<u>Comments To Treasury On Exposure Draft Paper On Advisers Experience Pathway</u>

I refer to the media release dated 18 April 2023 by the Honourable Stephen Jones, MP, Minister for Financial Services, on the matter of educational standards for experienced financial advisers.

I accept your invitation to provide comments on the exposure draft and explanatory statements.

<u>My Advice Background</u>

Mature-age advisers are the backbone of life risk specialist advisers. I am a 35-year veteran of the life insurance advice industry. For clarification, I advise retail clients **only** on specified aspects which form the basis of any sound financial plan – *the need to **protect** income, **create** income after certain events and eliminate all financial liabilities after certain events*. I choose not to advise on investments (super or non-super), superannuation structure and retirement planning, with the exception of life risk policies placed in a superannuation environment. If I identify a need for specialised advice on areas for which I choose not to be licensed, I refer to a network of trusted and competent specialist advisers, without a referral fee either way.

I was a registered Life Insurance Broker from 1998-2004, and held my own AFSL, [redacted] until 2010.

There are currently no specific risk-based educational opportunities for risk specialists. At this point in time, the only qualification I am required to hold is **PS 146 certification.** PS146 was first introduced in 28 November 2001 under the *Financial Services Reform Act 2001 (FSR Act)*., which I obtained in 2002. For experienced advisers, PS146 was attained not by sitting an exam of tricky questions designed by academics, conducted in a pressure cooker environment, but instead asked experienced advisers to submit <u>five case files</u> for an independent audit (Integratec). The Integratec process was designed to verify that I could demonstrate a rigorous and repeatable process that I would always use to develop my life risk advice, and to be able to demonstrate that the client was better off after enacting my recommendations. I've always followed the creed "do no harm", and always seek to ensure that the client is demonstrably better off after engaging with my advisory practice. This process has ensured that I have never received a client complaint.

Is the Corporations Act, and the FASEA Code of Ethics, fit-for-purpose for the differing advice disciplines, and is ASIC's one-size-fits-all attitude to advisers still appropriate. Years of ill-conceived disruption in the delivery of financial advice by government raises the question: does the public service, and therefore their Ministers, understand the structure and diversity of advice in our industry? For more than two decades, there has been a breakup of advisers into *specialist areas of* advice to suit different markets: risk-only advisers, stockbrokers, investment advisers, superannuation advisors (including SMSF) and so-called "holistic" advisers.

The key point to understand here is that most advisers post-Hayne are ***self-employed businessman:*** *AMP & Insignia (IOOF) are the only institutions left in* *advice, and both are denuded*. All advisers are by nature client focused, entrepreneurial and independently minded. We run companies, we employ staff, we met our obligations to the ATO, and the results of our endeavours reduce demand for welfare. We incur all the usual costs of running a business, **plus** professional indemnity costs, product research costs and an **ASIC Advisor Levy** of $1, 432pa. As of 2023 there are very few" salaried" advisers "employed" by institutions.

Independent or Conflicted?

However, much to risk advisers' annoyance, we are still not permitted by the Corporations Act to market ourselves as being "**independen**t." That situation is a direct consequence of Stan Wallis, then Chairman of AMP, being able to influence his *Wallis Committee* to recommend that small businessmen advisers, even registered life brokers, of which there were then very few, could not call themselves**" independent**", because it was seen as a threat to the then institutional ownership of most adviser forces.

Independence is a state of mind: a declaration of independence of thought. The principle espoused by the Corps Act is a reflection of a *feudal* advice system – advisers are still seen as serfs to the "Lords" in the guise of product manufacturers. As were the medieval serfs mandated to produce agricultural products only on rented land, the legislation that regulates advisers remains targeted at the sale of products, as in financial products, but not financial advice. Advisers legally do not own their clients, we "rent" them from AFSLs.

As a licenced life risk Specialist advisor, authorised by an independent AFSL, **I am not dependent upon any life insurer. Nor is there any control exerted on life risk advisers by life insurers.** Indeed, under the AFSL licensing system, there are no formal agreements between myself, as an adviser, and the product manufacturer. Apparently being in receipt of Life risk commission causes a conflict, but commission has long been a proven means for mum-and-dad clients to afford life risk advice; furthermore, remuneration is fully disclosed, and is now *standardised* under LIF, a welcome move. BUT the **60/20 LIF commission level is totally inappropriate** to sustain a life risk business, to be here for our clients today, and tomorrow, to look after those clients.

What's often forgotten, in the case of life risk commissions, it is the adviser whose capital is at risk *until such time as, **two years** after the policy start date, when the responsibility of the two-year" clawback", increased under LIF, is cleared. No other business in this country is held to ransom in this manner. And just for the record, mum and dad clients seeking life risk advice are reluctant, indeed totally resistant, to paying advice fees.*

FASEA

Has FASEA provided guidance, or hindrance? Before FASEA, advisers who were members of either the Association of Financial Advisers (AFA) or the Financial Planning Association (FPA) subscribed to a *Code of Ethics*. The *conflicted* academics on the FASEA Board chose to ignore those industry Codes: after all, their universities had courses to flog. The **FASEA Code of Practice** was in essence, a failed attempt at the type of *codification* of certain well-established *principles* in common-law and commercial law undertaken by the Napoleonic Code in 1804.

> But the FASEA Code, supposedly a statement of values and principles, went much further and introduced highly prescriptive standards to sit over and above Corps Act requirements. The Code attempted to be specific in an area where values are more important than black & white law; FASEA sought to build a rabbit-proof fence, where a striped HAZMAT tape might have been more appropriate. **For example, please consider Standard 5 - a lawyer's picnic.**
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> The Code of Ethics should have operated as a safety net. It's acknowledging that, even despite ALL the regulation, there are times when you can be within the bounds of the law, but still doing the wrong thing. These instances need to be evaluated on a *case-by-case* basis – and that's because each situation has an almost unlimited set of potential circumstances which can't all be accounted for in laws and regulation. Fundamentally, the Code requires advisers to be able to *identify situations* that are unusual, and then stop to do a gut check. *That's the nature of ethics – there are no hard and fast rules, but you should know it when you see it.*

Frankly FASEA is not fit for purpose. But to understand FASEA, and its's significant failings, one should study the history and the motives of the initiators. FASEA was funded for its first four years to the tune of $15.6 million by a consortium of banks - CBA ANZ, Westpac, AMP, SunCorp and Bendigo Bank, Macquarie Bank, NAB/MLC, all of whom, coincidently at that time, had large "employed" in-house financial advice teams flogging the insurance products of bank-owned life insurers and associated fund managers. Vertical integration was clearly Minister O'Dwyer's unstated policy.

Banks are not charities, so why be so generous, funding FASEA ? The banks' objective to me has always been clear, despite the cover-story of greater "professionalism"**: the banks in 2015 had an anti-competitive objective of eradicating independent small-businessmen advisers providing personal non-banking financial advice.** It was a classic big end of town play: small business lacked the resources, both to institute safeguards in advice processes, and to fund tuition for individual advisers to pass the FASEA exam. The plan came unstuck when the banks were "called out" by Hayne, but you can bet the banks will be back into non-banking advice, because under QAR, robo-advice will encourage un-regulated gouging, with significant and entirely predictable consumer detriment.

The banks, hounded by Hayne, left personal advice with a smile on their faces. The banks had cunningly left the self-employed advisers with a very smelly timebomb, because they knew that ASIC intended to begin levying the remaining advisers on the FAR to cover the costs of litigating against previous bad bank advice.

Yet the ACCC was apparently banned from the policy development that led to FASEA!

The Educational Case for Risk Advisers

As it stands today, the provision of life risk advice is something one can only learn with experience – **on-the-job, mentored by an experienced life risk adviser,** possibly supplemented by agnostic educational training offered by the **TAL Risk Academy**. All of the units offered in any of the university diplomas I have sighted make only very passing reference to the need for life insurance as the basis of a financial plan, the intricacies of how life insurance actually works and the elements of product design, without being product specific. These are generic generalist courses, designed to fill a gap and churned out by minor universities because in 2017 they thought they saw a business opportunity i.e. 25,000 advisers at $20,000 each is not to be laughed at. **BUT**, if those diplomas made you a better adviser, why did FASEA then deem it necessary to add an "apprenticeship" to ensure the mentoring of first year *new entrants*, even armed with all the "necessary" diploma units.

The issue with the "mentoring" proposition from FASEA is that all these qualified new entrants are legally unable to give advice in the first 12 months of employment. But once let loose on an unsuspecting public, many of these new entrants may decide that life risk advice is an easier place to start on their advice career than investment advice. Those university diplomas will not have imputed sufficient specific knowledge suffice to be regarded as a competent life risk Specialist. Be warned - many of the financial advisory firms of sufficient size and scale to be able to afford to employ a non-productive new entrant adviser, *have chosen, in the last few years, to decline to provide life risk advice to investment clients*. It's simply been scoped out of advice.

The elephants in the room with these ***new entrant*** *life risk advisers are the Professional indemnity Insurers (PI) and AFCA.* If a *new entrant*, having passed the mentoring phase, chooses to become a **life risk advisor**, then the Government **must decree** that these new entrants be compelled to undertake specific **life risk advising** training, before being licensed to provide life risk advice. **Then, the first years SOAs must be pre-vetted by the AFSL.**

Ideally such life risk training should last six or 12 months, be moderated by experienced advisers, and established by appropriately qualified and ***relevantly experienced*** *academics, if necessary.*

Who Cares If There Are Less Life Risk Specialists?

New entrants as life risk specialists are for the future. The problem NOW for the government is simply one of numbers: there's been a reduction of 10,000 to 12,000 licensed financial advisers in the last five years, indubitably linked with the impact of **FASEA, LIF** and ASIC's ever increasing compliance demands. Not to mention a sudden imposition of an **ASIC levy** of around $1500 per year, purely to fund ASIC's cases against the big bank's previous poor advice record, while failing to offset the penalties garnered from court action to the future calculation of the levy.

Risk advisor numbers: I believe that five years ago there would have been around 2000 risk-only specialist advisers. **Recent estimates say those figures are now down to 500.** This massive reduction in the number of pure risk specialists is simply reflected in the loss of **60% of new life risk business** going into the life insurers. According to **Adviser Ratings**, the number of pure risk life specialists is down **67%** in less than a year, and 77% of the non-risk advisers are no longer writing life risk policies, citing reduced remuneration and increasing complexity to life risk advice. That's a direct result of Coalition government policy.

This predicament, reduced numbers of life risk specialists, cannot go on for any longer, and it is already impacting on the continued existence of life insurers. Future capital adequacy and solvency tests will force smaller insurers to amalgamate with the monoliths, and that **will not,** in my experience, be in consumers best interests. And such amalgamations might just create an attractive target for **cyber criminals**, as past behaviour by some insurers purchasing smaller entities is that cyber protection becomes a secondary issue until data base amalgamation is achieved, which often takes years.

The second issue is that most remaining life risk advisers are very mature in terms of age. That is why most of us found it very difficult to sit at a FASEA computer for 3 ½ hours answering hypothetical questions set at graduate level, designed by academics who have never sat in front of a client, nor provided advice, or actually implemented and managed that advice. Risk specialists were particularly disadvantaged - in the 57 questions I completed in my last FASEA exam, just **three questions had a risk focus.** The pressure of that exam is at total contrast to FASEA's stated ambition that advisers should always be taking time to reflect on an advice situation that could potentially involve a "moral dilemma."

But risk advisers like what we do and we want to retire on our timetable, not that of the government. Just today, I have been able to ring a client of 12 years who had suffered a heart attack while having stents inserted (normally a partial trauma benefit), to inform him his insurer would be paying a full trauma policy benefit for a complete heart attack, in a tax-free lump sum, of some $295,000. *That's why we do what we do.*

Any further decline of risk specialist advisers will have one other direct impact on policy-holders as consumers. If we, the advisers who introduce fully underwritten life business to the insurers, are forced to retire, by either meaningless and artificial educational obligations, or compliance overload, then I can guarantee you there will be a minimum **25% drop off** in existing life risk business already "on the books" – the "rivers of gold", because clients would quickly detect that the adviser that had the relationship with them for many years, is no longer there.

Claims administration and policy administration in general will overload life insurers resources when clients decide to cancel cover. The trauma claim mentioned above would take six months to process, not three weeks, because I will have left the business and there is no longer a servicing adviser-policy holder relationship. Life insurers will be overloaded by the messy administration tasks that would generally be the burden of the life insurance adviser, and that has to add to costs for the insurer, apart from the obvious impact of losing revenue that was previously" locked in". AFCA, the life insurance ombudsman, will be overloaded. Your Treasurer would face a larger welfare budget. *And the facility for **default** cover in industry super funds will no longer exist.*

Life insurance policyholders don't have relationships with insurers: they have relationships, some of them very long-standing, with their life risk advisor. *Relationships between adviser and client are still, and will always be, the basis of sustainability in the life insurance industry.* Life insurers have a shocking history of looking after "orphan" clients.

There is a demonstrable and urgent need to provide incentives for established life insurance advisors to remain in the industry.

Appropriate Education and Training

As a long-time adviser, I argue our "professional" or "representative" bodies have failed our industry, and particularly the specialty of life insurance advice. When I joined this industry, both the AFA and the FPA conducted US-sourced "training" courses of up to one year in length, which provided additional targeted training and education to advisers over and above the product and sales orientated training provided by the product providers (AMP, MLC, NML et cetera) to whom the agent/adviser was "tied", or indentured, to coin a phrase. Sadly, the AFA courses disappeared two decades ago under the weight of an onerous training accreditation regime, and the FPA's longer "designation courses" were subsequently not recognised by FASEA. The FPA, supporting FASEA, was aghast!

The Diploma requirement put in place under FASEA, whereby advisers must be in possession of an 8- unit diploma by 1 January 2026, completely ignores the fact that there are no diplomas developed for, and targeted to, **life risk advisers**, particularly if the adviser is not a registered tax adviser.

I have been searching for 20 years to find appropriate additional qualifications I could obtain from an educational institution which would assist me to provide even better advice to my life risk clients. **There are none!**

Forcing life risk advisers with significant "hands-on" *life risk* advising experience to undertake the expensive and time demanding study for a generalist diploma is a total waste of adviser resources: such a diploma does not offer any benefit to a life risk client, and may indirectly result in the winding up of currently competitive life offices, which must rely on a stream of underwritten new lives, from reducing numbers of life risk specialists.

Remember, members of super funds who access *default cover* are never underwritten, and as a consequence, the life insurer holds an increased risk by taking on that business for more than three years.

Conclusion

I fully support Minister Jones' proposal for the Experience Pathway. Wealth Data believes that this policy change will advantage some 3000 existing licensed advisers. I believe the application of the Pathway will reinvigorate **life risk** advising in particular, something that is needed to maintain stability in the life insurance industry and with it, the continued availability of **default cover** for not-for-profit superannuation funds.

There will be no loss of professionalism as claimed by some critics, mostly those investment advisers who have already obtained the relevant qualifications and are seeking to restrict "club" membership. Frankly that position is *anti-*

competitive, as the aim seems to be to restrict the number of advisers, thus to drive up advice fees. I do not support suggestions by the AFA & FPA that there should be a "sunset clause" on how long advisers can utilize the Pathway-the basis of that argument is not proven.

The development of the Experience Pathway is in my view the most valuable policy change proposed in our industry since 2004.

There is now a demonstrable need for the introduction of a short-course diploma, designed to facilitate the entry of NEW risk advisers into the industry.

Even as a mature age entrant, I found that I needed at least five years to be able to satisfy myself that I was on my way to mastering the complexities and subtleties involved in providing competent life insurance advice, *and I'm still learning*. **But, u**nder no circumstances should new entrants, loaded down with generic degrees or qualifications, be allowed to begin advising clients, at the end of the mentoring process, on aspects **of life insurance.**

Such a rule is particularly of more importance if the new entrant was mentored by a financial advice business *where the practice had previously taken a position to decline to offer life insurance advice.* We don't give practising certificates to graduate lawyers!

The AIOFP, one of the more effective representative groups for advisers, and which receives no funding from product manufacturers, is proposing a six- or 12-months diploma level course for **new entrants** specifically on life risk advising, which must be obtained before the ***new entrant*** enters into arrangements to place business with any life insurers. This "diploma" would be restricted to **life risk insurance** and all the ramifications of the provision of advice on such a complex matter.

But there should be no need to apply this requirement to returning experienced risk advisers

Thank you for taking an interest in reading this rather long submission. I may not get another opportunity to put the case for the retention of life risk specialist advisers, as we are generally ignored by the policymakers and other stakeholders who choose to ignore our valuable and essential contribution to financial advice in Australia.

Yours faithfully

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