9 July 2021

Senate Standing Committees on Economics
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Parliament House
Canberra ACT 2600

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Dear Senator Brockman,

FINANCIAL SECTOR REFORM (HAYNE ROYAL COMMISSION RESPONSE—BETTER ADVICE) BILL 2021

The SMSF Association (SMSFA) welcomes the opportunity to provide this submission to the Senate Economics Legislation Committee.

We support the policy intent to simplify the regulatory environment for financial advisers. The proposed changes will aid in the removal of some of the additional layers of complexity around multiple registrations, regulatory bodies and codes. The SMSFA also views this as an opportunity to improve the efficiency of the current systems, regulatory oversight, and increase the level of individual accountability and professionalism. This will ultimately benefit financial advisers, the financial advice sector more broadly, and most importantly consumers.

Part 1 - Single disciplinary body for financial advisers

This measure is an important step in raising standards, providing consistency and simplification with the use a single body to monitor, review and where necessary discipline the sector.

It is in the best interests of the adviser, consumers, and the public to ensure that an appropriate and expedient process is put in place. It is understood that no time frames have been proposed in the draft legislation to allow for the necessary flexibility, with the time required to be determined and occur naturally based upon the nature, size and complexity of a particular matter.

Of concern, however, is whether this will see investigation times become protracted with matters lingering or mired as a result. Without a clear framework there is limited accountability.

Efficiency, particularly in the processing of simple or minor matters will be essential in containing costs incurred in processing, assessing, investigating, referring and then addressing matters before the FSCP.

Whilst the Association supports the expanded scope of FSCP, concerns are held on the pressure the operational costs of the FSCP and the supporting role played by ASIC will place on the financial advice sector. In particular, how will increased operational costs impact the fees, levies and other charges extended already to advisers. The current financial advisers levy already functions on a distorted cost recovery model, which needs review.

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The cost exposure for advisers under the current cost recovery model is significantly multiplied for the remaining pool of advisers as adviser numbers continue to decline.

Any significant increase in costs levied on advisers correlates to an increase in the costs of providing advice to consumers.

Adequate resourcing will also be a critical factor to enable ASIC to fulfill its role.

Part 2 - Registration of financial advisers

The SMSF Association welcomes measures that seek to improve the integrity and function of the financial advisers register and registration.

The introduction of an annual registration or renewal process and the incorporation of a fit and proper person declaration aligns with other professions and industry registrations.

Increasing individual accountability is seen as a positive step forward in further improving professional standards and the elevation of relevant providers (financial advisers) as professionals. However, to achieve this goal, the obligation should be an individual one and not that of the AFSL.

We note that Bill sets out a two-stage approach to allow the process to occur in parallel with the development of the necessary supporting IT structure. The practical need to adopt the proposed staged approach is acknowledged.

Under stage 1, the financial services licensee will be responsible for the registration of relevant providers (financial advisers).

When moving to stage 2, which will allow individual advisers to apply to register themselves, the appropriate alignment is achieved. This transition needs to occur as soon as is practical, noting that this will be driven by the time needed to put in place the new Australian Business Registry System.

Part 3 - Wind-up of FASEA and transfer of its standards functions to the Minister and ASIC

The SMSF Association supports the proposed winding up of FASEA. This is a common-sense measure that will further consolidate the regulation of financial advisers.

It was pleasing to see that clear provisions have been made to allow for a smooth transition and for the retention of essential work already undertaken by FASEA, particularly with regards to the approval of degrees and qualifications, both Australian and foreign.

It is essential that these resources, and the certainty they provide for advisers, are continued beyond the winding up of FASEA. However, once the transfer of responsibilities to the Minister and ASIC occurs, there is an urgent need for a review of several legislative instruments. Essentially, this process must include a proper consultation process with key stakeholders and industry. This process was lacking in their original development.

Concerns are held on the suitability of the current professional development requirements which are lacking in technical development.

The current FASEA prescribed continuing professional development standard requires financial advisers to complete 40 hours of CPD, 70% of which must be approved by their AFSL. Minimum CPD requirements across mandatory categories are:

- Technical – 5 Hours
- Client Care and Practice – 5 Hours
- Regulatory Compliance and Consumer Protection – 5 Hours
- Professionalism and Ethics – 9 Hours

This CPD framework and guidelines require urgent review. The shift in the regulation of tax financial advice to ASIC further drives this imperative.

Similarly, the Professional Year standards require review, to ensure that the appropriate technical components are addressed, including taxation now that the advisers are being removed from the Tax Practitioners Board and Tax Agent Services Act 2009 purview.

In addition, the current education standards and approved courses and degrees refer to Tax Practitioner Board approved courses in commercial and taxation law. This relationship will cease on the winding up and transfer of FASEA functions and the transfer of tax financial advisers out of the Tax Practitioners Board purview.

Concerns surrounding, education, ongoing professional development and the Professional Year standards are discussed in further detail in Part 4 below.

Looking forward, the SMSFA would welcome the establishment of a consulting panel or panels to assist with the winding up of FASEA and the transfer of its functions to the Minister and ASIC. We believe this would be an important step in ensuring there is active engagement between industry, the regulators, Treasury and the Minister. Further, we view this as essential in ensuring that any future reviews, changes and new or amended legislative instruments, codes or standards are appropriate, practical and benefit consumers.

Part 4 - Regulation of tax (financial) advisers

The SMSFA supports the consolidation of financial adviser registrations and the relocation of tax (financial) adviser registrations from the Tax Practitioners Board to ASIC. This is a positive measure and an important first step in alleviating the complex and convoluted regulatory regime that applies to financial advisers and the associated compliance costs and burden.

It is important to acknowledge that the regulatory landscape and education requirements that apply to financial advisers, has significantly changed since the concept of tax (financial) advisers was first introduced in 2014. The original policy intent sought to increase standards and the regulation of advisers due to concerns on the standards of associated taxation advice provided by financial advisers.

Since then, the landscape has fundamentally changed with the introduction of the FASEA standards on education, the code of ethics, Professional Year and adviser exam. Currently, financial advisers are required to satisfy both the standards under FASEA and the Tax Practitioners Board.

With the transfer of the tax (financial) adviser registration into ASIC, it goes part way to simplifying the regulatory complexity that applies to financial advisers.

Proposed s.921H allows for the Minister to make legislative instruments for relevant providers (advisers) who provide tax (financial) advice services. Referenced here is the requirement for the adviser to have completed a specified degree, qualification, or course, undertaken specified work and training, and ongoing professional development.

This is a duplication of existing education and training standards in s.921B(2) along with the work already undertaken by FASEA in approving various degrees and courses. The FASEA education standards require the completion of taxation subjects. These include taxation law, finance and business law subjects as defined by the Tax Practitioners Board.

It is acknowledged that for some existing advisers with a relevant degree, it may be possible in some circumstances to complete the requisite education and not wholly meet the commercial and taxation law requirements.

It should be noted that the current *Tax Agent Services Regulations 2009* ("TASR 2009") Schedule 2, Part 3 Division 1 item 304 provided for an adviser who did not hold the requisite qualifications but had a prescribed period of experience and held a voting membership with an approved professional association (or body) to have met the requirements for registration.

The pathway provided for in Item 304 must be acknowledged, and advisers who currently qualify and are registered, should not have any additional requirements imposed upon them when renewing under ASIC from 1 January 2022.

The FASEA education standards will over time bring all advisers into the approved tertiary or, diploma or higher award education standard. For most advisers, this aligns with the education standards currently set out in TASR 2009 Schedule 2, Part 3 Division 1 (items 301 and 302).

The current education standards will need to be reviewed and updated post 1 January 2022 as the Tax Practitioners Board will cease to be the standard setting body for taxation education for tax (financial) advisers. Further the FASEA education standard references course and degrees approved by the Tax Practitioners Board. With the transfer of the FASEA and tax (financial) adviser functions to the Minister and ASIC, there is an urgent need for review and updating of this legislative instrument.

In addition to the FASEA education standards is the need for continuing professional development and compliance with the *Financial Planners and Advisers Code of Ethics 2019.* These address any actual or perceived gaps in the education requirements.

Separate professional development standards are currently prescribed by the Tax Practitioners Board. These need to be met in addition to those prescribed by FASEA.

A review of what is the current FASEA continuing professional development standard will be essential to ensure that taxation is properly and separately considered. A robust CPD standard will ensure that the appropriate standards are upheld.

In addition to the formal and ongoing education requirements, advisers are required to also comply with the Code of Ethics. Refer to the Value of Competence and Standard 10 extracted below.

Value of Competence

*Acting to demonstrate, realise and promote the value of competence requires you to have regard to the **knowledge, skills and experience necessary** to perform your professional obligations to each of your clients. It requires you to assess the professional services required by each client with regard to their individual needs, priorities, circumstances and preferences, expressed or implicitly identified as the subject matter of the financial advisory engagement. While it may be possible to supplement your professional competence by accessing the expertise of others, the duty of competence is ultimately personal and cannot be outsourced to others. [Emphasis added]*

Standard 10

You must develop, maintain and apply a high level of relevant knowledge and skills

Explanatory Statement - Standard 10

61. This Standard imposes, as an ethical duty, a requirement to develop and maintain a high level of relevant knowledge and skills. For example, if you specialise in a particular area, you should not provide advice outside that area unless you have the necessary skills and competencies to do so in a professional way.

62. Meeting the continuing professional development requirements (part of the education and training standards—see subsection 921B(5) of the Act and the Corporations (Relevant Providers Continuing Professional Development) Standard Determination 2018)—will assist with meeting this duty

The Code sets out vital, overarching, core principles. It imposes additional standards upon the adviser, over and above any education or continuing professional development obligations. In this context, it ensures that the adviser holds and maintains the knowledge, education, skills and experience necessary to fulfil their role, professional and ethical obligations.

The SMSFA is of the opinion that it is difficult to separate financial product and strategic advice from taxation advice. Each of these are intrinsically linked. Consideration should therefore be given to simply recognising financial advisers as financial advisers and removing the need for additional registration, or at the very least, contemplate the phasing out of the need for a separate designation.

This will further alleviate some of the existing red tape that applies to financial advisers. It also considers the existing legislative requirements and the work that has already been done within the sector and by advisers to meet the new education standards.

If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

[redacted]

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing SMSF sector which is comprised of over 1.1 million SMSF members who have more than $700 billion of 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 advisors 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.