FINANCIAL SERVICES COUNCIL

8 July 2021

Senator Slade Brockman
Chair
Senate Economics Committee

By email: [redacted]

Dear Chair,

The FSC welcomes the Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021 [Provisions] **("the Bill")** to the Senate Economics Legislation Committee **("the Committee")** for inquiry and report by 28 July 2021.

General comment

The FSC welcomes individual registration of financial advisers in the Bill – a policy position advocated for in *Affordable and accessible advice: FSC Green Paper on financial advice*. The FSC's Green Paper outlined for public discussion a detailed proposal for updating the licensing and registration framework for financial advice in which a mature profession of financial advisers becomes more responsible for the advice provided and the significant consumer protections and benefits of Australian Financial Services Licensing **(AFSL)** regime, is retained. The Bill goes some way to ensuring this with some specific issues to be addressed (See 'Specific comment').

The FSC welcomes the Government's inclusion of a significance test in Section 139 (2) of the Bill for determining which matters of misconduct appropriate for consideration by the Financial Services and Credit Panels **(FSCP)** that will be convened specifically by ASIC to arbitrate misconduct by individual financial advisers. A test of 'reasonable belief' is also a welcome step for discerning vexatious and more serious claims to minimise pressure on the FSCP's resources and to continually build trust in the profession. We note the parameters of such discretion permitted under the legislation will be permitted by regulation. Where possible, these regulations should enable lower level administrative breaches to be triaged through a much simpler process in a manner that reduces the cost to industry and therefore consumers.

The FSC welcomes the adoption of Recommendation 7.1 of the Review of the Tax Practitioners Board for a single regulatory regime for financial advisers, in particular tax (financial) advisers, in the Bill. This has been a longstanding position advocated by the FSC. The process for independently reviewing decisions of the FSCP through the Administrative Appeals Tribunal **(AAT)** is a welcome step as is the specification of circumstances in which the Australian Financial Complaints Authority **(AFCA)** would refer complaints to ASIC about misconduct.

Reducing the cost of financial advice is a key priority for the FSC's Members and the Federal Government. The infrastructure governing the profession should not continue to increase this cost in a climate where legislation and regulatory oversight of financial advice is unchecked and directly increasing its cost.

Specific comment

Reiterating the recommendations made in the FSC's submission on the Exposure Draft **(ED)** legislation consulted on by Treasury (attached), the following points should be addressed following the Committee's scrutiny of the Bill:

- While individual registration is welcomed the precise clarity of the new spread of responsibilities between licensees and advisers should be clarified over time as individual registration is embedded to support the provision of better financial advice to consumers.
- The definition of which persons are subject to FSCP disciplinary action should be simplified and consulted on with regard to the FSCP's oversight of financial advisers providing all forms of financial advice (eg personal advice, general advice). The wording the Bill only end only relates to 'financial advisers providing personal financial advice to retail clients'.
- The Bill should clarify the process licensees should follow in relation to consumers where a financial adviser's registration is suspended – the Bill is silent on this matter.
- Auditing should be conducted by the regulator, or a duty imposed on the financial adviser to confirm and disclose such checks, on a regular basis for example every 12 months. The Bill is silent on the matter of auditing financial advisers.
- Tax (financial) advisers who meet the FASEA education requirements should be considered to have satisfied the TPB's education requirements. Changes currently proposed by the Tax Practitioners Board (March 2021) affecting tax (financial) advisers until the single disciplinary regime is established and consulted on with industry should be deferred, and the transitional provisions in the Bill should reflect this to ensure minimal disruption to the profession.

The FSC would welcome the opportunity to clarify for the benefit of the Committee any points raised in this letter. If this is of interest the Committee Secretariat should contact [redacted]

Yours faithfully,

[redacted]

Blake Briggs
Deputy Chief Executive Officer

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