

GOVERNMENT PROPOSES SIGNIFICANT REFORMS TO INCREASE PROFESSIONALISM OF FINANCIAL ADVISERS

01 December 2016 | Australia

Legal Briefings - By **Michael Vrisakis** and **Steven Rice**

The Federal Government has proposed reforms that, if passed, will require certain financial advisers to comply with professional, ethical and education standards

This will have significant commercial and regulatory implications for financial advisers and dealer groups. There will be sanctions for non-compliance and professional associations may take on an investigatory and enforcement role.

According to the Government, the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 (**Bill**) would amend the *Corporations Act 2001* (Cth) (**Act**) to 'raise the education, training and ethical standards of financial advisers.' By introducing the Bill, the government says it aims to enhance consumer trust and confidence in financial advisers and improve the sustainability of the financial advice industry in Australia.

THE REQUIREMENTS ONLY APPLY TO CERTAIN FINANCIAL ADVISERS

The proposed standards will only have to be met by relevant financial advisers (**RFA**) who provide personal advice to retail clients in relation to complex financial products (financial products other than basic banking products, general insurance products, consumer credit insurance, or a combination of these).

THE REFORMS WILL INCREASE THE REQUIREMENTS IMPOSED ON RFAS

Under the Bill, RFAs that commence their services after the proposed standards have been implemented must:

- hold a degree;
- pass an exam;
- undertake a 'professional year';
- undertake continuous professional development; and
- comply with a Code of Ethics.

The specific detail of these standards will be formulated and regulated by a standards body (a not for profit company, limited by guarantee).

A TRANSITIONAL PERIOD IS AVAILABLE

Under the Bill, RFAs who commenced before the new standards come into effect will be subject to transitional standards. Such RFAs must:

- hold a degree (or equivalent, or higher) no later than 1 January 2024;
- pass an exam no later than 1 January 2021;
- undertake continuous professional development from 1 January 2019; and
- comply with a Code of Ethics from 1 January 2020.

PROFESSIONAL ASSOCIATIONS MAY TAKE ON A SELF-REGULATORY ROLE

The Bill sets out a number of provisions requiring 'monitoring bodies', which may be professional associations or other persons, to:

- put in place a ‘compliance scheme’ to monitor and enforce compliance with a Code of Ethics;
- seek ASIC approval for the ‘compliance scheme’;
- notify licensees of a determination that the RFA has failed to comply with the Code of Ethics; and
- require the ‘monitoring body’ to give ASIC information and documents.

‘Monitoring bodies’ may also request information, documents, and the provision of reasonable assistance from licensees and RFAs.

THERE WOULD BE A NUMBER OF SANCTIONS FOR NON-COMPLIANCE

If a pre-existing RFA does not comply with the education and training standards within the transitional period, and subsequently becomes authorised to provide personal advice to retail clients about Complex Products, ASIC can either:

- refuse to grant an Australian financial services licence (**AFSL**) to the RFA; or
- make a banning order against the RFA,

depending on whether the RFA held an AFSL in their own right or was an authorised representative.

If a RFA authorises an individual to provide financial advice who has not met the education and training standards, including after any applicable transitional period has elapsed, the authorisation will be void. Further, ASIC’s banning power under s 920A of the Act will also be enlivened against the person (the licensee or authorised representative) who authorised the individual.

Sanctions for failure to comply with the Code of Ethics may include warnings or additional training. While failure to comply with the Code of Ethics alone cannot justify a banning order, ASIC may take non-compliance into account when determining whether it is in the public interest to ban a RFA for breach of another legal requirement.

KEY ISSUES AND NEXT STEPS

While the transitional period is helpful, dealer groups in particular will need to consider now whether their advisers will be in a position to meet these requirements and what systems and controls they will need to put in place to ensure compliance. They may also wish to consider what their medium-term strategy will be to manage their relationships with professional associations, given the regulatory role those associations may have in the future.

For more information see the proposed [Bill](#) and the relevant [Explanatory Memorandum](#).

Olivia Vallieres assisted with the writing of this article.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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