



**Royal Commission into Misconduct in the Banking,
Superannuation and Financial Services Industry**

Education and Training Requirements for Financial Advisers

Background Paper 6 (Part B)

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1. Purpose of the Paper

This background paper explains both the current education and training requirements for financial advisers or financial planners¹ and the key aspects of recent reforms in this area. This paper has been prepared using publicly available information.

¹ As the Australian Securities and Investments Commission ('ASIC') has noted, the terms 'financial planner' and 'financial adviser' are commonly interchangeable in general usage: ASIC, *Financial Adviser MoneySmart* (28 July 2017), <<https://www.moneysmart.gov.au/glossary/f/financial-adviser>>; ASIC, *Financial Planner MoneySmart* (28 July 2017), <<https://www.moneysmart.gov.au/glossary/f/financial-planner>>.

2. Introduction

The minimum education and training standards applicable to the finance advice industry have an important bearing on the competency of financial advisers and the resulting quality of the financial advice they provide. This is particularly the case given the complexity of many financial products.² This can also then affect the level of protection for consumers of financial advice³ and ultimately, the level of confidence and trust consumers have in the financial advice industry.⁴

² See, e.g., Parliamentary Joint Committee on Corporations and Financial Services, *Report: Inquiry into Financial Products and Services in Australia* (November 2009), 87–8, 90, <http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf>.

³ ASIC, *Regulatory Guide 146: Licensing: Training of Financial Product Advisers* (July 2012), 4, <<http://download.asic.gov.au/media/1240766/rg146-published-26-september-2012.pdf>>.

⁴ Financial Systems Inquiry, *Final Report* (November 2014), 223 <http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf>.

3. Current Education and Training Requirements

Under the current framework, the minimum education and training requirements for persons who provide financial product advice to retail clients are set out under a combination of provisions of the *Corporations Act 2001* (Cth), certain standard conditions for an Australian financial services licence ('AFSL') and ASIC regulatory guidance. A brief outline of each of these components is provided below.

3.1 Requirements under the *Corporations Act 2001* (Cth) and AFSL conditions

As giving financial product advice is providing a 'financial service',⁵ a financial adviser or planner must either hold an AFSL or operate pursuant to an exemption to this licensing requirement (for example, by providing financial services as a 'representative' of a licensee).⁶ A 'representative' of a financial services licensee is:

- An authorised representative⁷ of the licensee;
- An employee or director of the licensee;
- An employee or director of a related body corporate of the licensee;
- Any other person acting on behalf of the licensee.⁸

AFSL holders ('financial services licensees') are subject to general licensee obligations, conduct and disclosure obligations as well as additional obligations specifically for providers of financial product advice to retail clients.⁹ Separately, there are some obligations that can apply directly to representatives.¹⁰

Under the general licensee obligations found at s 912A of the *Corporations Act 2001* (Cth), a financial services licensee must:

- Maintain the competence to provide the financial services covered by their licence;¹¹ and
- Ensure that their representatives are adequately trained and competent to provide those financial services.¹²

⁵ *Corporations Act 2001* (Cth), ss 766A, 766B.

⁶ Ibid ss 911A(2)(a) and 911B; ASIC, *Regulatory Guide 36: Licensing: Financial Product Advice and Dealing* (June 2016), <<http://download.asic.gov.au/media/3889417/rg36-published-8-june-2016.pdf>>.

⁷ An authorised representative of a financial services licensee is a person authorised in accordance with ss 916A or 916B to provide a financial service or financial services on behalf of the licensee: *Corporations Act 2001* (Cth), s 761A (definition of 'authorised representative').

⁸ Ibid s 910A(a) (definition of 'representative').

⁹ ASIC, *Regulatory Guide 36*, above n 6, 33–36.

¹⁰ Ibid 37.

¹¹ *Corporations Act 2001* (Cth), s 912A(1)(e).

¹² Ibid s 912A(1)(f).

There is also a standard AFSL condition for licensees to ‘ensure that any natural person who provides financial product advice to retail clients on behalf of the licensee (including the licensee if he or she is a natural person)’ have completed training courses at an appropriate level as approved by ASIC.¹³

A financial services licensee must also maintain a record of the training that is relevant to the provision of financial services that each of its representatives has undertaken.¹⁴

3.2 ASIC regulatory guidance

ASIC’s Regulatory Guide 146 (‘RG 146’)¹⁵ sets out the details of the minimum standards for the education and training of financial advisers (both licensees and representatives) who provide general or personal¹⁶ financial product advice to retail clients¹⁷ and how such financial advisers can meet these education and training standards.

The predecessor to RG 146¹⁸ was first introduced in relation to the implementation of the *Financial Services Reform Act 2001* (Cth),¹⁹ following a recommendation by the 1996–97

¹³ ASIC, *Pro Forma 209: Australian financial services licence conditions* (November 2011), A2-4 (Conditions 7(a) and (b)) <<http://download.asic.gov.au/media/1343750/rep259-appendix-2-PF209-draft-rg166-Financial-requirements-for-REs.pdf>>.

¹⁴ *Corporations Regulations 2001* (Cth), reg 7.6.04(1)(d).

¹⁵ ASIC, *Regulatory Guide 146*, above n 3.

¹⁶ ‘General’ advice is financial product advice that is not ‘personal advice’: *Corporations Act 2001* (Cth), s 766B(4). ‘Personal’ advice is ‘[f]inancial product advice given or directed to a person (including by electronic means) in circumstances where: (a) the person giving the advice has considered one or more of the client’s objectives, financial situation and needs; or (b) a reasonable person might expect the person giving the advice to have considered one or more of these matters’: *Corporations Act 2001* (Cth), s 766B(3). See also ASIC, *Regulatory Guide 244: Giving Information, General Advice and Scaled Advice* (13 December 2013), <<http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-244-giving-information-general-advice-and-scaled-advice/>>.

¹⁷ This policy setting is based on a view taken by ASIC that there ‘is less risk to sophisticated investors of problems with poor advice because they are more capable of obtaining and monitoring the quality of services available to them’: ASIC, *Submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the regulations and ASIC policy statements made under the Financial Services Reform Act 2001* (May 2002), 20 <https://www.aph.gov.au/~media/wopapub/senate/committee/corporations_ctte/completed_inquiries/2002_04/fsra_regs/submissions/sub20_doc.ashx>.

¹⁸ ASIC, *Policy Statement 146: Licensing: Training of Financial Product Advisers* (first issued 28 November 2001); see generally ASIC, ‘IR 03–02 Updated Policy Statement 146: Training of Financial Product Advisers’ (Media Release, 22 January 2003), <<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2003-releases/ir-03-02-updated-policy-statement-146-training-of-financial-product-advisers/>>. This was adapted from the *Interim Policy Statement 146* that was issued in relation to the Corporations Act before the reforms introduced by the *Financial Services Reform Act 2001* (Cth): ASIC, *Submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the regulations and ASIC policy statements made under the Financial Services Reform Act 2001*, above n 17, 20.

¹⁹ The *Financial Services Reform Act 2001* (Cth), which commenced on 11 March 2002, made a number of significant changes to the *Corporations Act 2001* (Cth), including for present purposes, introducing a single licensing regime for financial advice and dealings in relation to financial products: see further Revised Explanatory Memorandum, *Financial Services Reform Bill 2001*

Financial System Inquiry to establish minimum education and training requirements for the licensing of financial advisers.²⁰

The education and training standards set out under RG 146 are sets of knowledge and skill requirements that vary depending on the financial adviser's activities. Specifically, different education and training requirements will apply (as set out in Table 1 below) depending on whether the financial adviser is providing 'general' or 'personal' advice, and whether the financial adviser is providing advice for 'Tier 1 products' (considered to be more complex financial products) or 'Tier 2 products' (considered to be simpler and more straightforward financial products).²¹

Under RG 146, the education level required for financial advisers on Tier 1 products is broadly equivalent to the 'Diploma' level under the Australian Qualifications Framework. The education level required for advisers on Tier 2 products is broadly equivalent to the 'Certificate III' level under the Australian Qualifications Framework.²² Table 1 below summarises how the generic and specialist knowledge and skill requirements from RG 146 apply to financial advisers.

(Cth),<<https://www.legislation.gov.au/Details/C2004B00956/Revised%20Explanatory%20Memorandum/Text>>.

²⁰ Financial System Inquiry, *Final Report* (March 1997), 37, 275
<<http://fsi.treasury.gov.au/content/FinalReport.asp>>.

²¹ 'Tier 1 products' are all financial products except those included as 'Tier 2 products'. 'Tier 2 products' are general insurance products, except for personal sickness and accident (as defined in reg 7.1.14); consumer credit insurance (as defined in reg 7.1.15); basic deposit products; non-cash payment products; FHSA deposit accounts (a first home saver account that is a deposit product as defined under s 761A of the *Corporations Act 2001* (Cth)); ASIC, *Regulatory Guide 146*, above n 3, 16, 61.

²² Ibid 5. For further information on the Australian Qualifications Framework, see generally Australian Government Department of Education and Training, *Australian Qualifications Framework*, <<https://www.aqf.edu.au/>>.

Table 1: Summary of the applicability of ASIC RG 146's generic and specialist knowledge and skill requirements

	Generic Knowledge Requirement²³	Specialist Knowledge Requirement²⁴	Skill Requirement²⁵
When does the RG 146 'generic knowledge', 'specialist knowledge' and 'skill' requirements apply?	For financial advisers who provide financial product advice on Tier 1 products. ²⁶	<p>For financial advisers who provide personal financial product advice to retail clients:</p> <ul style="list-style-type: none"> • Financial planning. <p>For financial advisers who provide financial product advice on Tier 1 products:</p> <ul style="list-style-type: none"> • Securities; • Derivatives; • Managed investments; • Superannuation; • Insurance (Tier 1 products); • Foreign exchange; • Margin lending facilities; and • Regulated emissions units. <p>For financial advisers who provide financial product advice on Tier 2 products:</p> <ul style="list-style-type: none"> • General insurance (Tier 2 products); • Deposit products and non-cash payment products; • First Home Saver Accounts. 	For financial advisers who provide personal financial product advice to retail clients.

²³ This refers to the 'generic knowledge of the environment in which [financial advisers] operate to understand the context in which advice is given': ASIC, *Regulatory Guide 146*, above n 3, 38 (Appendix A).

²⁴ This refers to the specific knowledge areas about the specific financial products and the specific markets in which the financial adviser operates: see generally *ibid* 39–52 (Appendix A).

²⁵ This refers to the 'appropriate skills' that financial advisers providing personal financial advice to retail clients should be able to apply in relation to their activities and the products and markets in which they operate: see generally *ibid* 53–5 (Appendix B).

²⁶ According to ASIC, financial advisers on Tier 2 products are not required to meet the generic knowledge requirement as 'Tier 2 products do not have an investment component where the return is subject to market fluctuations and, therefore, training on the economic environment as part of generic knowledge training is less relevant to advisers on Tier 2 products': *ibid* 18.

To meet these RG 146 education and training requirements, financial advisers can complete relevant training courses, or demonstrate their competence through individual assessment against the training standards by an authorised assessor.²⁷ Licensees are also expected to ‘implement policies and procedures to ensure that their advisers (and they themselves, if they are natural person licensees) undertake continuing training to maintain and update the knowledge and skills that are appropriate for their activities’.²⁸

²⁷ Ibid 6.

²⁸ Ibid 8. This is based on ASIC, *Pro Forma 209*, Condition 6: see ASIC, *Pro Forma 209*, above n 13, A2-4.

4. Recent Reforms

The Australian Government undertook reforms in this area²⁹ following two separate reports released in 2014 by the Financial Systems Inquiry and the Parliamentary Joint Committee on Corporations and Financial Services, which found issues with the current education and training requirements for financial advisers and made recommendations for improvements.³⁰

Consequently, the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* (Cth) ('Professional Standards Act') was passed and commenced on 15 March 2017. The Professional Standards Act amended the *Corporations Act 2001* (Cth). The main purpose of the amendments is to raise the education, training and ethical standards of financial advisers. Broadly summarised, the Professional Standards Act will require financial advisers who provide personal advice to retail clients on more complex financial products to hold a degree, undertake a professional year, pass an exam, undertake continuous professional development and comply with a Code of Ethics.³¹ A brief outline of each of these key areas of reform is provided below.

4.1 Scope of application

The reforms introduced by the Professional Standards Act will only apply to 'relevant providers'. A 'relevant provider' is an individual who is a financial service licensee, an authorised representative, employee or director of a financial service licensee (or a related body corporate of a financial service licensee) that is authorised to provide personal

²⁹ See generally Australian Government, *Government Response to the Financial System Inquiry: Consumer Outcome Measures* (20 October 2015), <http://192.195.49.161/PublicationsAndMedia/Publications/2015/Govt-response-to-the-FSI/html/06-Consumer-outcomes-measures>; Australian Government, *Australian Government Response to the Parliamentary Joint Committee on Corporations and Financial Services Report: Inquiry into Proposals to Lift the Professional, Ethical and Education Standards in the Financial Services Industry* (August 2017), http://192.195.49.161/~media/Treasury/Publications%20and%20Media/Publications/2017/Inquiry%20into%20proposals%20to%20lift%20the%20standards%20in%20the%20financial%20services%20industry/Downloads/PDF/Government_response_PJC_Inquiry.ashx; Australian Government (The Treasury), *Lifting the Professional, Ethical and Educational Standards in the Financial Services Industry*, <https://treasury.gov.au/consultation/lifting-the-professional-ethical-and-education-standards-in-the-financial-services-industry/>.

³⁰ Financial Systems Inquiry, *Final Report*, above n 4, 222–226 (Recommendation 25); Parliamentary Joint Committee on Corporations and Financial Services, *Report: Inquiry into Proposals to Lift the Professional, Ethical and Education Standards in the Financial Services Industry* (19 December 2014), 35–57
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Financial_Adviser_Qualifications/~media/Committees/corporations_ctte/financial_industry_standards/report.pdf.

³¹ Explanatory Memorandum, *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016* (Cth), 3, http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5768_ems_c6b53b56-1756-4e41-8010-03cfca59ab6f/upload_pdf/605981.pdf;fileType=application%2Fpdf.

financial product advice in relation to ‘relevant financial products’.³² ‘Relevant financial products’ are financial products other than basic banking products, general insurance products, consumer credit insurance or a combination of these financial products.³³ This is intended to capture a range of the more complex financial products that is similar to, but not exactly the same as, the range of financial products covered by the concept of ‘Tier 1 products’.³⁴

For the purposes of the outline of the main reforms introduced by the Professional Standards Act in the remaining parts of this Section 4, references to ‘financial advisers’ or ‘financial planners’ are references to ‘relevant providers’ only.

4.2 Education, supervision and ongoing professional development requirements

The reforms introduced by the Professional Standards Act require that from 1 January 2019, all new financial advisers (those authorised on or after 1 January 2019) must:

- Hold a bachelor or higher degree, or equivalent qualification (before they can complete the two other requirements immediately below);
- Pass the compulsory exam set by the Financial Adviser Standards and Ethics Authority Limited (‘FASEA’). This requirement is aimed at ensuring an industry standard of competence and skill in the financial advice industry; and
- Undertake at least one year of work and training.³⁵

Under transitional provisions, existing financial advisers (those authorised between 1 January 2016 and 1 January 2019) must pass the compulsory exam by 1 January 2021 and obtain a standard equivalent to a bachelor degree by 1 January 2024.³⁶ On 20 March 2018, the Financial Adviser Standards and Ethics Authority released proposed guidance on education pathways for existing advisers for public consultation until 29 June 2018.³⁷

³² Under a newly inserted defined term ‘relevant provider’ in s 910A of the *Corporations Act 2001* (Cth).

³³ Under a newly inserted defined term ‘relevant financial products’ in s 910A of the *Corporations Act 2001* (Cth).

³⁴ See n 21 and accompanying text. ‘Tier 1 products’ are all financial products except those included as ‘Tier 2 products’. ‘Tier 2 products’ are general insurance products, except for personal sickness and accident (as defined in reg 7.1.14); consumer credit insurance (as defined in reg 7.1.15); basic deposit products; non-cash payment products; FHSA deposit accounts (a first home saver account that is a deposit product as defined under s 761A of the *Corporations Act 2001* (Cth)); ASIC, *Regulatory Guide 146*, above n 3, 16, 61.

³⁵ See generally new Division 8A of the *Corporations Act 2001* (Cth).

³⁶ See generally *ibid*, new Part 10.23A.

³⁷ See further FASEA, *Proposed Guidance on Education Pathways for All Advisers* (20 March 2018), <<https://www.fasea.gov.au/consultations/proposed-guidance-on-qualification-pathways-for-all-advisers/>>.

In addition, financial advisers will also need to comply with new annual continuing professional development requirements (which will be set by the Financial Adviser Standards and Ethics Authority, see section 4.4 below). There is also a new accompanying obligation to notify ASIC of non-compliance with these continuing professional development requirements for each year.³⁸

Taken collectively, these new requirements set higher education and training standards than those found under current RG 146 requirements (see section 3.2).³⁹

4.3 Code of Ethics

The reforms introduced by the Professional Standards Act will require relevant providers to comply with the industry standard Code of Ethics.⁴⁰ Under the Professional Standards Act, the standards body — being the Financial Adviser Standards and Ethics Authority (see section 4.4 below) — must make a Code of Ethics as a legislative instrument.⁴¹ On 20 March 2018, the Financial Adviser Standards and Ethics Authority released an exposure draft of a Code of Ethics for Financial Advisers for public consultation until 1 June 2018.⁴²

Monitoring bodies will operate compliance schemes to monitor and enforce financial advisers' compliance with this Code of Ethics.⁴³ Compliance schemes must be approved by ASIC.⁴⁴ ASIC may only approve a scheme if it is satisfied that compliance with the Code of Ethics will be 'appropriately monitored and enforced' under the scheme.⁴⁵ Monitoring bodies may be professional associations, but cannot be a financial services licensee or an associate of a financial services licensee.⁴⁶

4.4 Independent standards body

The Professional Standards Act provided for the establishment of a Commonwealth standards setting body with broad powers over professional standards for the financial advice industry.⁴⁷ This standards setting body — the Financial Adviser Standards and Ethics Authority (FASEA) — was established on 11 April 2017.⁴⁸

³⁸ See *ibid*, new s 922HB.

³⁹ See n 22 and accompanying text.

⁴⁰ See new s 921E of the *Corporations Act 2001* (Cth).

⁴¹ See new s 921U(2)(b) of the *Corporations Act 2001* (Cth).

⁴² See further FASEA, *Code of Ethics* (20 March 2018), <<https://www.fasea.gov.au/consultations/code-of-ethics/>>.

⁴³ See new s 921G(2) of the *Corporations Act 2001* (Cth).

⁴⁴ See generally *ibid*, new Division 8B ('Compliance schemes').

⁴⁵ See *ibid*, new s 921K(4).

⁴⁶ See *ibid*, new s 921G(3).

⁴⁷ See generally *ibid*, new Division 8C ('The standards body').

⁴⁸ See The Financial Adviser Standards and Ethics Authority Limited, *Standards Authority*, <<https://fasea.gov.au/>>.

The responsibilities of FASEA include approving degrees and foreign qualifications, approving and administering the compulsory exam, determining continuing professional development requirements and setting the Code of Ethics.⁴⁹ This Code of Ethics is intended to be a uniform standard for the financial advice industry (i.e. all relevant providers).

4.5 Commencement dates for reforms

Broadly summarised, the new education, exam, professional year and CPD requirements will commence on 1 January 2019 for new financial advisers (those authorised on or after 1 January 2019). From that date, only relevant providers who meet all the professional standards requirements will be able to call themselves a financial adviser or financial planner.⁵⁰ For existing relevant providers (those authorised between 1 January 2016 and 1 January 2019), RG 146 will continue to apply until the new education requirements commence on 1 January 2024. For new relevant providers (those authorised on or after 1 January 2019), RG 146 will not apply to them.

The Code of Ethics will commence on 1 January 2020 — all financial advisers are required to be compliant any Code of Ethics requirements by this date.

Table 2 below (derived from a table prepared by ASIC) sets out the commencement dates for the main professional standard requirements.

Table 2: Commencement Dates for the Main Professional Standard Requirements

Professional Standard Requirement	Commencement Date for New ‘Relevant Providers’ (authorised on or after 1 January 2019)	Commencement Date for Existing ‘Relevant Providers’ (authorised between 1 January 2016 and 1 January 2019)
Have a relevant bachelor or higher degree, or equivalent qualification	1 January 2019	1 January 2024
Pass the exam	1 January 2019	1 January 2021
Complete a professional year	1 January 2019	N/A
Comply with annual CPD requirements	1 January 2019	1 January 2019
Comply with the code of ethics	1 January 2020	1 January 2020
Be covered by a compliance scheme	1 January 2020	1 January 2020

Source: ASIC⁵¹

⁴⁹ Ibid.

⁵⁰ See new s 923C of the *Corporations Act 2001* (Cth).

⁵¹ ASIC, *Professional Standards for Financial Advisers — Reforms* (12 March 2018), ‘When do the reforms commence?’ <<http://asic.gov.au/regulatory-resources/financial-services/professional-standards-for-financial-advisers-reforms/>>.