

[REDACTED]

9<sup>th</sup> July 2021

Senator Slade Brockman  
Chair  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Senator Brockman

### **Inquiry into Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021 [Provisions]**

CPA Australia represents the diverse interests of more than 168,000 members, working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia welcomes the government's proposed implementation of recommendation 2.10 of the Financial Services Royal Commission to introduce a single disciplinary system for financial advisers. We believe this is a positive step towards reducing the regulatory complexity that governs the provision of personal financial planning advice to retail clients.

We also support the proposed transitional implementation for the registration of financial advisers to align with the development of supporting IT infrastructure. A two-stage approach will ensure that resources are not spent on platforms that will become redundant in the near future, while also supporting financial advisers to move to individual registration, which is common feature of most professions.

However, we have significant concerns with the proposed implementation of the response to recommendation 7.1 of the Tax Practitioners Board Review. CPA Australia believes a better policy outcome could be achieved, which would also remove duplication regulation, further reduce regulatory complexity and avoid the introduction of potential new barriers to other industry participants when providing advice.

Our detailed responses are contained in the Attachment.

If you have any queries about this submission, please contact

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Yours sincerely

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Dr Gary Pflugrath  
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CPA Australia

## Financial Sector Reform (Hayne Royal Commission Response—A New Disciplinary System for Financial Advisers) Bill 2021

### 1. A new disciplinary system for financial advisers

*ASIC may be required to convene a Financial Services and Credit Panel if it reasonably believes that a financial adviser has breached their Corporations Act obligations.*

*Once convened, a panel can:*

- *give a warning or reprimand;*
- *make an instrument taking other administrative action; or*
- *in certain circumstances – issue an infringement notice or recommend that ASIC apply to the court for a civil penalty.*

CPA Australia welcomes the government's proposed implementation of recommendation 2.10 of the Financial Services Royal Commission to introduce a single disciplinary system for financial advisers.

We believe the introduction of a single disciplinary system is a positive step towards reducing the regulatory complexity that governs the provision of personal financial planning advice to retail clients. However, we believe that there are opportunities to improve the effectiveness and transparency of the proposed single disciplinary model.

For example, it is important that the Financial Services and Credit Panel (FSCP) has the appropriate mix of knowledge and experience that reflects the scope of advice and services that may be provided by the sector. To achieve this, CPA Australia recommends that the list of eligible persons for the FSCP be expanded to include both experience in the provision of financial advice and key financial product areas, such as superannuation (section 141(3)).

It is also important that the composition of the FSCP reflects the nature of the matters being heard. For credibility and to engender professionalism within the sector, peer to peer discipline is vitally important.

Where a member of the FSCP is not entitled to be present at a meeting due to a conflict of interest, the remaining members and the panel, including the chair, will constitute a quorum. Depending on the number of industry representatives on the panel, or the situation where more than one member is excused due to conflicts of interest, the end result, in a worst case scenario, may be a panel of just the ASIC chair and one industry representative. Section 151 should therefore be amended to clarify that the minimum quorum should be the ASIC chair and no less than two industry representatives from the FSCP. If this quorum cannot be met, additional industry representatives should be selected for the panel.

While the introduction of a single disciplinary model is welcomed, consideration must be given to the fact that the model will sit within ASIC, which will likely further impact the costs incurred by Australian Financial Services (AFS) licensees and their financial advisers under the ASIC Industry Funding model.

In the past two years the fee per financial adviser has increased by 160 per cent, while the number of financial advisers has fallen to just over 19,000, down from around 25,200 in 2017-2018. The increasing cost burden is a significant challenge for many, noting that 90 per cent of financial advisers are sole traders or part of a small business<sup>1</sup>. The increasing costs will also continue to negatively impact the accessibility of affordable advice by the community, an issue on which [ASIC are currently focused](#).

While not within the scope of this inquiry, CPA Australia believes it is important that the ASIC funding model is [urgently reviewed](#).

### 2. Registration of financial advisers

*Stage 1 registration (commences no later than 1 January 2023) – financial services licensees are required to apply to ASIC to register their financial advisers.*

*Stage 2 registration (commences by proclamation) – financial advisers are required to apply to the Registrar to register themselves annually.*

<sup>1</sup> [Address to the 12th Annual Financial Services Council's Life Insurance Summit 2021](#) Senator Jane Hume 21 April 2021

CPA Australia supports the proposed transitional implementation for the registration of financial advisers to align with the development of supporting IT infrastructure.

The one-off obligation for an AFS licensee to apply to ASIC to register their financial advisers, followed by a second stage administered by the Australia Taxation Office using the new Australian Business Registry System, where the individual financial advisers applying to register themselves, is a welcomed and considered solution. It will avoid unnecessary costs being borne by the sector.

It harmonises reform agendas, while supporting the sector to move towards professionalism through financial advisers being accountable for their own professional responsibilities and actions. As stated by Commissioner Hayne in his final report, “a requirement of individual registration as a condition of practice is common to most professions”.

However, we have concerns with the obligation to specify in the application for registration if the financial advice provides, or is to provide, tax (financial) advice services and a declaration that they have met the additional education and training standards for the provision of this advice. This is discussed further in section 4 of this attachment.

### **3. Wind-up of FASEA and transfer of standards functions to the Minister and ASIC**

*The Minister is responsible for performing all of the standards-setting functions.*

*ASIC must administer an exam for financial advisers in accordance with the principles approved by the Minister*

CPA Australia supports the winding-up of FASEA and the transfer of the standard setting powers to the Minister and the foreign qualification approvals to ASIC.

While we note that the standard setting powers will sit with the Minister, it is not clear who will perform the work of maintaining the existing FASEA standards and Code of Ethics, ensuring they remain current and fit for purpose, and developing any new standards that may be set by the Minister. Currently, this expertise sits within FASEA. Our consultation with Treasury suggests this function will transition to sit within Treasury. However, if this is to be that case, careful consideration will need to be given as to whether Treasury has the necessary skill set and expertise to perform these functions.

To support Treasury in this role, CPA Australia recommends the establishment of an independent advisory panel, consisting of an appropriate cross-section of experts and professionals from the sector to provide the necessary analysis, expertise and advice to both Treasury and the Minister.

### **4. Regulation of tax (financial) advisers**

*To provide tax (financial) advice services, a person must either be a registered tax agent, or be a financial adviser who has met the additional education and training standard to provide tax (financial) advice services under the Corporations Act.*

CPA Australia supports the removal of the requirement for financial advisers to register with the Tax Practitioners Board (TPB) under the Tax Agents Services Act 2009 (TASA) in order to provide tax (financial) advice. In principle, this reform seeks to reduce the duplication of requirements for financial advisers under the TASA and the Corporations Act 2001.

However, we believe that a better policy outcome could be achieved with further amendments to the proposed Bill.

For example, the removal of the requirement for financial advisers to register with the TPB will remove the duplication of registration obligations for financial advisers. However, seeking to emulate many of the requirements for tax (financial) advice currently in TASA, within the Corporations Act, arguably adds more complexity and creates new barriers for other industry participants.

The Bill currently provides that in order to provide a tax (financial) advice service for a fee or reward, a person must be:

- a registered tax agent under the Tax Agent Services Act 2009; or
- a qualified tax relevant provider – a financial adviser who has met the additional education and training requirement as per the standard prescribed by the Minister (if any) for the provision of tax (financial) advice services under the Corporations Act.

- In the case where tax (financial) advice services are provided on behalf of another person or entity (such as the licensee or an authorised representative of the licensee), the person providing the advice must either be a registered tax agent or a qualified tax relevant provider.

Given this definition, only an individual can be a qualified tax relevant provider.

Currently AFS licensees and Corporate Authorised Representatives (CARs) are required to register as a tax (financial) adviser with the TPB if they provide a tax (financial) service for a fee or other reward. This is common practice given the structure and obligations of the AFS licensing regime. We believe there are currently more than 1,000 AFS licensees registered with the TPB.

Given that both AFS licensees and CARs will not be eligible to be a qualified tax relevant provider under the proposed model, where an AFS licensee or CAR provides continues to provide tax (financial) advice, such as robo- advice, it will be required to register with the TPB as a registered tax agent (RTA).

AFS licensees, authorised representatives (ARs) and representatives who provide wholesale financial product advice or advice on non-relevant financial product will also be required to register with the TPB as an RTA to continue providing tax (financial) advice as part of their legislative obligations. (Of importance these participants are not within the scope of FASEA nor the reforms resulting from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.)

We do not believe this aligns with the policy intent of this reform.

It is also highly unlikely such AFS licensees, ARs and representatives will be eligible to register as an RTA. This will have significant impacts on these participants, noting the reform is proposed to commence 1 January 2022.

The proposed new regime also fails to recognise the significant reforms that have been implemented for the retail financial planning sector since 2014, including:

- the lifting of education requirements to a minimum of a bachelor's degree
- 40 hours of professional development that must be completed annually
- a legislated Code of Ethics implemented by FASEA, and
- compulsory education in commercial law and taxation law as part of the approved qualifications for new financial advisers.

Further, existing financial advisers have already had to meet education and/or experience requirements to register as a tax (financial) adviser with the TPB. Yet, it is possible under the proposed reforms that an existing financial adviser who has been registered as a tax (financial) adviser may be required to complete one or more approved bachelor or higher degrees, qualifications or courses to continue providing tax (financial) advice if the Minister determines new requirements by legislative instrument.

CPA Australia believes a better policy outcome could be achieved by removing tax (financial) advice from TASA and not introducing new legislative terms and obligations in the Corporations Act 2001 to mimic the existing obligations.

This would reduce regulatory complexity by both avoiding the replication of requirements currently in TASA, in the Corporations Act, and the need to introduce a new term of qualified tax relevant provider, noting that these individuals advisers are already legally defined as financial advisers, relevant providers and a representative or authorised representative.

It would also clearly delineate legislative frameworks where financial advisers provide financial planning advice under the Corporations Act regulated by ASIC, while RTAs and BAS Agents provide tax advice under TASA regulated by the TPB. This framework provides clarity and benefits to the sector, by reducing regulatory overlap and in turn regulatory costs.

Importantly, consumer protections would be retained through the best interests duty in the Corporations Act 2001 as well as the FASEA Code of Ethics, and could be further strengthened by:

- amending the FASEA CPD standard to include compulsory completion of relevant tax CPD, and
- incorporating a prescribed number of hours of supervised tax-related activities in the FASEA professional year of experience.

ASIC, being responsible for the training requirements for non-relevant product providers and wholesale advisers, could also prescribe tax as a core area for the training standards for new entrants and amend the CPD obligations to also include

compulsory completion of relevant tax CPD. We understand that ASIC are reviewing RG 146 Licensing: Training of financial product advisers, which provides an opportunity to incorporate these changes.

ASIC could also amend existing regulatory guidance, such as RG 175: *Licensing: Financial product advisers—Conduct and disclosure*, to state that the basis for advice must include tax considerations where appropriate.

CPA Australia believes that these changes would reduce regulatory complexity, complement existing legislative obligations and strengthen consumer protections.