From the Desk of Director Andy Semple

Association of Securities & Derivatives Advisers of Australia

26th July 2016

The Hon Kelly O'Dwyer MP
Minister for Revenue and Financial Services
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600
Letter sent via kelly.odwyer.mp@aph.gov.au

Dear Minister O'Dwyer,

ASDAA is a recently formed Association that represents the interests of its members, who are from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors or employees of small to medium sized firms which hold an Australian Financial Services Licence (AFSL) but are not a Participant Member of the Australian Stock Exchange or ASX.

ASDAA has a strong desire to raise professional standards and improve investor protection. ASDAA members rely on the ongoing trust of their clients and on the integrity of the Australian financial markets for their livelihood. Without both, clients wouldn't participate in the markets and trade in shares, exchange traded options, and other listed financial products.

In response to the recent media article titled "*Financial advisers face new exam: O'Dwyer*" published in *The Australian* on Thursday 21st July 2016, ASDAA decided it was important to write to you the Minister and express the concerns of our members.

Professional advisers from the Securities and Derivatives industry have been absent from the extensively reported Financial Planner and planning issues that have come about since the GFC. Why? Because advisers, who specialise in the dealing and advising of Securities and Derivatives, are under a much more defined and stringent management and supervision structure than those who provide Financial Planning advice outside this area.

ASDAA
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By being financial product advisers, ASDAA members have been caught up in the various findings and recommendations of recent reviews, including the Parliamentary Joint Committee on Corporations and Financial Services (PJC) and the Financial System Inquiry (FSI), notwithstanding that the problems that gave rise to these reviews, and to the significant public debate over the last few years, have occurred in the Financial Planning/wealth management areas, most of which are owned by the Banks, AMP and IOOF, and not in relation to the Securities and Derivatives advisory profession, which is predominately small business owned.

Many of the proposals now under consideration will require major changes to the Securities and Derivatives advisory profession, and the potential for significant additional costs to our industry, without this sector having caused the problems in the first place.

Already the broader industry has had to absorb significant increased costs in implementing the FOFA reforms of 2012 and these new reforms will have a disproportionate cost impact on the small to medium sized advisory firms.

It is clear from the framing of many of the various proposals in the PJC Report, FSI Final Report and Raising Professional Standards of Financial Adviser (RPSFA) draft legislation that they have been drafted with the Financial Planning industry firmly in mind, and it does not seem that much thought has been given to their application in relation to the Securities and Derivatives advisory profession.

A single one-size fits all approach, caused by systemic failures that have occurred in other sectors, namely Financial Planning, should not result in unfairness to the Securities and Derivatives advisory profession.

However, ASDAA does support the thrust of the draft legislation with respect to new financial advisers, whether they become financial planners or Securities and Derivatives advisers. Regulations requiring them to hold a relevant degree, undertake a professional year and pass an exam seem reasonable improvements.

We note with interest that the Final Report of the FSI stated that it also did not favour the national exam.

ASDAA would however support a registration exam if there was a separate version dedicated to each distinct area of financial advice – one for financial planners, one for Securities and Derivative advisers, and so on. Each relevant industry body is also best placed to set the exam for their sector. It would be better to use industry skills to set the exam rather than a newly created "Standards Body" who would likely have no industry experience and would have to outsource the expertise required to set such as exam/s.

ASDAA's reservations are, however, in the yet to be decided transition process for existing advisers, especially around the area of "relevant bachelor degree" or "degree-equivalent status."

Most members of ASDAA already hold either a *Bachelor of Commerce* or *Bachelor of Business* degree from an Australian University or have completing the relevant *Diploma of Financial Planning* or *Diploma of Financial Services*. ASDAA's concern surrounds the yet to be incorporated "Standards Body" interpretation of what constitutes a "degree equivalent status" and whether an ASDAA member could be forced to complete an arbitrary bridging course even though they successfully

completed a relevant Bachelor Degree or Diploma in the 1980's, 1990's, or since the year 2000.

Our other concern is that many financial advisers employed in the Advisory and Dealing sector that provide personal advice to retail clients in particular are not degree qualified. Many of these older advisers entered the industry through on the job training or by completing the training courses that were recommended by the Exchanges at the time or listed by ASIC in the ASIC Training Register (which met the requirements of RG146).

These new standards are certainly feasible for new advisers to the industry however appropriate transitional arrangements/grandfathering provisions for existing advisers should be adopted.

Persons employed in the Advisory and Dealing sector, (which is similar to the Stockbroking industry but the AFS Licensees are not members/participants of an Exchange, and their advisers do provide advice across securities, derivatives and foreign exchange contracts), may become an adviser using many avenues, including but not limited to:

- Becoming an Experienced trader (proprietary account traders or personal account traders) and completing their RG146 accreditation;
- On the job training and completing their RG146 accreditation;
- Completing the relevant Diploma of Financial Planning or Diploma of Financial Services; and
- Degree qualified and worked in financial services industry as an Adviser assistant or in the back office and wishes to transition to an adviser type role.

For the PJC model to work all professional industry bodies will need to work closely together with the universities to ensure that the degrees available do cater for the industry and are applicable to the industry.

It is ASDAA's opinion that an adviser actively involved in the industry prior to 2002 – being when the new Corporations Act and the requirement to have an AFS Licence were introduced - be grandfathered on the requirement to hold a relevant Bachelor's Degree or reach "degree-equivalent status."
This exemption should also be written into the Raising Professional Standards of Financial Advisers law, and not be left as an arbitrary decision to be made at a late date by the yet to be established "Standards Body."

With respect to a Code of Conduct and Ethical Standards, every reputable industry body already has their own Code of Conduct and Ethical Standards that their members comply with. It is ASDAA's opinion that a new "grander" Code of Conduct and Ethical Standards created by the yet to be established "Standards Body" is unnecessary. The sensible course of action here would be to mandate that a Financial Adviser, in order to practise, must also be a member of an industry body (such as FPA, FINSIA, ASDAA and SAA) which has had its Code of Conduct and Ethical Standards approved by ASIC.

Each industry body should have the right to freely nominate their own Code of Conduct and Ethical Standards they feel is appropriate to their members and not be forced to accept and adopt a Government sponsored Code of Conduct and Ethical Standards. A Government sponsored code would also weaken the role of

industry bodies at the same time the Government wants to raise professional standards of Financial Advisers.

Again, a single one-size fits all approach isn't a practical outcome.

Our final reservation is in respect to the "penalty for contravention" of the use of restricted terms "*Financial Adviser*" and "*Financial Planner*." Point 1.29 from the RPSFA explanatory memorandum notes a daily consequence of 10 penalty units (whatever this means) for each day a restricted term is unlawfully used.

The issue ASDAA has here is the burden of proof – who exactly shall determine the number of days such a term is misused? ASDAA believes there will be so many complications basing the penalty on a number of days used and the administrative cost would literally outweigh any benefit achieved.

Whilst the goal to protect those two titles of "*Financial Adviser*" and "*Financial Planner*" is admirable, adopting an unknown punitive punishment for their unlawful use is flawed, especially when anyone can call themselves lawfully anything but those two restricted titles.

Good intentions can often lead to unintended consequences and the failure to achieve anything useful.

ASDAA appreciates the opportunity to provide you with our comment. We would be happy to discuss any issues arising from our letter, or to provide any further material that may assist you or your department. Should you as the Minister be inclined ASDAA would be more than welcome to meet with you and members of your department in Canberra of a date and time of your choosing to discuss in person the detail of this letter.

Should you or your department require any further information, please contact myself on (07) 5657 3620 or email andy@asdaa.com.au

Yours sincerely,

Andy Semple
Director

Attached to this letter is a copy of the news article published in *The Australian* on 21st July 2016 titled; "*Financial advisers face new exam: O'Dwyer"*