

20 August 2021

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

By email: SDBconsultation@treasury.gov.au

Dear Anna,

Single disciplinary body: policy paper

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 proposals to implement Regulations under the Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021. The Bill will give effect to the establishment of a new disciplinary system for financial advisers implementing the Government's response to recommendation 2.10 of the Financial Services Royal Commission Final Report.

CPA Australia supports the intent to establish a single disciplinary body. We believe this is an important step towards the professionalisation of the financial advice sector.

We raised a number of questions and concerns in our submission of 14 May 2021 in relation to the operation of the Financial Services and Credit Panel (FSCP) as proposed in the draft Bill as circulated for consultation. A number of these concerns have been addressed by the Bill as introduced into Parliament and by the proposal in this Policy Paper.

With regard to the questions posed in the Policy Paper we provide the following responses.

Proposed criteria for convening an FSCP

1. CPA Australia are supportive of the criteria proposed for when ASIC must convene an FSCP and do not believe the inclusion of other specified additional breaches is necessary.

However, we question if the FSCP has the power to take action for contraventions which involve the provision of financial product advice to retail clients without being registered as listed under criteria 3.(e)?

The Financial Sector Reform (Hayne Royal Commission Response – Better Advice) Bill 2021 states that the FSCP will only have the power to take action against individual financial advisers, also known as financial planners or relevant providers.

Given this, should such breaches instead be addressed by ASIC's existing processes?

2. We do not believe the proposed criteria should be linked to the 'significance test' in the breach reporting regime. The significance test will be used to identify which breaches must be reported to ASIC. The ASIC triage process should then be relied upon to determine which breaches are referred to the FSCP based on the criteria set by the Regulations.

3. CPA Australia supports the terms 'serious' and 'repeated breach' being defined in Regulations.
4. We support the definition of the term 'serious' to be:
"the contravention is a serious breach taking into account:
 - *the material loss or damage to clients;*
 - *the benefit gained by the relevant provider;*
 - *involves dishonesty or fraud and*
 - *repeated breaches of a similar nature."*
5. CPA Australia supports the definition of 'repeated breach' to include similar breaches that have occurred on two or more occasions within a specific timeframe, such as in a 12-month period.

However, we would suggest ASIC having some discretion in determining the timeframe. This would cater for situations where the breaches may occur just outside a 12-month period or for breaches that occur periodically within different periods, for example disclosure or reporting breaches that could be repeated each year.

6. Yes, the criteria in c) should include circumstance that may bring into a question a financial adviser's fitness and propriety.

Sanctions to be listed on the Financial Advisers Register

CPA Australia supports the proposal to include sanctions issued by the FSCP on the FAR, including for first-time breaches. We also support the proposal to not include written warnings or reprimands made by the FSCP or ASIC on the FAR.

However, if there are breaches subsequent to or in contravention of a written warning or reprimand, they should be captured in the criteria for the possible convening of an FSCP. In the interests of transparency, ASIC should also detail the circumstances under which it would issue a written warning or reprimand.

Outstanding issues

We recognise this consultation is specifically in relation to when an FSCP must be convened. However, we would like to reiterate a number of outstanding issues from our submission of 14 May 2021, which still need to be addressed.

- The proposed process sees ASIC performing triage on all matters and only convening a FSCP to consider a matter if ASIC does not consider a banning order, warning or reprimand appropriate. Based on past experience, ASIC's investigation and review process can take a considerable period of time, in some cases years, and the process is not always clear. Full transparency of ASIC's processes and timeframes is required to manage community and industry expectations. Service level agreements should be put in place and committed to by ASIC to ensure matters can be addressed in a timely manner.
- Details are required for the process, expectations and timeliness of referrals from AFCA, the TPB and industry associations along with ASIC's process once referrals are received. Where a referral is from an industry association, consideration must be given to privacy obligations and the due process the association will need to provide to their member.
- We understand the cost of the proposed FSCP process will be included in the ASIC Industry Funding Model (IFM) and individual financial adviser registration fees will go to consolidated revenue. CPA Australia already has serious concerns with the ASIC IFM and [that a post implementation review is needed to assess if the current model remains fit for purpose](#). Adding the FSCP costs will add to the significant cost burden already faced by financial advisers and will arguably make the provision of advice further untenable for many.

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



Ms Keddie Waller
Head of Public Practice and SME
CPA Australia