30 November 2018

Stephen Glenfield
Chief Executive Officer
Financial Adviser Standards and Ethics Authority

Email: consultation@fasea.gov.au

Dear Mr Glenfield,

SMSF ASSOCIATION SUBMISSION ON THE WORK AND TRAINING REQUIREMENT LEGISLATIVE INSTRUMENT.

The SMSF Association welcomes the opportunity to make a submission on the Financial Adviser Standards and Ethics Authority's (FASEA) work and training ('Professional Year') requirement legislative instrument.

As we have previously stated, the Professional Year should help to build on the education completed by new entrants into the profession and ensure they are competent to provide financial advice.

We support the reduction in Professional Year hours to 1600, of which 100 is to be structured training. This provides a more realistic and practical application of new entrant training and is consistent with our submission on the original guidance.

However, as we have highlighted in other submissions to FASEA and will continue to do so, we have significant concerns the standards do not appropriately recognise or account for the limited licence advice regime.

Effectively, by failing to recognise or account for the limited licence regime, FASEA has prescribed a one month timeframe by the end of 2018 for existing accountants to consider applying for a limited licence or authorised representative status to become an existing adviser before it comes impractical.

Disregarding a legislated section of the financial advice framework is contrary to FASEA's purpose to set the education, training and ethical standards of all financial advisers who provide personal advice on relevant financial products to retail clients. We have proved more detail on issues regarding limited licence advisers and the FASEA standards in the **Appendix.**

Limited Licence Advisers

Given we have no significant issues regarding the legislative instrument for a new entrant who is intending to offer a full service of financial advice, our main concern is how the Professional Year is applicable to limited licensed advisers, particularly SMSF advisers.

For example, an experienced accountant who wishes to enter the limited licence regime to provide SMSF related financial advice to complement the taxation services they currently provide will be considered a new entrant from 1 January 2019.

Education standards aside, this will require an experienced accountant to enter a prescribed quarterly assessed Professional Year of 1600 hours supervised by a supervisor who has two years' experience.

It is highly unlikely an experienced accountant will intend to undertake this level of 'training' or be able to practically source an appropriate working arrangement to be supervised. Furthermore, it will be impractical for accountants to continually service their clients during the Professional Year as they will need to undertake supervised work and training of the limited financial advice they intended to offer.

The Professional Year program is therefore highly restrictive for any individual who wishes to move into a legislated limited licence advice regime. In effect, it makes the limited licence regime impractical going forward.

Accordingly, we believe there needs to be an option which allows a provisional financial adviser, particularly a certified professional practicing accountant under a limited licence who has completed or is completing the FASEA education standards, the ability to apply to the Australian Securities and Investments Commission (ASIC) or FASEA for scaled Professional Year requirements.

A scaled Professional Year would be designed for these individuals and would provide a more suitable and practical training program.

The activities described in quarter 1 as client observations and supporting the supervisor, and quarter 2 as supervised client engagement and advice preparation for example are completely impractical for an experienced accountant to replicate when entering a limited licence regime for their current clients. An individual cannot be expected to provide taxation advice and then seek a supervisor to supervise their actions when recommending a contribution be made to an SMSF. In effect, the Professional Year provides a significant barrier to entry for an accountant who wishes to expand their SMSF service.

In fact, the requirements of a Professional Year may be unworkable when considering ASIC information sheet 216 and the fact certain advice exemptions may not be relied upon when an individual becomes licensed. This would result in the accountant being unable to provide their traditional accountant exemptions unless they are supervised.

The intention of the Professional Year is to ensure 'new entrants' to the profession are adequately trained and mentored to understand the process regarding compliant and valuable financial advice. It is arguable that individuals who have been operating as an existing related professional have many of the skills that are required in a Professional Year.

A potential application of a scaled Professional Year should not be quarterly focused and should place emphasis on indirect supervision of client engagement and advice preparation from a supervisor. The responsible licensee will be responsible to ensure that appropriate supervision is provided and will be ultimately responsible for the advice supplied by the limited licensed adviser. For example, this may take the form of an off-site review of the advice that a provisional relevant provider is providing.

The application for a scaled Professional Year to ASIC or FASEA by relevant provisional provider will need to adequately describe how the individual is not a typical 'new entrant' and has satisfied most of the requirements and outcomes of the full Professional Year through their previous professional experience.

Under a scaled Professional Year, we believe that 1500 hours of work would not need to be officially recognised. However, we believe it is still appropriate for 100 hours of structured training to be provided and recorded under a scaled Professional Year.

This will ensure that the FASEA standards have recognised and appropriately accounted for the limited licence and not stifle its application.

We believe there is merit to extend this exception to existing advisers who have failed the FASEA examination or advisers who have previously been on the ASIC financial advice register and have completed the new education framework and are forced to enter the profession again potentially as a 'new entrant'.

Alternatively, when the limited licence regime was introduced, recognised accountants who lodged applications with ASIC between 1 July 2013 and 30 June 2016, who were professional practising certificate members of CPA Australia, Chartered Accountants Australia & New Zealand or the Institute of Public Accountants, were only required to demonstrate that they had completed the appropriate financial product training. Consequently, it may be appropriate to introduce a transition until 1 January 2024 for similar accountants who are requesting entrance to a limited licence regime an exception to the Professional Year and who are only required to demonstrate they have met the new education requirements.

Flexibility and accelerated progress

The SMSFA agrees with the proposed quarterly supervised approach and indicative key activities that are aligned to each quarter.

The SMSFA is also supportive of the principles behind allowing certain individuals accelerated progress throughs quarter one and two. This provides some added flexibility and practicality that we believe was essential to be included after viewing the original guidance.

However, we have concerns regarding the rigidness of section 12(1) and requirements to start a quarter.

Crucially, it is the assessment and exit criteria at the end of the Professional Year that is ultimately responsible to determine the readiness of the provisional relevant provider. If a provisional relevant provider has completed all their requirements, regardless of when certain work activities were commenced due to the practicalities of an office environment, then they should be able to complete their Professional Year.

Therefore, the legislative instrument should not be so rigid to legislate that a provisional relevant provider is not able to undertake an action in a proceeding quarter. We stress that flexibility and practicality are essential in the assessment of the different key activities, which may allow activities to be assessed across different quarters where appropriate.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing SMSF sector which is comprised of over 1.1 million SMSF members who have $755 billion of the funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisers and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.

Limited Licence Advice and FASEA standards – Appendix

The SMSF Association has significant concerns the FASEA standards do not appropriately recognise or account for the limited licence advice regime.

Effectively, by failing to recognise or account for the limited licence regime, a legislated section of the financial advice framework, FASEA has prescribed a one month timeframe by the end of 2018 for existing accountants and other professionals to consider applying for a limited licence or authorised representative status to become an existing adviser before the standards are inappropriate.

Background

Prior to 1 July 2016, an accountants' licensing exemption permitted a recognised accountant to recommend the establishment or winding up of an interest in an SMSF without being licensed under the Australian Financial Service (AFS) licensing regime. This exemption was repealed from 1 July 2016.

It is important to note however, that exemptions permitting a range of accounting services including compliance, tax advice related to financial products and broad asset allocation advice are available to unlicensed accountants.

To facilitate this, a new limited AFS licence was established, particularly for professional accountants who hold a public practice certificate/certificate of public practice.

Obtaining a limited AFS licence or becoming an authorised representative of another entity's AFS licence enables individuals to provide a range of SMSF advice and 'class of product' advice. However, individuals are not able to provide full financial product advice, including product recommendations, in a broad range of areas.

Individuals must have met the specific scaled RG 146 training in the specialist knowledge areas of advice that they will be providing advice to clients, for example, SMSFs.

This allowed professionals a scaled ability to continue providing quality specialist SMSF services in the best interest of the SMSF trustees.

FASEA Approach

The proposed FASEA approach applies rigid standards to individuals who are operating under a limited licence or will potentially enter the limited licence regime.

The standards currently do not differentiate between a financial adviser who is able to provide a full range of financial advice services and a financial adviser who is able to provide a limited range of financial services.

As we expand in our submissions, a limited financial adviser or prospective limited financial adviser may need to:

- Complete more subjects than a full financial adviser.
- Complete subjects which are financially costly, impose significant time costs and not relevant to the financial advice they provide.

- Undertake a supervised professional year of 1600 hours. (E.g. impractical for an experienced accountant obtaining a limited AFS licence).
- Undertake an examination with topics that may not be relevant to their financial advice.

Outcomes of FASEA approach

The requirements under the legislative instruments will likely discourage the majority of professionals who are intending to add financial advice to their services and to a lesser extent advisers who currently provide limited financial services from meeting the FASEA standards and providing advice.

The professional year and subjects which are not relevant to the provision of specialist advice will reduce the number of professionals offering this type of advice, particularly to SMSF trustees. The 'business case' of undertaking a graduate diploma in full financial advice and undertaking a professional year will not be viable for the provision of SMSF advice.

Accountants acting as limited financial advisers (e.g. SMSF specialist advisers) are often a significant source of SMSF information and advice. On average, an SMSF trustee uses two different advisers on professionals on average.

Recent SMSFA research indicates that upwards of 250,000 SMSFs have unmet advice needs, due to factors such as trust, cost and inconvenience. By ignoring the limited licensing regime and making advice more difficult for accountants to provide there is likely to be an increase in the number of SMSFs who are unable to have their advice needs met as advisers leave or professionals do not enter the system.

Additionally, as limited licence advisers leave the advice industry and individuals fail to become licensed, the provision of 'execution-only' services will increase. This is a significant risk to the integrity of the SMSF industry as trustees will be unable to access quality SMSF advice. Furthermore, it may blur the line of advice and information. This is an issue recently highlighted by the Australian Securities and Investments Commission.

The SMSFA does not believe that FASEA should be reducing the education standards for limited advisers, however, FASEA should recognise and account for limited licence advisers by providing appropriate pathways for their education and entry to the system which is relevant to the services they provide**.**

Disregarding a legislated section of the financial advice framework is contrary to FASEA's purpose to set the education, training and ethical standards of all financial advisers who provide personal advice on relevant financial products to retail clients