Submission to the Senate Economics Legislation Committee: Financial Sector Reform (Hayne Royal Commission Response – Better Advice) Bill 2021

July 2021

09 July 2021

Committee Secretary
Senate Economics Legislation Committee
Department of the Senate
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By: online lodgment

Dear Sir/ Madam

Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021

The Institute of Public Accountants (IPA) welcomes the opportunity to comment on the Financial Sector Reform Bill.

Overall, the IPA supports the measures in the Bill and in particular, supports the establishment of a Single Disciplinary Body (SDB) for financial advisers; and the removal of Tax (financial) Advisers (TFAs) from the *Tax Agent Services Act 2009* (TASA).

The IPA is one of the three professional accounting bodies in Australia, representing over 42,000 accountants, business advisers, academics and students throughout Australia and internationally. Three-quarters of the IPA's members work in or are advisers to small business and SMEs.

In preparing this submission, we have consulted with IPA members who work in the financial advice sector, as full and limited licensees, TFAs, Registered Tax Agents (RTAs), as well as other stakeholders who operate in and have extensive experience in the financial advice sector. Our submission has also benefited from the expertise and experience of stakeholders in the disciplinary process.

Our comments appear below and have been grouped under SDB, registrations, TFAs and other comments.

If you have any queries or require further information, please don't hesitate to contact

Yours sincerely

Vicki Stylianou
Group Executive, Advocacy & Policy
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Single Disciplinary Body

- IPA fully supports the establishment of a SDB to improve the regulation of financial advisers. In particular, we support the process of a 'triage' to ensure that minor matters or breaches do not create bottlenecks in the overall disciplinary process; and having a separate, efficient process to deal with minor matters and breaches. The IPA also has a two-tier process by which administrative breaches can be dealt with expeditiously whilst more serious breaches are channeled through the Disciplinary Tribunal and then the Appeals Tribunal (if applicable).

- The success or otherwise of the new SDB will depend on adequate funding and attracting the most appropriately qualified and experienced people for the Financial Services and Credit Panel (FSCP). Even though inadequate funding has plagued ASIC for many years, we remain hopeful that this will not extend to the SDB. Further details on funding and the pool for the FSCP would be welcome and we anticipate further consultation will be undertaken in due course.

- We fully support the need for a broader range of sanctions which can be applied in a proportionate way to the breach which has occurred. This is standard practice for most disciplinary bodies, including the IPA as a professional accounting body, which has a range of sanctions which can be matched proportionally to the severity of the breach.

Registrations

- IPA firmly believes that the consumer and public interest are best served by a system of individual responsibility and accountability, which require individual registration. This would be consistent with other professions which rely on individual responsibility and accountability, such as the legal and accounting professions. These require the individual to be responsible and accountable for their own professional and ethical behaviour, including compliance with education and ongoing training. For accountants, the professional, ethical and education standards, including the 'fit and proper' person requirement, are all implemented and enforced at the individual level. We note that the requirements on the annual form, relating to being fit and proper and education, are more appropriately completed by an individual licensee.

- The role of 'dealer groups' has been explored in ASIC CP 332 and the promotion of affordable financial advice for consumers. In that context, it has become apparent that the role and function played by the larger licensees or dealer groups has led to an increase in costs. In terms of reducing costs, the IPA's contention is that reducing the regulatory burden will in turn reduce the overall cost for consumers of obtaining financial advice. This is partly driven by a risk averse approach to compliance, which would be removed or reduced if the legislative accountability under the Corporations Act was shifted to individual registrants. This is another reason to base the registrations on an individual level. 'Dealer groups' still have a role to play and have legal obligations, which can still be satisfied under an individual registration system. Further details and examples are contained in our submission to ASIC on CP 332 and can be found here.

- Further, it is duplicated regulation to have individuals and licensees being responsible for compliance with the standards. It would be unfortunate and unfair for any adviser to be unregistered despite being authorized, simply because of the oversight or negligence of their

licensee. As noted above, licensees/ dealer groups have reporting obligations which won't change under the proposed legislation; and individual advisers can still engage with them for compliance support, investment and research support and so on.

- IPA always has concerns about the cost impact of legislation and regulation. We urge the Government not to impose an excessive fee to support the SDB. We note the damage currently being caused by the ASIC industry funding levy which is the subject of separate consultation and advocacy. Small practices are struggling with the escalation of costs since the Royal Commission, which has created a scale imperative for advice businesses operating in the financial advice sector, which has impacted many of our members in this sector. Costs must be considered on a cumulative basis. For instance, the impact on premiums for Professional Indemnity (PI) insurance is often ignored in the cost equation even though advisers cannot operate without PI insurance.

- Any further cost escalation will force many small practices out of effective operation immediately and over the next couple of years if changes are not made to enable them to comply more efficiently. The current regime forces a large degree of responsibility to the licensee which is a layer of monitoring paid for by the licensee, to support ASIC. Again, we refer to our submission on CP 332 for further detail, which can be found https://www.publicaccountants.org.au/media/3165519/Sub-ASIC-CP332-17012021.pdfhere.

Tax (financial) Advisers

- IPA supports the removal of TFAs from the TASA. We note that the Explanatory Materials (released prior to the Explanatory Memorandum) had referred to there being no regulatory gaps; and recommendation 1.9 which states that the TPB Review had the objective of reducing red tape for the tax profession. The intention was to reduce duplicate regulation without creating a gap in regulation, which is commendable. We suggest that Treasury could identify other areas of regulatory duplication which could benefit from similar treatment to that being applied to TFAs; and which would ultimately benefit consumers. IPA would welcome the opportunity to work with Treasury and other stakeholders in the process of removing regulatory duplication and overlap.

- As TFAs are transitioned across to the Corporations Act, we believe it is essential to ensure harmonization between the professional, ethical and education standards which apply to the financial planners and to RTAs. As these two groups of professionals are often servicing the same clients, it would be in the public interest to ensure consistent standards apply, as well as ensuring that the regulation applies efficiently between these sectors.

- With respect to the setting of education standards, IPA is concerned that this rests with the relevant Minister. We believe that transparency is essential to maintain public and industry confidence. For this reason, we would support the establishment of a formal advisory group which is genuinely representative of the sector, and which can adequately support the Minister in the decision-making process.

- During the transition process and on an ongoing basis there should be extensive coordination and collaboration between ASIC, Tax Practitioners Board (TPB) and Treasury (and FASEA until its winding up) on all regulatory matters, including the operation of the disciplinary process. In this regard we note other current and potential reviews including the ALRC three-part review resulting from the Hayne Royal Commission starting with the *Financial Services Legislation: The Regulatory Ecosystem for Financial Services*. The work which has already been undertaken is 'game changing' in terms of policy development and regulation in financial services (and beyond) and we urge the Committee to have due regard to this body of work. We are also mindful of the work being undertaken by the Deregulation Taskforce under the Dept of Prime Minister & Cabinet, the upcoming Quality Review by Treasury, the current consultation mentioned above by ASIC on CP 332 *Promoting access to affordable advice for consumers*, Hayne Royal Commission and review into the TPB.

- We believe that a stocktake of regulation between now and a decade ago, will reveal that the financial services sector is now significantly more regulated. The question is whether this avalanche of regulation has achieved the original policy objective of the Future of Financial Advice reforms, which was to develop and promote accessible, competent and affordable advice for consumers. We believe that the content of CP 332 speaks for itself and offers evidence of policy failure.

Other comments

- We note that the Bill inserts the new definition of **'qualified tax relevant provider'** (QTRP) in the Corporations Act and TASA. A person is a QTRP if the person is a financial adviser and meets the additional education and training standard for the provision of tax (financial) advice services determined by the Minister (if any). In our view, this is unnecessary and simply adds confusion without any benefit for consumers, the industry or even for regulators. We believe it would be preferable to completely remove TFAs from TASA, which would be genuine deregulation and not a confusing half-way solution. Financial advisers are held to much higher professional, ethical, education and ongoing training standards than they were before the establishment of FASEA, and these need to be reflected in the regulation. The policy intention was to move financial planning from an industry to a profession, and this should be acknowledged and reflected in the legislation and regulations. Therefore, we contend that the introduction of QTRP is unnecessary.

- **Regulation Impact Statements** (RIS) and Small Business Impact Statements are critical elements in developing and applying policy and measuring the impact of proposed legislation and regulation. However, these need to be properly considered and assessed and not treated as a box-ticking exercise. The critical need for an adequate and genuine cost-benefit analysis cannot be over-stated. All too often, the RIS process is undertaken as an afterthought, or in some cases, not at all. In the case of the Hayne Royal Commission report, there is a lack of adequate analysis of how the implementation of the recommendations might affect small practices, individuals or other relevant stakeholders. We believe that the intent of the recommendations was not to replace the need for an adequate RIS. We urge the Government to consider the proper use of RISs when developing all legislation.