



INSTITUTE OF  
**PUBLIC  
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**Submission to the  
Treasury:  
Single Disciplinary  
Body  
for Financial  
Advisers**

May 2021

14 May 2021

Adviser and Brokers Unit  
Financial System Division  
Treasury  
Langton Cres  
Parkes ACT 2600

**By email:** [SDBconsultation@treasury.gov.au](mailto:SDBconsultation@treasury.gov.au)

Dear Anna

### Single Disciplinary Body for Financial Advisers

#### Financial Sector Reform (Hayne Royal Commission Response—A New Disciplinary System for Financial Advisers) 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).

In order to ensure that the legislation is operating as intended, we recommend that a full review be implemented two years after commencement of the SDB.

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, Tax (Financial) Advisers (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 and TFAs.

If you have any queries or require further information, please don't hesitate to contact Vicki Stylianou, Group Executive, Advocacy & Policy, either at [vicki.stylianou@publicaccountants.org.au](mailto:vicki.stylianou@publicaccountants.org.au) or mob. 0419 942 733.

Yours sincerely



Vicki Stylianou  
Group Executive, Advocacy & Policy  
Institute of Public Accountants

## 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.
- With respect to the process for investigating a complaint, we seek clarity as to which stage of the process will the adviser be notified of the complaint. It appears that ASIC will investigate by collecting evidence, making a determination on a sanction and then presenting a notice to the adviser. The IPA's process is to involve the adviser (ie member) of the complaint, seek a response and then feed this into the deliberation and determination process as to whether there is a 'case to answer'. From there it goes either to an administrative process for less serious breaches or to the Disciplinary Tribunal for more serious breaches. There is also a separate Appeals Tribunal. Otherwise, it would seem pre-emptive for ASIC to collect the evidence, then ASIC or the FSCP determine a sanction and then go to the adviser to seek a response.
- ASIC (or the FSCP) should advise any relevant professional association if one of their members has had a sanction recorded against them. This would make it far more efficient for the professional association to undertake its own investigation. The TPB does this and it saves a lot of time in determining whether members have breached the regulatory requirements.
- As a point of clarification – we assume that the name of the adviser is made public as well as the sanction against them. We think that only advisers who are found to have committed more serious offences should be publicly named. Even publication of minor offences can have a detrimental effect on reputations and the state of mind of the adviser. For this reason, we believe that only major offences should be made public.

- Some of the prevailing concerns from IPA members has been the heavy consumer bias and ‘no risk’ process from the complainant’s point of view even if frivolous claims are made; and the perception that applicants are being “persuaded” as to the manner in which they frame the claim from parties internal to the process. IPA believes from an equity perspective that there should be some risk to the complainant to protect against absurd actions, perhaps a refundable deposit unless the claim has no merit as an example. In this regard we refer to our submission to Treasury in April 2021 on the review of AFCA in which we make this point in greater detail. Even though AFCA serves a different function, we believe that lessons can be learnt from the operation of AFCA which also deals with consumer and other stakeholder complaints. In our submission on the ASCA review we refer to judicial criticism of the consumer bias.
- With respect to the make up of the FSCP we contend that there should be at least an equal number of practitioner representatives as others to ensure there is a practical element to the review.

## 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. Further details and examples are contained in our submission to ASIC on CP 332. 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.
- 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. Licensees 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 fees and urges 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 by the accounting and other bodies. 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.
- 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.

### Tax (financial) advisers

- IPA supports the removal of TFAs from the TASA. We note the Explanatory Materials which refer 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 Explanatory Materials state that ‘the changes will reduce duplicate regulation but do not create a gap in regulation’. IPA believes the Bill presents a timely and ideal opportunity to consider other areas of regulatory duplication. We suggest that Treasury could identify areas of regulatory duplication which could benefit from similar treatment to that being applied to TFAs. IPA would welcome the opportunity to work with Treasury and other stakeholders in this process.
- As TFAs are transitioned across to the Corporations Act, we believe it is essential to ensure that the applicable professional, ethical and education standards are aligned with, and at least not inconsistent with, the standards applicable 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.
- During the transition process and on an ongoing basis there should be extensive coordination and collaboration between ASIC, TPB and Treasury (and FASEA until its winding up) on all regulatory matters, including the operation of the disciplinary process.