

15 October 2021

Director
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: SDBconsultation@treasury.gov.au

Dear Anna,

Better Advice Bill - Exposure Draft Regulations

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.

The Government is seeking stakeholder feedback on the exposure draft regulations and legislative instrument supporting the Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021 (the Better Advice Bill). The Bill is intended to:

- give effect to the establishment of a new disciplinary system and registration system for financial advisers implementing the Government's response to recommendation 2.10 of the Financial Services Royal Commission Final Report
- give effect to the Government's decision to wind up the Financial Adviser Standards and Ethics Authority (FASEA); and
- introduce a single disciplinary and registration system for financial advisers who provide tax (financial) advice services implementing the Government's response to recommendation 7.1 of the Independent Review of the Tax Practitioners Board (TPB).

CPA Australia supports the intent to establish a single disciplinary body, which is an important step towards the professionalisation of the financial advice sector, and the decision to wind up FASEA.

Notwithstanding the concerns we have raised in previous submissions regarding the need for detail concerning ASIC's implementation of the single disciplinary body, we do not have any specific comments in relation to the draft regulations or legislative instrument beyond recommending that a post-implementation review be conducted two years after the commencement of the body or earlier should systemic issues arise.

CPA Australia also 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 the implementation of this reform, as drafted, does not meet the intent of either recommendation 7.1 of the TPB review, which envisaged a single point of registration for advisers, or the Government's response to the review¹. The Government, in its response, agreed that the regulatory overlap should be reduced, that the new system would cover all financial advisers, including tax (financial) advisers, and that tax (financial) advisers will only be subject to a single disciplinary regime. The amendments contained within the Better Advice Bill before Parliament will result in a substantial cohort of financial advisers still being required to be registered under the TPB to provide tax (financial) advice. This will include advisers providing wholesale financial product advice, robo-advice, non-relevant financial product advice and potentially those operating under a Corporate Authorised Representative (CAR) structure. Further, while the registration and regulation of tax (financial) advisers will occur under ASIC, the definition and regulation of tax (financial) advice services will also continue under the TASA, effectively maintaining duplicative disciplinary regimes.

We acknowledge the regulations have been drafted to address these anomalies by creating new pathways for certain financial advisers to become registered tax agents under the TPB. However, the pathways and transitional provisions proposed in the exposure draft regulations to address the unintended consequences resulting from the Better Advice Bill introduce add great complexity. This point was acknowledged by Treasury officials when attempting to explain the pathways to industry stakeholders at recent roundtables. If industry "experts" have difficulty comprehending the proposed pathways, it is likely they will create considerable confusion amongst financial advisers, AFS licensees and most importantly, consumers.

At the very least, maintaining the definition of tax (financial) adviser under the TASA - to cater for those advisers providing tax (financial) advice services who would not meet the requirements to be a qualified tax relevant provider (QTRP) under ASIC - would avoid the complexity that will be created by the proposed new pathways.

Enacting legislation that will introduce greater complexity and confusion also appears to be at odds with the current aims of the Australian Law Reform Commission Review of the Legislative Framework for Corporations and Financial Services Regulation, the upcoming quality of advice review under recommendation 2.3 of the Financial Services royal Commission and the Government's regulatory red-tape reduction agenda.

As such, we strongly recommend that the Government does not proceed with the transfer of the registration of tax (financial) advisers from the TPB at this point of time. We recommend that the status quo be maintained in the interim to allow sufficient time for Treasury to consult with the TPB, financial advice sector and the tax profession on these proposed changes. Additionally, further consideration must be given to introducing reform that can be implemented at a later date, that will ensure a consistent regulatory framework for all advisers providing tax (financial) advice while satisfying the intent of recommendation 7.1 of the TPB review.

This could be achieved by the Government amending the Better Advice Bill currently before Parliament. Specifically, by excising the regulation of tax (financial) advice section and related references in the registration section from the Bill. Similarly, all references to amending the Tax Agent Services Regulations 2009 could be removed from Schedule 1 of the draft Better Advice Regulations.

Such amendments would then allow the Bill to pass through Parliament unimpeded, enabling the Government to meet its commitment of implementing the Royal Commission recommendations and allowing for the winding up of FASEA to proceed.

If you have any queries about this submission, please contact Michael Davison, Senior Manager, Advocacy and Retirement Policy on 02 6267 8552 or michael.davison@cpaaustralia.com.au.

Yours sincerely



Dr. Gary Pflugrath
Executive General Manager, Policy and Advocacy

¹ [GOVERNMENT RESPONSE TO THE REVIEW OF THE TAX PRACTITIONERS BOARD 2019, November 2020](#)