Submission on Professional Standards of Financial Advisers Bill 2015

January 2016

National Seniors
Australia

About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect people aged 50 years and over. It is the largest membership organisation of its type in Australia.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over-50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and tours designed for the over-50s and provide our members with affordable, quality insurance to suit their needs.

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Overview

National Seniors appreciates the opportunity to provide feedback on the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015.

The proposed framework to legislate higher educational standards, continuing professional development and adherence to a Code of Ethics for new and existing financial advisers is long overdue and applauded.

Expediency of implementation is now the priority. With this in mind, National Seniors believes the Bill should:

- introduce the new educational standards and Code of Ethics concurrently from July 2017, recognising that positive change in the financial advice industry requires both qualification and behavioural improvements; and
- mitigate against potential misuse of transitional arrangements by those seeking existing provider status immediately prior to July 2017.

We take a pragmatic view that greater government oversight is needed in the initial stages to give momentum to the transition effort. As the new framework takes effect with evidence of improved adviser competency and professional conduct, there will be more scope for industry-led initiatives including options for reducing costs through industry self-regulating compliance.

While there are associated costs of increased regulation to industry, these costs are outweighed by the benefits to consumers of improved adviser standards and appropriate advice. This is especially the case for older Australians seeking to manage their lifetime savings in retirement with limited timeframes to recover from the consequences of poor advice.

National Seniors understands that raising the professional standards is not, in itself, sufficient to safeguard consumers from inappropriate financial advice. Product design and remuneration structures in the industry continue as a prevailing influence on the disposition of financial advisers.

We see the legislation of higher qualifications and ethical standards as a milestone in a broader reform process to shift the entire industry away from a sales-driven culture to a profession grounded in the best interest of consumers.

Education and training standards

National Seniors is supportive of the proposed new minimum education and training standards as outlined in the Bill, namely that all new advisers must:

- hold a bachelor degree in a relevant discipline;
- pass an approved exam;
- complete a professional year under supervision of an experienced adviser; and
- commit to ongoing professional development.

We also support the proposed requirements for existing financial advisers to bring their education qualifications up to the equivalent of a degree standard, pass an exam and commit to ongoing professional development.

While these minimum requirements for both existing and new financial advisers is reasonable, the detailed aspects of the requirements are not yet known and will be determined by a new Standards Body. National Seniors seeks confirmation that there will be a proper consultation process to ensure these detailed aspects are consistent with the policy intent and meet consumer expectations.

National Seniors is concerned about some exemption provisions in the Bill.

The proposed framework gives ASIC powers to exempt an existing financial adviser from meeting the transitional education and training standards up until July 2019. National Seniors questions the need for these provisions in the Bill and the specific circumstances that would justify such action.

Exemption for timeshare arrangements may be open to misuse. Timeshare arrangements are an increasing area of concern and we suggest strict monitoring and enforcement to ensure these providers are not using the term ‘financial adviser’ or ‘financial planner’ or similar. We agree that providers of timeshare arrangements should comply with the Code of Ethics and support inclusion of this in the Bill.

The Bill exempts persons providing wholesale advice to clients or in-house advice to their employer from restrictions on the use of the terms ‘financial adviser’ or ‘financial planner’. It means wholesale providers are able to use the term ‘financial adviser’ or ‘financial planner’ without having the minimum education and training requirements, which we consider to be confusing. To remove all doubt, National Seniors believes the restriction on the use of the terms ‘financial adviser’ or ‘financial planner’ should be strictly enforced and an alternative expression required in the case of wholesale advice.

National Seniors seeks:

- confirmation that the development of the detailed requirements for education and training standards will be subject to a proper consultation process;
- clarification on the circumstances where ASIC would use its powers to exempt an existing provider from the education and training standards; and
- clarification of the exemption to use of the restricted term ‘financial adviser’ or ‘financial planner’ for those providing wholesale advice.

Code of Ethics

National Seniors has two main concerns with the Code of Ethics provisions as set out in the Bill:

- the extended July 2019 timeframe for the Code to take effect; and
- responsibility for compliance schemes residing with either a professional association (Pathway 1) or the licensee (Pathway 2).

Developing a Code of Ethics is absolutely critical for instituting integrity across the financial advice industry. It is only through the combination of improved standards and applied ethical behaviour, framed in client best interests, that quality financial advice will be delivered. We therefore question the rationale for allowing the Code of Ethics to take effect from July 2019, two years after the date of effect for new minimum education standards.

We believe this timeframe is unnecessarily protracted and the Code of Ethics should take effect from July 2017. The new Standards Body should develop the Code in conjunction with the education and training requirements.

Bringing forward the start date for the Code of Ethics would ensure the proposed statutory review to commence before the end of 2019 considers the education and training standards as well as the effectiveness of the Code. It is important these two aspects of the legislative framework are working in a complementary manner.

In terms of the compliance schemes, the Bill specifies that ASIC would be required to approve the scheme but compliance would reside with a professional association (Pathway 1) or licensee (Pathway 2).

We believe that both Pathway 1 and 2 are essentially another form of industry self-regulation and will not achieve the desired improvement in ethical behaviour to safeguard consumers from inappropriate advice.

Under Pathway 1, professional associations would have discretion to determine whether certain behaviour of a financial adviser is in breach of the Code and report this breach to the licensee, who in turn reports to ASIC. This discretion leaves open the possibility of behaviour going under the radar to avoid negatively impacting the membership brand and manage reputation of the professional association. We question the inclination of professional associations to assess their own members and manage disciplinary action.

Pathway 2 requires the licensee to engage a third party monitoring body that would be obliged to report breeches to the licensee under the new laws. It is unclear whether the monitoring body would have access to all relevant information to perform its enforcement functions. The contractual arrangements between the licensee and a third party would limit the practical workings of assessing compliance because the third party has a monetary incentive to retain ongoing business with that licensee.

Further, up to 60 days is allowed under the Bill for notification of Code breaches to ASIC, which means the register of relevant providers would not be up-to-date and consumers potentially exposed to non-compliant advisers.

Given the substantial adverse consequences of non-compliant behaviour, particularly for older Australians and the heightened consumer mistrust of the financial advice industry, it is premature to rely entirely on industry-led compliance schemes.

National Seniors suggests the new Standards Body or ASIC establish a single, comprehensive compliance scheme that applies uniformly across the industry and ASIC have greater oversight of monitoring and enforcement of that scheme. This approach avoids having numerous compliance schemes that ASIC has to approve, each with varying features leading to inconsistencies and consumer confusion about what is considered ethical behaviour. Professional associations and group licensees would have a supporting role in developing more detailed practices and procedures that meet the requirements of the industry wide compliance scheme.

Giving ASIC greater responsibility for monitoring and enforcement has the advantage of ensuring the Register of financial advisers is promptly updated with information about breaches of the Code and will help identify emerging systemic issues that may warrant government intervention.

The resource implications for such an approach should be considered as part of establishing the new ASIC funding model based on industry levies. National Seniors believes that increased funding for ASIC monitoring and enforcement will signal to financial advisers that their activities will be subject to scrutiny and act as a deterrent to non-compliance.

As part of the scheduled 2019 review, it may be appropriate to consider options for alternative industry-led compliance schemes that could reduce costs to industry and consumers. This would depend on whether there has been a fundamental shift in improving the quality of financial advice to consumers and a demonstrated culture of compliance within the industry under the new framework.

National Seniors recommends:

- rapid development of the Code of Ethics with a proper consultation process;
- that the Code of Ethics commence on July 2017 to align with the start of new education and training standards;
- ASIC or the new Standards Body have responsibility for establishing a single compliance scheme for all licensees; and
- ASIC have responsibility for monitoring and enforcement of that compliance scheme.

Register of Relevant Providers

National Seniors supports the Bill placing a new obligation on ASIC to update the Register. We suggest including a clarifying provision in the Bill that this obligation includes ASIC having responsibility for validating information before it is put on the Register. Currently, ASIC does not check or review the information provided by financial advice businesses before it is put on the Register and we believe this limitation should be addressed under the new framework.

Restriction on the use of the term ‘financial adviser’ or ‘financial planner’ to relevant providers who have met the education pre-qualification and commitment to ongoing professional development is welcomed. We believe the listing of only these relevant providers on the national Register together with an additional validation process by ASIC will help consumers make informed decisions when selecting a financial adviser.

However, the notice obligations under the Bill for compliance schemes and breaches of the Code of Ethics only apply from July 2019, which leaves a void and limits the usefulness of the Register to consumers. We believe notification of compliance with both qualifications and the Code of Ethics should commence from July 2017.

The proposed amendments to the content requirements of the Register is a positive step but needs to be accompanied by enhanced useability so older consumers can make better use of the information available. Currently, the Register only enables consumers to search by financial adviser name. In line with the new content requirements, we suggest the Register allow consumers to search by group licensee name and business location.

Given many older Australians have limited internet access, the information on the Register must also be accessible via phone. We suggest this be considered as an extended function of ASIC's contact centre.

National Seniors recommends:

- including a clarifying provision in the Bill that ASIC is responsible for validating information before it is put on the Register;
- that notification requirements for breaches of the Code commence on July 2017 to align with start of new education and training standards;
- improving the online search functionality of the Register to facilitate consumer access to reputable financial advisers; and
- that information on the Register be accessible via phone as well as online.

The Standards Body

National Seniors supports the provision in the Bill to establish a new Standards Body that would operate as a not-for-profit entity separate from the regulator, to determine the minimum education and training requirements and the Code of Ethics. The proposed composition of the seven member board for the Standards Body is also sensible, particularly the inclusion of two directors with experience in consumer affairs and a director in the field of ethics in addition to those directors with financial services industry experience.

The Ministerial power to nominate the Standards Body and appoint the Chair is supported. However, we are concerned that the Bill allows the Minister to revoke at any time the standards and make legislative instruments as if the Minister were the Standards Body. We consider the revocation powers to be too broad and instead, suggest limiting the scope of Ministerial powers to suspension of the standards in exceptional circumstances only. If revocation powers are included, then the Bill should specify the conditions that must prevail before the Minister can exercise these powers, for example when there is convincing evidence that the standards are not operating to provide appropriate consumer safeguards.

The Bill does not specify who will conduct the 2019 review. National Seniors believes the review must be independent of industry, government, ASIC and the new Standards Body to properly assess the effectiveness of the new framework. We suggest more detail in the Bill regarding the reviewer's independence as well as specific reference to consumer outcomes as part of proposed criteria for the assessment.

National Seniors recommends:

- limiting the Ministerial powers of revocation or specifying in the Bill the conditions before such powers can be exercised; and
- the Bill specify that the review will be conducted by an independent authority.

Transitional provisions for existing providers

National Seniors accepts the need for transitional provisions but believes the current provisions are open to misuse. We believe the Federal Government's commitment to lift professional standards of financial advisers needs a greater sense of urgency. Until the new standards are legislated, there is opportunity for aspiring financial advisers to gain entry with lower qualifications and this will extend the inadequate standards already prevalent in the industry.

Recent media reports suggest two thirds of the 5,200 advisers that registered with the Australian Securities and Investments Commission (ASIC) in the past year do not hold a university degree.[1] As there are increased costs associated with attaining a higher level of educational qualifications, National Seniors is worried that many advisers will seek to fast track their registration before July 2017 as a means of bypassing the degree requirement.

Further, we are concerned that consumers may have misplaced confidence in the Register, which will only reflect the new standards from July 2019. The Register will only record professional associations that have a scheme approved by ASIC from July 2019. Existing advisers will also have until July 2019 to pass an approved exam and complete relevant bridging courses. This means that consumers will still be exposed to the existing shortcomings of the financial advice industry for almost four years and this risk is amplified if there is an increase of new, under-qualified registrations during the transition period.

National Seniors is calling for expedient implementation of the new framework with a strong focus on facilitating upskilling of financial advisers, both new and existing, to deliver quality advice for consumers. It is critical that this policy intent is not undermined by hurried registrations and misuse of the transitional arrangements.

National Seniors recommends the Federal Government:

- apply greater scrutiny on the registration process to determine if there are any trends that would be contrary to the intent of the new legislation;
- explore the feasibility of introducing a requirement for completing a professional training year for all those seeking registration prior to July 2017, given the proposed transitional provisions will not prescribe this requirement;
- establish an interim memorandum of agreement with industry on the engagement of new financial advisers until legislative changes take full effect to alleviate misuse of the transitional provisions; and
- encourage industry to proactively adopt the higher professional and ethical standards to demonstrate credibility.

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[1] The Australian, Wednesday December 9, 2015. New financial advisers less likely to hold a university degree
http://www.theaustralian.com.au/business/financial-services/new-financial-advisers-less-likely-to-hold-university-degree/news-story/5a0737286be5a39515f7377c1049081d