means that it is not necessary for the supervisor to be in the same workplace. Rather, the key to a successful relationship is accessibility. Options may also include the vetting of advice before it is provided to the client.

This amendment would require the new financial planner to be listed on the Financial Advisers Register (FAR), although the FAR should clearly disclose the individual is still completing their professional year as part of meeting the education and training standards.

2.3 Exam

CPA Australia does not support the inclusion of a registration exam as a necessary component of the model to improve education and professional standards for new financial planners.

If the model is appropriately developed to include appropriate minimum standards of education, with key learning outcomes that appropriately reflect the knowledge to provide quality financial planning advice and this is coupled with a professional year that is structured to formally assess key skills, then the exam itself is unnecessary.

To appropriately understand the practical implications we must first understand the exam's objective, which has not been made clear.

It is important to acknowledge that a registration exam will not address the many issues of poor advice primarily driven by conflicts of interest that have to come to light through both parliamentary inquiries and the media. These issues remain a product of poor culture and behaviour rather than technical competence.

While we understand the potential value of portability that an exam may bring, we are unsure what further assurance a registration exam will provide that has not been addressed through the combination of robust education, professional year and membership of a professional association.

At a base level a registration exam or exams adds an unnecessary layer of compliance and cost without delivering any additional assurances to consumers.

2.4 Continuing professional development

CPA Australia supports the introduction of mandatory ongoing continuing professional development requirements for financial planners. However, we do not believe it is necessary to mandate a notice to be provided to ASIC whether each relevant provider has complied with this requirement.

As it will be a new general obligation for financial services licensees to comply with this obligation under s912A; we believe there are already sanctions for non-compliance and that this additional requirement will simply add an unnecessary compliance burden and cost.

2.5 Restriction on use of terms ‘financial adviser and ‘financial planner’

As drafted, the new law will restrict the use of titles ‘financial adviser’ and ‘financial planner’, terms of like import and combinations of words which include these terms, to individuals, who are relevant providers.

At a conceptual level regulating specific terms may introduce complexity and additional costs. Therefore, it needs to be clearly demonstrated that implementing further regulation is in fact in the public interest and will deliver positive benefits to the public and more specifically to those who seek professional financial planning advice.

Notwithstanding the above, we believe that restricting the term ‘financial planner’ to only those individuals who are relevant providers to provide financial planning product advice may be in the public interest.

However, we do not support restricting the use of the term ‘financial adviser’ and any other word or expression that is of like import. We believe this is unnecessary and overly restrictive. In addition, it would add complexity to consumers’ understanding.

The term ‘financial adviser’ is recognised and used in broader terms by professionals other than those licensed to provide financial product advice to retail clients. This includes professional accountants and financial institutions such as investment banks that provide financial advice both in Australia and internationally. It is also widely used by other professional advisers who provide financial product advice to wholesale clients.

We also have concerns about the potential implications of restricting any other word or expression that is of like import. This proposal will arguably impact commonly used terms in other related areas of financial advice. For example many professional accountants commonly use titles such as Financial Planning and Analysis Manager, Manager Finance and Planning, Manager Financial Planning or Financial Planning Manager. These titles are all reflective of individuals who operate in finance departments of national and multinational businesses who have no connection to regulated financial product advice and services.

The underlying objective of this proposal is to improve the trust and confidence of consumers in the financial planning industry.

To achieve this objective, it is important that the proposed regulation provides clarity to the industry and clearly assists the consumer identify those individuals who are appropriately qualified to provide licensed financial planning advice. The most effective way to ensure this is to enshrine only one expression and ensure that the specific expression clearly reflects the primary function of the individual; to provide financial planning advice.

We would therefore not be opposed to the implementation of new regulation, provided that it only restricted the use of the expression 'financial planner' and it can be demonstrated that implementing further regulation is in fact in the public interest. It must not only deliver positive benefits to the public but more specifically to those who seek professional financial planning advice.

Recommendations:

- 4. Section 921B(2) is amended to '.. standard is that the person has completed a bachelor degree, or equivalent course or competency, approved by the standards body.**
- 5. The reference to the professional year of experience in section 921B is amended to enable a new financial planner to provide licensed advice under supervision during the mandatory year of experience.**
- 6. The amendments to s921B will need to be reflected in s921C and the Explanatory Memorandum.**
- 7. Note 2 in s921D requiring a notice to be given at the end of each financial year confirming whether a relevant provider has complied with this section is removed from the exposure draft.**
- 8. Section 923C is amended to only prohibit the use of the term 'financial planner'.**

3. Transitional provisions for existing providers

As drafted the transition arrangements for the bulk of many financial planners will be unachievable. Further, they appear to be drafted without taking into account the requirements and obligations of the current training standards and education framework.

The current minimum education requirement set under ASIC Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146) is diploma level equivalent education. This means that an individual can complete a number of short courses to meet these training requirements and become licensed to provide financial planning advice.

However, it is unlikely that these courses combined will equate to a diploma qualification. Further, the current Diploma of Financial Planning does not meet the requirements of RG 146 to provide holistic financial product advice. This is due to both the competencies required to provide product advice and the way the qualification has been structured under the Financial Services Training Package. As a result, many existing financial planners will complete a combination of short courses to meet the training standard, which will not result in the achievement of a qualification.

The transition provisions also appear to make general assumptions about the education and experience level of all financial planners.

There will also be experienced financial planners who completed courses that at the time were considered to be the industry standard, however were completed before the introduction of the Australian Qualifications Training Framework.

The transition arrangements will require these existing advisers, who have meet the current training requirements, to now complete a course or courses to bring their education level of a degree equivalent. In reality this means these individuals need to complete a degree within a two year period.

This is unrealistic, given that a degree takes on average three years full time to complete.

It will also have a significant and detrimental impact on the industry, including a considerable reduction in the number of financial planners which will result in thousands of clients being left without a financial planner.

Where the financial planner was also a small business owner, which is common, it will also result in the loss of thousands of jobs for their support staff.

It is clear the Government is seeking to set a benchmark for education and training in the sector, which we strongly support. However, this is not an acceptable outcome for these financial planners, their staff or the community and demonstrates the often detrimental impact of retrospective legislation. The transition arrangements also disregard other qualifications, experience or designations that the financial planner may have attained during their career. The Explanatory Memorandum does make reference to providing flexibility for existing providers so that they only need to undertake adequate study to bring their qualification in line with the new standard. However, this approach only focuses on completed education and fails to recognise the importance of experience and professional designations.

To address these significant concerns, s1546B should be amended to provide the standards body the flexibility to develop transition arrangements for existing financial planners based on recognition of prior learning (RPL). This would ensure that the individuals' previous experience, education and professional designations could be taken into account to develop an RPL pathway rather than a one size fits all approach.

The legislation as drafted also appears to prevent an existing adviser applying for their own Australian financial services licence from 1 July 2017.

Section 921C applies to any Australian financial services licence granted on or after 1 July 2017, as required by section 1526C. Under section 921C ASIC cannot grant a Australian financial services licence to an applicant who is a natural person if they have not met the education and training standards in subsection 921B(2) to (4), being:

- bachelor degree or equivalent qualification,
- a year of work and training, and
- passed an exam.

Under s1546B an existing financial planner must complete:

- a bachelor degree or equivalent qualification, or
- one or more courses determine by the standards body, and
- passed an exam.

The existing financial planner however is not required to complete a year of work or training, as they will already have this experience. However, this is a specific obligation to meet when applying for an Australian financial services licence. An Australian financial services licensee looking to appoint an authorised representative must also apply the same requirements.

This may be a drafting issue; however it may have also been an issue that was not identified and demonstrates the risks that may be faced as a result of finalising this legislation in such a short timeframe.

There also appears to be a gap on how the new education and training standards will apply where the applicant for an Australian financial services licence is a corporation, noting this is the norm, rather than a natural person.

Recommendation:

- 9. Section 1546B is amended to state that the standards body is responsible for developing transition arrangements for existing financial planners, taking into account the individuals' previous experience, education and professional designations.**
- 10. The transition timeline is determined taking into account the transition arrangements and the likely period it will take to achieve the requirements.**

11. **Section 1546C and section 921C are amended to ensure that existing financial planners who meet the transition arrangements, as set by the standards body, can apply for their own Australian financial services licence from 1 July 2017.**
12. **Section 1546C and section 921C are amended to ensure an existing financial planner is not prevented from moving to another Australian financial services licence after 1 July 2017.**

4. Code of Ethics

The introduction of a model Code of Ethics applicable to all financial planners is an efficient and far-reaching mechanism to enhance consumer confidence and trust. While we support the development of a model Code of Ethics by the body, in consultation with relevant stakeholders, we believe it should be built on the core principles of:

- honesty and integrity
- independence
- competence, and
- confidentiality.

This will ensure that it aligns with other obligations relevant to the sector. For example, there are more than 16,000 tax (financial) advisers registered with the Tax Practitioners Board who must comply with the statutory Code of Professional Conduct in the *Tax Agents Services Act 2009*. It also benefits the sector by setting out a consistent and uniform framework of expected behaviour that will act as an umbrella to existing legislative obligations, without adding another heavy layer of compliance

There are also other professionals operating under relevant codes, such as professional accountants who must comply with APES 110 Code of Ethics for Professional Accountants, which incorporates the Code of Ethics for Professional Accountants (IESBA Code) issued by the International Ethics Standards Board for Accountants (IESBA). It is therefore important that the new model of Code of Ethics complements, rather than conflicts with, existing relevant Codes of Ethics and Conduct.

While we support the development of the model Code of Ethics, we are concerned with proposed mechanisms for ensuring compliance; a compliance scheme of professional association approved by ASIC or a compliance scheme of a licensee (or a group of licensee's) scheme approved by ASIC.

We believe that this model significantly removes the ability of a professional association to influence and drive professionalism within the financial services sector, despite the *Parliamentary Joint Committee on Corporations and Financial Services* noting the integral role that professional associations must play to drive professionalism in the sector.

A genuine co-regulatory model where every licensed financial planner would operate under an approved ethical and professional framework would also strengthen the existing regulatory framework. Given the financial services industry is structurally differently to most professions, where accountability lies largely with the AFS licensee rather than the individual, this model would not only represent a regulatory change but importantly a cultural change for both financial planners and AFS licensees.

However, the proposed framework places accountability back with the AFS licensee where they are responsible for ensuring that a compliance scheme covers its financial planners and even permits the licensee (or a group of licensees) to develop their own scheme and seek ASIC's approval. We acknowledge that a licensee (or group) will need to enter into a contractual arrangement with a third party to remove the potential conflict of monitoring its own scheme. However, rather than driving professionalism and developing a framework for individuals to address perceived and actual conflicts of interest, it is more likely this framework will drive a 'tick the box' compliance behaviour driven by the licensee.

It also potentially removes the ability of an individual financial planner to make their own decision to be a member of a professional association and subject to its scheme, as licensees will likely require all of its financial planners to be a member of one scheme to reduce its compliance reporting obligations. It is also likely that this scheme will be operated by a compliance-based firm with a focus on legislative compliance rather than ethics and a professional framework.

The financial services sector already has a strong focus on compliance. What is needed is a focus on professionalism. If a code of ethics is going to be established to set a benchmark for professional values or moral obligations, it must be supported by a framework that then oversees and promotes the professional and ethical conduct of all financial planners.

The framework as proposed also provides no regulatory incentive for an individual financial planner to become a member of a professional association, or for licensees to encourage membership of a professional association.

This is a missed opportunity to improve professionalism and increase the accountability of individual financial planners.

Of relevance, the Tax Practitioners Board can accredit a recognised tax agent, BAS agent or tax (financial) adviser association if they meet certain requirements in the Tax Agent Services Regulations 2009 (TASR). These requirements set out important factors around education, professional and ethical conduct, as well as systems to monitor and ensure compliance. For example, to be approved as a registered tax agent association the organisation must:

- be not for profit
- have at least 1 000 voting members, of whom at least 500 are registered tax agents
- have adequate corporate governance and operational procedures to ensure that it is properly managed and its internal rules are enforced
- require each voting member to meet minimum education and/or experience requirements
- have professional and ethical standards for its voting members, including CPD requirements and that each voting member must be of good fame, integrity and character
- demonstrate each voting member is subject to rules controlling the member's conduct in the practice of his or her profession and that they are subject to discipline for breaches of those rules
- if a voting member is permitted by that organisation to be in public practice, the voting member has professional indemnity insurance
- have satisfactory arrangements in place for notifying clients of its members, or of members of its member bodies, about how to make complaints, receiving, hearing and deciding those complaints
- taking disciplinary action if complaints are justified
- have satisfactory arrangements in place for publishing annual statistics about the kinds and frequency of complaints made to the organisation (except complaints under the Act about entities registered under the Act), findings made as a result of the complaints and action taken as a result of those findings, and
- be able to pay its debts as they fall due.

In addition the organisation must be able to demonstrate that the management of the organisation is:

- required to be accountable to its members
- required to abide by the corporate governance and operational procedures of the organisation

CPA Australia believes there is merit in adopting a similar framework for the approval of a scheme being offered by a professional association. It would ensure consistency in the methods used by Government Regulators to recognise professional associations.

Recommendation:

- 13. The Government amend the compliance scheme framework and develop regulatory incentives to encourage financial planners to become a member of a professional association and for AFS licensees to encourage membership of professional association.**

5. Register of Relevant Providers

From 1 July 2019 unless the individual financial planner is under the compliance scheme of its professional association for the purposes of the Code of Ethics it will not even be able to list it is a member of the association on FAR. Given the objective of FAR is to provide an independent mechanism for consumers to discover and verify information about a financial planner, we believe this will be a significant omission from FAR in the future.

We support the requirement that breaches of the Code of Ethics must be notified to ASIC, however we recommend that the obligation to report 'alleged breaches' be removed given it is unclear what constitutes an 'alleged breach'.

Clarity is also needed as to what 'certain events occurring' refers to in Note 1 in s921E.

Recommendation:

- 14. Section 922F is amended to ensure that a relevant provider can list all relevant professional memberships, noting that the definition of professional association must be appropriately defined.**
- 15. All references to an 'alleged breach' are removed from the draft legislation.**

6. The Standards Body

Central to the new model is for the Minister to nominate in writing a body corporate as the standards body (the body) which will be responsible for setting the education, training and ethical standards for financial planners.

The expectation is that the industry will both establish and seed fund the body, which will then be subject to strong legislative oversight.

CPA Australia supports co-regulation; however we do not believe the model or proposed regulatory oversight achieves the right balance between the role of the sector and the role of Government.

A key objective of this reform is also to increase public confidence in this sector. Given a key driver in eroding consumer confidence has been the poor conduct of some financial planners, largely driven by conflicts of interest, we believe there is the potential for perceived and actual conflicts of interest to undermine the success of the body and that this should not be underestimated.

The draft legislation also demonstrates the Government has a strong desire to have legislative control and influence over the body. We therefore believe that a statutory body should be considered which would effectively address potential concerns around independence and provide the Government the level of control it is seeking to ensure the integrity of the model.

Just as integral to the success of this model is the mix of skills, expertise and experience that make up the body. It is this combination together that will ensure that the standards developed are relevant for the sector.

Recommendation:

- 16. CPA Australia recommends that the Government establish an independent statutory body to set the education, ethical and professional standards for relevant providers.**

7. Definitions

The draft legislation defines a *professional association* to mean a body or association that represents a section of the financial services industry.

The mere fact that an association represents a section of the sector does not make it a professional association. Key attributes of a professional association include a strong education framework, experience requirements, ethics and professional standards and oversight and enforcement of these standards.

Professional Standards legislation exists in all States & Territories and the Acts define 'Occupational Associations'. The explanatory memorandum references the need to place provisions which are designed to facilitate improvement in the standards of services provided by professionals and others in order to protect the users of those services. The Professional Standards Authority has a framework to recognise a profession and differentiate from an association group or industry participants. The framework for an occupation association is that they have an appropriate governance structure, minimum education standards, code of ethics / practice, commitment to ongoing CPD, complaints and discipline systems, risk management and quality assurance systems. These are the key attributes that need to be included in the definition of a professional association.

Recommendation:

- 17. The definition of *professional association* is amended to *industry association* and a new definition that accurately reflects the attributes a professional association is drafted, noting that this should not be contingent on the professional association operating an approved scheme under s921H.**

CPA Australia is committed to lifting education and professional standards for financial planners, as we believe this is vital to rebuild the confidence and trust in financial planning advice.

However, we believe if these issues are not addressed in a considered and comprehensive manner, it will result in the implementation of a flawed model that will have significant detrimental consequences for existing financial planners and importantly, their clients.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller, Policy Adviser – Financial Planning on (03) 9606 9816 or keddie.waller@cpaaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Malley', with a long horizontal flourish extending to the right.

Alex Malley FCPA
Chief Executive