



9 July 2021

Mr Mark Fitt
Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Senators

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

Chartered Accountants Australia and New Zealand (CA ANZ) has long advocated for industry reform to ensure that more consumers are able to access high quality, ethical and professional financial advice. We welcome this revised Bill: it simplifies some overlapping regulatory areas within the industry whilst also promoting professionalism.

CA ANZ supports raising the standards of financial advice to better serve and protect consumers. We are wholeheartedly committed to helping the industry move forward and fix a regulatory model that is clearly 'broken'. We believe there is, and will continue to be, a need for trusted advisers to look after the financial advice needs of everyday Australians. This will be best served by retaining Chartered Accountants (CAs) in the financial advice industry, as any further exodus of CAs is likely to significantly reduce the overall level of training and expertise in the industry.

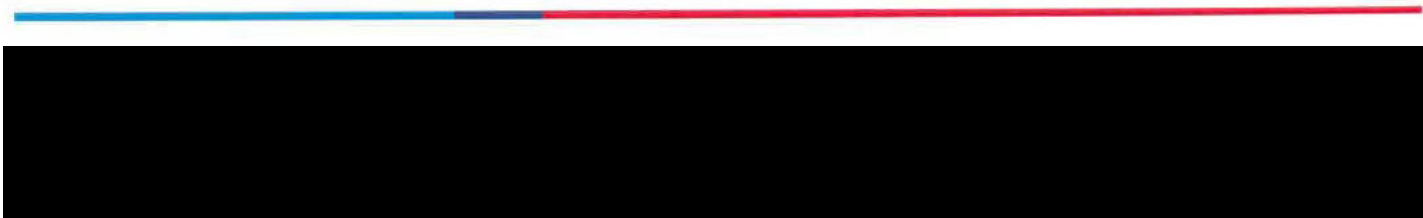
We would be happy to meet with you as a Committee should you wish to do so and authorise publication of this submission.

If you would like to discuss our submission, please do not hesitate to contact [REDACTED] (Leader, Financial Advice) on [REDACTED]

Yours sincerely

[REDACTED]

Simon Grant FCA
Group Executive
Advocacy & Professional Standing



1. Single disciplinary body (SDB) for financial advisers

Proposed new law:

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.**

CA ANZ:

- Supports the government's recommendation to establish a new single disciplinary body (SDB) for financial advisers. Measures to reduce duplication of regulations required to provide financial advice which in turn lowers the costs of providing advice are welcome.
- Is pleased to see that not all possible financial advice breaches need to be referred to the Financial Services and Credit Panel (FSCP), as we are concerned that:
 - ASIC will be 'swamped' with insignificant breaches that have no detrimental impact on clients but will take up valuable ASIC resources. We recommend ASIC designs a simple, streamlined process for matters that are clearly identified as 'minor' or will attract a minor sanction. Streamlining steps could include a single member panel to determine sanctions for specified types of breaches.
 - The cost of running such a program will be significant. It is unclear who will pay for it. The high cost of providing financial advice is already seeing many advisers (especially accountants) leave the sector, so avoidance of unnecessary additional costs is of paramount importance.
- Supports the requirement that the FSCP may be required to convene if ASIC reasonably believes a financial adviser has failed to comply with Corporations Act obligations. The Committee should seek further detail around how the various sanctions will work.
- Would like to understand how the Minister will select industry participants to sit on this panel. We see a role for professional associations in nominating suitable candidates.
- Regards enforceable undertakings from financial advisers as appropriate in certain circumstances.

CA ANZ has significant experience in running conduct and disciplinary processes through its Professional Conduct Committee (PCC), Disciplinary and Appeals Tribunals (Tribunals) and would be keen to work with ASIC in the development of the SDB. We believe our experience, expertise and existing resources may be of benefit to ASIC and CA ANZ is happy to share insights with officials.

2. Registration of financial advisers

Proposed new law:

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.

Although the government sees the move to individual registrations as an important reform, we would like to see the proposed two-step process combined so that individual advisers can register individually with the Registrar by 1 January 2023.

CA ANZ strongly believes the obligation for an adviser to be individually registered with the SDB should rest solely with the adviser, and not with licensees. When considering other professionals such as accountants, lawyers, doctors and engineers - all have individual registrations, completed by the individual themselves.

If financial advice is to truly be accepted as a profession by the community, it is time for the individual professional practitioners within it to take responsibility for their own actions, their own ongoing CPD and their own adherence to high levels of professional standards.

We also believe advisers should personally declare they have met FASEA's education and training standards.

Lastly, in order to become a respected profession within the community, we believe it should only be necessary for the professional adviser to declare they are a fit and proper person and there is no need for this to be the role of a licensee as well.

The government has an excellent opportunity to lower costs and unnecessary regulation from the financial advice industry and we strongly urge the government to further reconsider their position in this area.

3. Wind up of FASEA and transfer to the Minister

Proposed new law:

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.

CA ANZ is pleased to see that the Minister is assuming responsibility for all standard-settings functions.

As expressed in our last submission to The Treasury on the Financial Sector Reform (Hayne Royal Commission Response – A new disciplinary system for financial advisers) Bill 2021 dated 14 May 2021, the implementation of the FASEA reforms has added a great deal of cost and frustration to the financial advice sector, and we therefore welcome this move if it produces efficiencies for the industry.

For the standards to be reviewed and improved in the future, we urge the Minister to consult with, and listen to, suggestions from industry. The industry provided FASEA with highly considered and detailed feedback to no avail. This has been disappointing and has led to poor outcomes.

There is now a strong need for many of the FASEA standards to be improved and CA ANZ is very keen to participate in this process. In particular, acknowledgement of existing qualifications and the inappropriately apportioned CPD requirements should be two of the Minister's first priorities.

Lastly, we note that the FASEA exam has been an enormous impost on the industry at large. Its purpose was to ensure the skill level of financial advisers met a benchmark so that the public had trust in financial advisers. It is therefore difficult to understand why the exam was designed to be more of an aptitude test rather than a skills test, thus creating unnecessary angst and frustration across the sector whilst at the same time costing the sector – and ultimately clients – huge expense. The time and money invested into an exam that many regard as not fit-for-purpose could have been far better utilised in other ways to truly increase the skill level of financial advisers, which in turn would have had a positive impact on advisers and those they serve.

CA ANZ is happy to assist in the improvement of the FASEA standards and has already made many suggestions to FASEA. We would therefore appreciate the opportunity to resume those conversations once the Minister assumes responsibility in this area.

4. Regulation of tax (financial) advisers

Proposed new law:

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

CA ANZ fully supports the government in its desire to 'reduce duplicate regulation whilst not creating a gap in regulation. By removing tax (financial) advisers (TFAs) from the Tax Practitioners Board (TPB), regulatory overlap is reduced, which is a very positive initiative in this Bill.

As stated in CA ANZ's submission to The Treasury on the Financial Sector Reform (Hayne Royal Commission Response – A new disciplinary system for financial advisers) Bill 2021 dated 14 May 2021, we also believe this Bill provides a timely opportunity to address other areas of regulatory overlap. For example, by taking into consideration issues we raised in response to ASIC's *Consultation Paper 332: Promoting access to affordable advice for consumers*, where we pointed out that some of our members have three layers of regulation (ASIC, TPB and FASEA) as well as requirements from CA ANZ as a professional member association.

Please see: <https://www.charteredaccountantsanz.com/news-and-analysis/advocacy/policy-submissions/submission-on-cp332>

As a general principle, we support any government initiative that decreases the regulatory burden in our industry, as the benefits are threefold:

1. More consumers can access affordable advice.
2. More existing advisers will stay in the industry.
3. More new advisers will enter the marketplace.

As a professional member association for accountants, we agree with section 1.294 of the Draft Explanatory Memorandum to the Bill that:

The provision of tax agent services and business activity statement services (BAS services) will continue to be regulated under the Tax Agent Services Act 2009. Accordingly, tax agent services may be provided by registered tax agents, and BAS services may be provided by registered tax agents or registered business activity statement agents (BAS) agents.

We also strongly believe that tax is an integral part of financial advice, irrespective of the type of advice provided. As such, we believe all financial advisers should have some form of ongoing tax training on topics relevant to their work and would like to see this being prescribed more specifically in the standards than is currently the case.

We still have some concerns in the revised Bill however, which can be summarised as follows:

1. ...'to provide tax (financial) advice for a fee or reward, a person must be:
 - 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.'

CA ANZ is interested to learn how the Minister, by Legislative Instrument, will determine the requirements for the provision of tax (financial) advice services, which degrees, qualifications or courses will be approved, and what specified work and training experience will be needed.

2. We note that the Bill inserts new definitions of 'qualified tax relevant provider' in the Corporations Act and the Tax Agent Services Act 2009. A person is a qualified tax relevant provider (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 a mistake. Another adviser description with an associated acronym (QTRP) will only exacerbate confusion for both industry and more importantly, consumers.

We need to collectively find a way to sever the ties of TFAs from the TPB and retire the TFA acronym as well, rather than creating a new one. In order to do this, CA ANZ suggests:

- For any actual or perceived education gap(s) with financial advisers who are not currently TFAs, the FASEA CPD standard could require advisers to complete a minimum annual number of tax related ongoing CPD hours.
 - Regarding new entrants, the Professional Year standard could include a prescribed number of hours of supervised tax-related activities.
 - If individual advisers have the appropriate knowledge, skills and experience to advise (which they must have under the FASEA Code of Ethics), then we see no need for AFSLs, Corporate Authorised Representatives or indeed professional member associations to be registered with the TPB. This would further assist with the separation of TFAs with the TPB.
3. The Minister, by Legislative Instrument will have the power to prescribe education and training standards to ensure that the standards can be updated regularly to protect consumers and the integrity of the financial services sector. One of the Minister's goals will be to ensure that persons who provide tax (financial) advice services have the appropriate knowledge, skills and experience to do so. The Committee should seek more detail on how this will be determined and implemented. We also recommend the establishment of an industry based advisory panel to assist the Minister with the development of these education and training standards.

We understand the government de-regulation taskforce is looking at opportunities to remove excess regulation, so moving TFAs from the TPB is a great start. However, CA ANZ believes this is a golden opportunity to really make a mark on removing duplicated regulation, so we urge the government to go one step further and completely sever the ties of TFAs from the TPB and look at other areas for removing duplicated regulation.

Appendix A

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

In summary:

Across the country, in local communities and large cities, CAs are seen as a trusted and educated group of financial professionals who are working every day to serve the interests of individual and businesses in the Australian economy.

Being highly qualified

As well as relevant degree-level study, all our members have completed a minimum of three years approved and mentored relevant work experience. CAs have an Australian or New Zealand approved degree at AQF7, or an overseas equivalent, and a TEQSA approved AQF8 post-graduate qualification which requires rigorous study.

Significant continuing professional development obligations

Significant ongoing professional development requirements ensure CAs skills and knowledge remain current and relevant. Members are required to complete a minimum of 120 hours of relevant training during a three-year period. This is monitored through audits for a selection of members as well as annual declarations from all members.

Broad experience

Our members are accountants who can offer far more than technical knowledge. CAs are broadly experienced in dealing with business and financial issues across a diverse range of management and advisory roles. This bigger picture, holistic perspective enables them to work flexibly to positively impact businesses, organisations and communities.

Fully accredited

Our members have all met, and are bound by, internationally recognised technical and ethical standards. CA ANZ is part of the Global Accounting Alliance - the coalition of the world's premier accounting bodies.

Future-focussed

Whether working in business or practice, CAs are uniquely positioned to offer advice that can be trusted. Through deep understanding they have the skills to examine the past and guide organisations into the future.

Highest ethical and professional standards

Members are required to adhere to a strict code of ethics included in the Accounting Professional & Ethical Standards Board's Code of Ethics for Professional Accountants (including Independence Standards) (APESB 110). They are also required to comply with detailed CA ANZ regulations which maintain high levels of professional standards.

Protection to consumers and members through the Professional Standards Scheme

All members in public practice must meet the requirements of the CA ANZ Professional Standards Scheme. This includes having minimum levels of professional indemnity insurance and appropriate disclosure of the limitation of liability under the scheme. This offers protection to both our members and their clients.

Quality Review Program

The CA ANZ Quality Review Program reviews practices on a cyclical basis and examines each practice's compliance with technical and professional requirements, including compliance with the professional standards scheme. The programme monitors whether our members in public practice have quality control systems in place to ensure they comply with the Code of Ethics, professional standards, and legal and regulatory requirements. All members offering services to the public are eligible for review. This helps maintain a consistently high standard of quality and service to their clients.

Conduct and disciplinary processes

There are robust disciplinary processes to hold members to account who may not comply with high professional and ethical standards. This includes investigating and resolving complaints made against members. Sanctions imposed on members can include termination or suspension of membership, a censure, training and costs.