

From the Desk of Director Andy Semple



**AMENDED VERSION OF OUR ORIGINAL  
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The Treasury  
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RAISING PROFESSIONAL STANDARDS OF FINANCIAL ADVISERS  
-SUBMISSION BY THE ASSOCIATION OF SECURITIES AND DERIVATIVES  
ADVISERS OF AUSTRALIA

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to Treasury in respect of Raising Professional Standards of Financial Advisers draft legislation.

ASDAA is a newly formed association which represents its members from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors or employees of firms which hold Australian Financial Services Licences (AFSLs).

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.

Professional advisers from the Securities and Derivatives industry have been absent from the extensively reported financial planner and planning issues that

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**ASDAA**

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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.

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, and not in relation to the Securities and Derivatives advisory profession.

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. It is clear from the framing of many of the various proposals in the PJC Report, FSI Final Report and this 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 has no industry experience whatsoever and has to buy in the expertise.

ASDAA’s reservations are however in the yet to be decided transition process for existing advisers, especially around the area of “relevant bachelor degree.”

Most members of ASDAA already hold either a *Bachelor of Commerce* or *Bachelor of Business* degree from an Australian University. ASDAA’s concern surrounds the yet to be incorporated “Standards Body” interpretation of what constitutes a “degree equivalent” and whether an ASDAA member could be forced to complete an arbitrary bridging course because they successfully completed a relevant Bachelor Degree in the early 2000’s, nineties or eighties.

Many financial advisers that work in the Advisory and Dealing sector that provide personal advice to clients are not degree qualified. Many of these older advisers (more specifically) 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 provide advice across securities, derivatives and foreign exchange contracts) a person may become an advisor 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; and
- Degree qualified and worked in financial services industry in the back office and wishes to transition to an adviser type role.

For the PJC model to work the FPEC will need to work with the universities to ensure that the degrees available cater for the industry and are applicable to the industry.

It is ASDAA's opinion that an adviser actively involved in the industry pre-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.

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 later unknown date by the yet to be established "standards body."

As far as ASDAA is concerned, the practical implications of the proposed CPD requirements would not be significant. ASDAA already mandates 20 hours CPD per annum as a standard for its members.

A higher CPD figure would not necessarily accomplish anything more, in our opinion.

ASDAA sees no reason to interfere with the ability to rely on successful existing sources of CPD, such as continued enrolment with professional CPD providers, professional annual conferences and company presentations.

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 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.

Furthermore, there are many professionals who won't use either term to describe themselves. For example some qualified advisers may call themselves "*Securities Adviser*" or "*Securities and Derivative Adviser*" and so on.

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 failing to achieve anything useful.

ASDAA appreciates the opportunity to provide this Submission to Treasury on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Director of Communications, on (07) 5532 3930 or email [brad@asdaa.com.au](mailto:brad@asdaa.com.au)

Yours sincerely,

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