

15 June 2022

Michelle Levy
Quality of Advice Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email: AdviceReview@treasury.gov.au

Dear Michelle,

Submission: Quality of Advice Review, specifically 4.6 'Accountants providing financial advice'.

We thank you for the opportunity to provide this submission which incorporates and summarises the extensive work Chartered Accountants ANZ (CA ANZ), the Institute of Public Accountants (IPA) and the Self-Managed Superannuation Fund Association (SMSFA) have undertaken to advocate for the great role accountants play in assisting their clients with superannuation queries.

The information provided in this submission has been prepared on a collective basis for the specific purpose of Section 4.6 of the Quality of Advice Review Issues Paper, March 2022, (the Issues Paper). This submission should be read in conjunction with the collective submission from 11 industry associations (including our three) due on Friday 17 June 2022 as well as individual submissions from each of our organisations.

We emphasise this advocacy for accountants in specified circumstances is *in addition* to the considerable work being carried out in conjunction with the broader group of professional associations responding to the Quality of Advice Review. However, alongside professional advisers who want to provide consumers with comprehensive financial advice, there is another cohort of professional business advisers who want to find a solution to be able to support small businesses and individuals who seek simple strategic superannuation advice from their trusted accountant in the ordinary course of their working relationship. Currently this is not possible due to existing licensing requirements.

Over the past two years, we have been working tirelessly to support this cohort of professionals and the clients they seek to serve.

Our drive is consumer led and is focused on client needs for advice. The proposed model achieves this through:

- Access to affordable strategic superannuation advice
- Delivery of an efficient and effective model
- Use of suitably and highly qualified and regulated accounting professionals
- Appropriate consumer protections

We would be pleased to further discuss this submission with you and the Treasury Secretariat.

Yours sincerely

Ainslie van Onselen

Chief Executive Officer

Chartered Accountants Australia & New Zealand

John Maroney

Chief Executive Officer

SMSF Association

Andrew Conway

Chief Executive Officer

Institute of Public Accountants

Response to section 4.6: Accountants providing financial advice

In summary: our proposed recommendation

The issue:

Accountants should be able to provide strategic advice to their clients in relation to superannuation, which should simply be in the ordinary course of providing a tax agent service. At present, they can't do that due to licensing requirements.

Why change is required:

1. Due to escalating licensing costs, ongoing compliance costs, and the unintended consequences of the FASEA regime, most of the estimated 1,600 members of the major accounting bodies and the SMSFA who are authorised to provide limited advice have ceased to do so.
2. For many members, providing strategic superannuation advice represents only a small portion of their business and it is simply no longer viable for these members to provide this advice.
3. Consumers need access to affordable strategic superannuation advice, which can be delivered through an efficient and effective model, utilising suitably highly qualified professionals with adequate consumer protections in place.

Our proposed solution:

Amend the definition of tax agent service in section 90-5 of the *Tax Agent Services Act 2009* (TASA), to allow:

- a. A 'qualified accountant' (defined in s88B of the *Corporations Act 2001* as a member of one of the major accounting bodies),
- b. who operates under a Certificate of Public Practice, and
- c. who is a Registered Tax Agent (RTA) with the Tax Practitioners Board (TPB), and
- d. who is either:
 - I. Listed on the Register or Relevant Providers as at the date the legislation is passed or within two years prior to this date
 - II. Accredited as an SMSF specialist adviser to provide a service, in the ordinary course of business as an RTA, that relates to advising on and assisting with: Calculating and making contributions to an existing superannuation fund; or
 - Establishing a pension and calculating payments in connection with a pension payable from an existing superannuation fund; or
 - Establishing or winding up an SMSF.

What we're not asking for:

- A return of the old accountants' exemption, whereby *any* qualified accountant could advise on superannuation and SMSF issues without additional training and/or consumer protections.

Detail behind our proposed recommendation

Why our recommendation makes sense:

- Tax (financial) advisers (TFAs) have already been removed from the TPB and are now under ASIC's guidance.
- We likewise believe that the small cohort of accountants who are suitably qualified (as outlined above) should be removed from the ASIC regime and be placed under the regulation of the TPB (they are already under TPB regulation)
- This recommendation *does not* create an uneven playing field. This cohort of professional accountant advisers are already practising under the tenets of being professionals: degree qualified with post graduate accounting studies, significant mentored experience, a Code of Ethics enforced through a rigorous quality review and discipline process, annual CPD requirements. The former FASEA regime seeks to bring all industry participants to these levels by 1 January 2026. We believe it is in the public interest that these qualified advisers should be able to practise in this capacity.
- This measure could be adopted in advance of completion of the review.

Our recommendation seeks to remove an additional layer of regulation for a qualified accountant who only provides a tax agent service as defined in section 90-5 of the TASA.

How consumers will be protected:

- Consumer protections are strong as the accountant is required to be a qualified accountant and a RTA, subject to more rigorous and consumer-oriented ethical standards. A comparison of the FASEA Code of Ethics and the Accounting Professional and Ethical Standards Board (APESB) APES 110 Code of Ethics and the TPB Code of Professional Conduct illustrates that the ethical standards under the APESB and TPB codes are more extensive and consumer-oriented than under the FASEA regime.
- In addition, qualified accountants are subject to other professional and ethical standards under the APESB, which cover a range of requirements relating to risk management, engagement, client monies and other areas that are relevant to protecting consumers. Unlike ASIC regulatory guides, these are mandatory in nature and are enforced by the professional accounting bodies. Please refer to <https://apesb.org.au/> for further information.
- Another layer of regulatory oversight applies to all professional accounting bodies that have a Professional Standards Scheme: the professional standards legislation administered by the Professional Standards Councils (PSC). The 'vision' of the PSC is 'protecting consumers by improving professional standards.' Please refer to <https://www.psc.gov.au/> for further information.
- The *Tax Agent Services Regulations 2009* (TASR) will also prescribe that the qualified accountant must hold an SMSF specialist advisor designation from either the SMSFA or CA ANZ or be a SMSF specialist adviser as prescribed by the TPB. This requirement will be included in regulations and is an integral part of the proposal.

Resources prepared and the considerable advocacy already undertaken

Who we have consulted with:

While the majority of our communication has been with Ministers Hume, Sukkar and their staff, we have also met with both former Government and Shadow Ministers, The Treasury, ASIC, the De-regulation taskforce, PM&C, the TPB and there has been general acknowledgement this proposed solution for some Australian small businesses and individuals would be considered 'non-controversial'.

We understand that with a new Government, these positions may need to be re-visited.

Resources prepared to outline our advocacy position:

Considerable resources have been developed over the past three years, many of which were prepared,

revised and/or updated at the request of Minister Hume and/or her staff.

Please find attached the following schematics and case studies that have all been circulated including to Minister Stephen Jones and his staff and Treasurer Jim Chalmers and his staff, as well as to former Ministers Hume and Sukkar and their respective staff:

- Appendix 1: Schematic: CA ANZ, IPA and SMSFA membership breakdown as at April 2021
- Appendix 2: Schematic: Considerations, outcomes and benefits of limited advice relief
- Appendix 3: Schematic: Options for reform for tax agents – reducing regulatory overlap in financial and tax services
- Appendix 4: Schematic: Consumer protections to be recognised for a small cohort of accountants
- Appendix 5: Case study 1: Contributions: farming business in country Australia
- Appendix 6: Case study 2: Commence pension: farming business in country Australia
- Appendix 7: Case study 3: Small business CGT rollover concessions and small business 15-year exemption – establish an SMSF
- Appendix 8: Case study 4: Small business unsustainable – wind up everything including an SMSF

Additional resources prepared for former Minister Hume and her staff:

Minister Hume's office suggested it would be useful to have paragraphs drafted for inclusion into the Financial Sector Reform (Hayne Royal Commission Response – A New Disciplinary System for Financial Advisers) Bill 2021 (the Bill). We engaged Maddocks Lawyers to prepare the attached:

- Appendix 9: Financial Sector Reform Bill provisions in respect of specific superannuation services

We also met with Minister Hume in Sydney, and at that meeting she asked us to seek the views of the Financial Planning Association (FPA) to have our suggested draft paragraphs inserted into the Bill.

We then collectively met with the FPA in person in June 2021 at the FPA office in Sydney, and our discussions are continuing.

Disappointment at non-inclusion into the Bill:

Following extensive work on limited licensing reforms at considerable time, cost and expense, we were disappointed to learn that Minister Hume decided not to include our draft amendments into the Bill.

An alternative solution:

As a group of associations, we have listened to feedback from members with literally thousands of clients who want simple strategic superannuation advice in the ordinary course of the business dealings they have with their trusted accountant.

We approached the then Assistant Treasurer, Minister Sukkar, who supported our proposal for an amendment to the TASA. Again, Maddocks Lawyers were engaged to help us with the wording of those amendments and to advise on how they could be implemented, with the solution being to amend the definition of a tax agent service in section 90-5 of the TASA by way of Legislative Instrument.

This proposal could be achieved either by way of inclusion in legislation, in TASA, or by way of regulations, in TASR, or by way of Legislative Instrument. We have prepared drafts of all three options, which we would be pleased to provide. Whilst a Legislative Instrument is the most expedient method, inclusion in primary legislation would provide the most certainty. We would also be pleased to consult further on the most appropriate method of enactment.

In order to check there were no significant oversights, our proposal was shared with the TPB in July 2021. The papers prepared for that meeting are attached:

- Appendix 10: Joint Briefing paper for the TPB 26 July 2021
- Appendix 11: A draft Legislative Instrument to make appropriate changes to the TASR to expand the definition of a tax agent service for appropriately qualified accountants in strictly prescribed circumstances.

The four case studies and four schematics outlined above were also provided, and pleasingly, the TPB had no objections to our proposal.

Our last attempts for the previous Government to listen and act:

On 4 February 2022, a meeting was arranged with Minister Hume's office and Minister Sukkar's office to again discuss the plight of accountants, who simply want to serve their clients in the ordinary course of providing a tax agent service. At that meeting, we acknowledged the Terms of Reference for the Quality of Advice Review had been announced by Minister Hume.

However, we again pointed out that by way of a simple Legislative Instrument – with the wording already provided – accountants should be able to provide strategic advice to their clients in relation to superannuation. This should simply be an extension of their tax advice. We again made it clear that this is an entirely different issue to accountants being fully licensed and operating in the financial advice space that the Quality of Advice Review will be reviewing.

Direct response to the three areas raised in the Issues Paper regarding accountants

We acknowledge that at 4.6 of the Issues Paper, accountants have specifically been included.

Review of the Tax Practitioners Board Recommendation 7.2

Taken from the Issues Paper at page 28, "Recommendation 7.2 of the Review of the Tax Practitioners Board (TPB review) recommended that the Government initiate a specific review into what advice accountants can and cannot give in respect of superannuation and to which accountants that might apply. In response, the Government agreed to consider the recommendation as part of the Review."

In the content above, our submission addresses this Recommendation.

Former “accountants’ exemption”

Also, at page 28 “Up until 30 June 2016, the accountants’ exemption allowed recognised accountants to provide advice recommending a client establish or wind up a self-managed superannuation fund (SMSF) or acquire or dispose of an interest in a SMSF, without an AFSL. Recognised accountants included those who were members of CPA Australia, Chartered Accountants Australia and New Zealand, or the Institute of Public Accountants.

As accountants were not required to hold an AFSL they also were not required to comply with key consumer protections in the AFSL regime, including disclosure requirements, obligations applying to the provisions of personal advice to retail clients, dispute resolution mechanisms and compensation arrangements.

There were also concerns that the exemption created an uneven playing field, which favoured accountants over others who provided similar services and held an AFSL or who were a representative of an AFSL holder.”

In response to these paragraphs and as outlined above in our submission:

1. We are NOT seeking a return of the accountants’ exemption as it was then. We are seeking an amendment to the definition of a tax agent service in section 90-5 of the TASA, to allow:

A ‘qualified accountant’ (a member of one of the three major accounting bodies)

- who operates under a Certificate of Public Practice
- who is a RTA with the TPB
- who is on the Financial Advice Register (FAR) or within the past two years and/or is an SMSF specialist can advise on:
 - Calculating and making contributions to an existing superannuation fund; or
 - Establishing a pension and calculating payments in connection with a pension payable from an existing superannuation fund; or
 - Establishing or winding up an SMSF

2. Consumer protections have specifically been addressed above.

3. Regarding an ‘uneven playing field’, arguably there is one right now, and it does NOT favour accountants.

Accountants are already considered to be trusted professionals. They are required to complete an approved degree, complete post graduate studies, a mentoring program, ongoing mandatory CPD and operate under a strict Code of Ethics that is enforced.

Conversely, financial planners are striving to become recognised professionals, with a degree, mentoring, ongoing CPD, a Code of Ethics and specific education requirements being phased in over a period culminating on 1 January 2026. And even at that time, post graduate studies will not be essential.

This is a significant anomaly that we therefore urge the Government to consider.

Limited AFSLs

On page 29 “In place of the accountants’ exemption, a new ‘limited’ AFSL regime was established. A limited AFS licensee can provide limited financial services, including:

- *financial product advice about SMSFs, and a client’s existing superannuation holdings, to the extent required for making a recommendation to establish an SMSF or providing advice to a client about superannuation contributions or pensions;*
- *arranging to deal in an interest in an SMSF; and*
- *class of financial product advice: superannuation products; securities; simple managed investment schemes; general and life risk insurance products; and basic deposit products.*

A limited AFS licensee is required to comply with the other relevant requirements of the Corporations Act 2001, including key consumer obligations, but are subject to lower levels of financial reporting obligations where they do not handle client money.

Limited licensing has simply not worked, and the majority of the Limited AFSLs have been wound up.

This can be attributed to the following two main reasons:

1. High and escalating costs such as licensing, compliance, PI Insurance, ASIC fees, additional CPD and studies.
2. The unintended consequences of the FASEA regime, whereby the Code of Ethics conflicts with the authorisations allowed under a limited AFSL, the exam was not relevant, the CPD is unrelated to this area of practice and the worst impact of all, studies to gain a limited AFSL were not recognised, so this cohort of members were being asked to complete yet further unrelated studies.

How do we draw qualified accountants, who have left the industry, back into the space?

Many members have left the FAR – how do we get them back to provide simple strategic superannuation advice to their clients before it's too late?

There has been a steady decline in the recognition the former Government has given to accountants in this space and as outlined above, the decline has been exacerbated by the implementation of the FASEA reforms, which revolved around 'traditional' financial planners. We have seen a steady decline in the number of accountants practising in advice resulting from these reforms, which is to the detriment of consumers.

In addition, in December 2021, the former Government announced new proposed qualification and education pathways for financial advisers. Unfortunately, by then, it was too little too late, as members who had to do further studies, complete the FASEA exam and fulfil FASEA's CPD requirements had had enough, and had been removed from the FAR.

If our proposed Legislative Instrument had at least been considered, and if the proposed education pathway had been announced prior to December 2021, it is likely we would have retained more members on the FAR.

Given accountants have done so much to assist their clients and the economy during the COVID pandemic, all we are asking for is a fair go as clients are continually asking for simple superannuation advice from our members.

We now respectfully request that this Review and the new Labor Government urgently considers our recommendations. We ask that suitably qualified accounting professionals with added conditions be able to provide advice in limited specific areas of superannuation without the need for an AFSL, so as to meet existing considerable consumer advice needs.

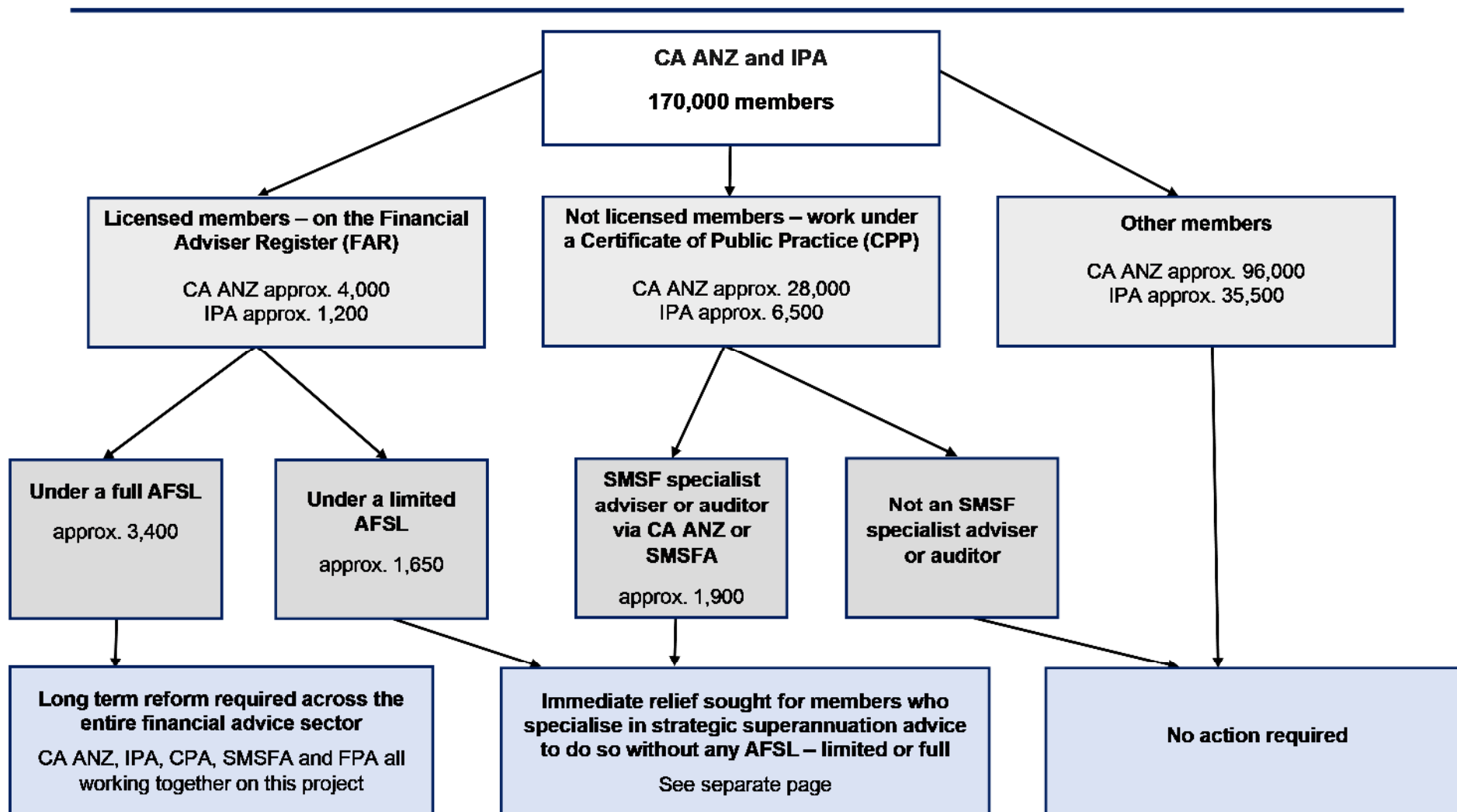
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Appendix 1

Schematic: CA ANZ, IPA and SMSFA membership breakdown as at April 2021

**CHARTERED ACCOUNTANTS AUSTRALIA + NEW ZEALAND (CA ANZ)
AND INSTITUTE OF PUBLIC ACCOUNTANTS (IPA)
MEMBERSHIP STATISTICS**



Appendix 2

Schematic: Considerations, outcomes, and benefits of limited advice relief

LIMITED ADVICE RELIEF: CONSIDERATIONS, OUTCOMES, AND BENEFITS

Members under a limited AFSL

+

Members who are an SMSF specialist

The most sought-after areas in which clients continually seek advice from their accountant:

	Contributions to that existing fund and/or	Pensions from that existing fund and/or	Appropriateness of establishment or wind-up of that fund
Super fund (but not an SMSF)	Yes	Yes	No, as this is product advice – should require an AFSL
SMSF	Yes	Yes	Yes, as this is a trust structure and structural advice should not require an AFSL

At present, these areas of advice cannot be provided without an AFSL

Considerations

1. Clients want a one stop shop for their financial COVID-19 recovery
2. Accountants have played a key role in govt stimulus measures
3. Record levels of super have been withdrawn
4. Australians have an urgent need for high quality affordable advice
5. Structural advice is in ordinary course of an accountant's business
6. The cost of running a limited AFSL has become prohibitive
7. Consumer protections are in place through professional associations
8. The protections of the FASEA regime (Code of Ethics, mandatory CPD, best interests' duty) already exist for professional advisers
9. The FASEA regime duplicates these requirements and in relation to limited advice is unrelated to practice (CPD, exams)

Outcomes and benefits

1. Individuals/small business helped on road to recovery
2. Jobs are created - small businesses are big employers
3. Single-issue advice is more affordable without an AFSL
4. Super account balances can be restored
5. Adding to super will add to self-reliant retirees
6. Accountants are accessible across Australia
7. A vibrant financial advice sector creates jobs
8. Trust in the financial services sector is restored
9. The advice 'gap' is reduced
10. The 'price gap' identified by ASIC is reduced
11. Royal Commission 'independent advice' is increased

Australians need urgent and affordable basic strategic superannuation advice, which can be delivered through an efficient and effective model, utilizing suitably qualified professionals.

This will assist Australian small businesses and individuals on their road to a post COVID-19 recovery.

This can quickly be achieved by a new Legislative Instrument.

Appendix 3

Schematic: Options for reform for tax agents – reducing regulatory overlap in financial and tax services

Reducing regulatory overlap in financial and tax services

Accountants with limited AFSL and SMSF/superannuation specialists

+

Accountants who are Registered Tax Agents

Consumers would benefit from a streamlined and consistent regulatory framework to meet their different advice needs.

Giving effect to:

1. **Govt response to review of TPB** (Nov 2020) – recommendation (rec) 1.1 TPB remains the most appropriate statutory body to regulate tax practitioners (noting that tax (financial) advisers will be subject to a revised statutory regime – see rec 7.1); rec 3.3 creation of Tax Practitioner Governance and Standards Forum; rec 3.4 ASIC, ATO and TPB to work more closely together; rec 4.4 greater accountability for delivery of tax agent services; rec 7.1 single point of registration for individuals; abide by one Code; disciplinary action decided by tax profession; rec 7.2 level playing field for accountants and what advice accountants can and cannot give (refers to Hayne rec 2.3); other recs strengthen governance and accountability
2. **Restoring trust in Australia's financial system** (Feb 2019) – Govt response to 'Hayne Royal Commission' – rec 2.10 establish a new single, central disciplinary body for financial advisers who provide personal financial advice to retail clients; require them to be individually registered etc; rec 2.3 review of measures to improve quality of advice, including Future of Financial Advice
3. **ASIC CP 332** Promoting access to affordable advice for Australian consumers (Nov 2020) – addressing impediments to providing good quality, affordable personal advice to meet consumers' unmet advice needs
4. **ALRC Review** of the legislative framework for corporations and financial services regulation (Sep 2020) – includes consideration of Corporations Act 2001 (Corps Act) chapter 7; new business models, technology and practices
5. **Deregulation Taskforce** (Jul 2019) – focus on ensuring that, where regulation is required, it is implemented with the lightest touch, designed and applied in most efficient and timely way, with least cost on businesses
6. **Treasury Quality Review** (planned for 2022) including a full review of licensed advice

By amending:

1. Tax (financial) advisers being removed from Tax Agent Services Act 2009 (TASA) and Tax Agent Services Regulations 2009 (TASR) – already proposed in the BILL
2. Limited AFSLs who are also Registered Tax Agents could simultaneously be removed from the financial advice system under the Corps Act and Corporations Regulations 2009 (Corps Regs), by re-defining:
 - o TASA's meaning of 'tax agent services' to include providing advice on establishing and winding up SMSFs, contributions and pensions to superannuation funds and SMSFs, if provided 'in the ordinary course of business' ie when providing other taxagent services
 - o TASA s90-5 – insert (1A) – *The Board may, by legislative instrument, specify that another service is a tax agent service* – making it consistent with TASA 90-10 and 90-15 relating to BAS and tax (financial) advice services

Registered Tax Agents who hold a limited AFSL are currently subject to at least four regulatory regimes (ASIC, TPB, APESB, PSC).

Appendix 4

Schematic: Consumer protections to be recognised for a small cohort of accountants

Consumer protections to be recognised for accountants who are under:

- A Limited AFSL and are on the FAR and/or hold
- A Certificate of Public Practice (CPP) and have an SMSF specialisation

Requirement	Chartered Accountants (and many IPA and CPAs) already have:
Appropriate education, experience and qualifications	<ol style="list-style-type: none"> 1. An Australian or New Zealand qualification at Bachelor's degree (or overseas equivalent), and 2. Have passed CA ANZ approved subjects in required competency areas <p>Members of CA ANZ also have a TEQSA approved AQF8 post graduate qualification.</p>
Minimum mentoring	<p>CA mentoring program</p> <ol style="list-style-type: none"> 1. 3 years full-time equivalent employment in a relevant accounting role with an approved training employer + 2. Mentored by a CA or member of Global Accounting Alliance body +
Code of Ethics	APES 110 Code of Ethics (*see detail below)
Ongoing CPD	Minimum 120 hours CPD for a 3-year time period as required by CA ANZ
Compulsory PI Insurance	Members must have PI insurance
Additional Liability Scheme protection	Members under a CPP have additional client protection via a limited Liability Scheme

***Further detail re applicable Accounting Professional & Ethical Standards Board Limited ("APESB") references:**

APES 110: Code of Ethics for Professional Accountants at para 100.1

"A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. A Member's responsibility is not exclusively to satisfy the needs of an individual client or employing organisation. Therefore, the Code contains requirements and application material to enable Members to meet their responsibility to act in the public interest."

Also, at para 110.1 A1 There are five fundamental principles of ethics for Members:

- a. Integrity – to be straightforward and honest in all professional and business relationships.
- b. Objectivity – not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others.
- c. Professional Competence and Due Care – to:
 - i. Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent Professional Activities, based on current technical and professional standards and relevant legislation; and
 - ii. Act diligently and in accordance with applicable technical and professional standards.
- d. Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships.
- e. Professional Behaviour – to comply with relevant laws and regulations and avoid any

Also APES 230: Financial Planning Services at para 3.6:

A Member providing a Financial Planning Service shall act in the Best Interests of the Client.

This is defined as follows - Best Interests of the Client means the obligations as defined in Division 2 of Part 7.7A of the Corporations Act 2001, and for the purposes of this Standard apply to the provision of all Financial Planning Services.

Appendix 5

Case study 1: Contributions: farming business in country
Australia

Case study 1

Contributions: farming business in country Australia

Facts	Situation
<p>Mum 59 years old</p> <p>Dad 63 years old</p> <p>Son 32 years old</p> <p>Daughter-in-law 30 years old</p>	<p>Mum and Dad are second generation farmers.</p> <p>Son is working as mechanic in country town.</p> <p>Daughter-in-law is nurse in local Hospital.</p>
<p>All have an existing industry super fund</p>	<p>Mum: Australian Super</p> <p>Dad: Australian Super</p> <p>Son: MTAA</p> <p>Daughter-in-law: Hesta</p>
<p>The season has been good</p>	<p>Accountant prepares interim accounts and estimates a \$60K profit.</p>
<p>What the accountant <u>wants</u> to recommend</p>	<p>Make additional contributions to existing funds as follows:</p> <p>Mum: \$20k</p> <p>Dad: \$20k</p> <p>Son: \$10k</p> <p>Daughter-in-law: \$10k</p> <p>Cost to client: \$175 (30 mins of accountant's time)</p> <p><i>Accountant to recommend seeing a licensed adviser for the investment of the funds.</i></p>
<p>What the accountant <u>can currently</u> say</p>	<p>Superannuation is tax deductible.</p> <p>We are unable to assist with any advice in relation to the quantum of the contribution or where the contribution might be directed.</p> <p>Cost to client: \$1,500 (Needs appointment with licensed adviser, business facts need to be relayed and explained, source of funds for contribution need to be established, possible conversation between adviser and accountant, record of Advice needs to be prepared)</p>

Case study 2: Commence pension: farming business in country Australia

Case study 2

Commence pension: farming business in country Australia

Facts	Detail/situation
Mum 59 years old Dad 63 years old Son 32 years old Daughter-in-law 30 years old	Mum/ Dad decide it's time for Son to take over farm. Dad wants to retire, Mum happy to continue. Son starts full-time on the farm. Daughter-in-law is still nursing in local Hospital.
All have an existing industry super fund	Mum: Australian Super Dad: Australian Super Son: MTAA Daughter-in-law: Hesta
New cashflow needed for Dad from super	Dad has healthy account balance with Australian Super.
What the accountant <u>wants</u> to recommend	Dad to commence a pension from existing Australian Super Fund. Amount required \$40k Cost to client: \$475 (1.5 hours of accountant's time to evaluate cashflow required) <i>Accountant to recommend seeing a licensed adviser for advice around asset allocation and possible need for a review of risk profile for retirement phase.</i>
What the accountant <u>can currently</u> say	Pension streams are tax-free if commenced after 60 years of age. We are unable to assist with any advice in relation to the commencement of the pension from an existing super fund. Cost to client: \$2,500 (Needs appointment with licensed adviser, business facts need to be relayed and explained, cashflow needs to be analysed, possible conversation between adviser and accountant, scaled Statement of Advice needs to be prepared.)

Appendix 7

Case study 3: Small business CGT rollover concessions and small business 15-year exemption – establish an SMSF

Case study 3

Small business CGT rollover concessions and small business 15-year exemption – establish an SMSF

Facts	Detail/situation
<p>Judy and George are partners in a small business. They:</p> <ul style="list-style-type: none"> • Are both over 60 years old • Have had a business for 30 years • Want to sell their business and retire • Understand there are some CGT provisions and small business concessions that may help them to lessen their capital gain if they utilise superannuation • They want to know what provisions will help in their case 	<p>They have been with the same accountancy practice for the entire 30 years.</p> <p>Their accountant talks them through the various options available from tax and CGT perspectives and explains which tests apply and whether they qualify or not.</p> <p>They have always been in full control of their structures and assets and want their affairs to remain that way.</p> <p>As they are retiring, they'd like to take an interest in how the rolled over funds are invested and have some control over the investments they hold within superannuation.</p>
<p>What the accountant <u>wants</u> to recommend</p>	<p>Based on the facts, the accountant believes an SMSF is the best structure for these clients.</p> <p>The accountant recommends an SMSF, assists with the sale of the business, ensures record keeping is in line with ATO requirements, guides the client in the establishment of an SMSF and ensures the business proceeds are deposited into the newly established SMSF.</p> <p><i>Accountant to recommend seeing a licensed adviser for advice around the investment of assets within the SMSF.</i></p>
<p>What the accountant <u>can currently</u> say</p>	<p>From a small business perspective, you will qualify for...</p> <p>As you've owned your business for over 30 years, the CGT concessions available are....</p> <p>An SMSF has the following qualities...</p> <p>We are unable to assist with any advice in relation to the pros and cons of an SMSF for you and we are unable to establishment one for you.</p> <p>We are also unable to manage the sale of your business and ensure the proceeds go seamlessly into the SMSF you have requested.</p>

Appendix 8

Case study 4: Small business unsustainable – wind up everything including an SMSF

Case study 4

Small business unsustainable – wind up everything including an SMSF

Facts	Detail/situation
<p>Mary and Peter are partners in a small business. They:</p> <ul style="list-style-type: none"> • Are both 35 years old • Have had a business for 5 years • Have seen revenue drop throughout COVID and don't believe their business is sustainable • Need to get secure jobs to pay their mortgage • Will salvage any plant and machinery and try to sell via Facebook • Want all their business entities wound up as cheaply and as quickly as possible 	<p>They have been with the same accountant since the establishment of their business.</p> <p>They have a corporate trustee, a family trust and an SMSF.</p> <p>The accountant did not set up the SMSF, nor were they allowed to advise that for lower levels of assets, an SMSF would be inappropriate in this client situation.</p>
<p>What the accountant <u>wants</u> to recommend</p>	<p>The accountant believes winding up everything is the best option for these clients, including the SMSF as it has a low account balance, and Mary and Peter are pursuing employed positions.</p> <p>Agree that Mary and Peter can sell remaining assets themselves to save costs.</p> <p>The accountant provides the necessary advice around winding up the corporate trustee, the family trust and the SMSF, and explains that funds in the SMSF will need to be rolled into new individual superannuation fund(s)</p> <p>Accountant to recommend seeing a licensed adviser for advice around the rollover of SMSF balances to individual superannuation funds.</p>
<p>What the accountant <u>can currently</u> say</p>	<p>We recommend you wind up your corporate trustee and your family trust and we can help you with this</p> <p>However, we are unable to recommend and help you to wind up your SMSF, even though it shares the same corporate trustee as your family trust. Until you have sought external advice on this, we are unable to wind up your corporate trustee.</p>

Appendix 9

Financial Sector Reform Bill provisions in respect of specific superannuation services

Financial Sector Reform (Hayne Royal Commission Response—A New Disciplinary System for Financial Advisers) Bill 2021

IPA / CA ANZ / SMSFA proposed amendments to the draft Bill for the purpose of reforming the regulation of certain superannuation related advice provided by appropriately qualified accountants.

Amendments to:

Tax Agent Services Act 2009

The following amendments should be included in the draft Bill after what is section 119 in the exposure draft Bill.

XX Section 90-5

Insert:

- (1A) The Board may, by legislative instrument, specify that another service is a tax agent service.

XX Section 90-5

Insert:

- (3) A *tax agent service* is any service provided by:
- (a) a *qualified accountant that relates to advising on and assisting with:
 - (i) calculating and making a payment of any contribution to an existing *superannuation fund or a *self-managed superannuation fund; or
 - (ii) establishing a *pension and calculating payments in connection with a pension payable from an existing *superannuation fund or a *self-managed superannuation fund; or
 - (iii) establishing a *self-managed superannuation fund; or
 - (iv) winding up a *self-managed superannuation fund; and
 - (b) an individual that meets the requirements prescribed by regulations or specified by the Board by legislative instrument for the purposes of this subsection.

Note: Contributions in sub-paragraph 90-5(3)(a)(i) takes its meaning in accordance with tax laws from time to time.

- (4) In subsection 90-5(3):
- (a) *pension* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; and
 - (b) *qualified accountant* has the same meaning as in the *Corporations Act 2001*; and
 - (c) *self-managed superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; and
 - (d) *superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*, but does not include a *self-managed superannuation fund.

No amendment is required to the *Corporations Act 2001* because of the operation section 766B(5)(c).

Appendix 10

Joint Briefing Paper: Tax Practitioners Board (TPB) - 26 July 2021

Reforms to the regulation of certain superannuation and tax related advice provided by appropriately qualified accountants.

Briefing paper for the TPB Board: June 2021

Current situation:

- In the ordinary course of business (i.e. when providing other tax agent services), Accountants commonly provide advice to clients about making contributions to an existing superannuation fund, commencing a pension from an existing superannuation fund, establishing an SMSF and winding up an SMSF.
- Accountants who provide this advice are required to hold a limited or full AFSL or be authorised to provide this advice by an entity who holds a limited or full AFSL. The group for which this solution is being sought are those who practise under a limited AFSL and can therefore only advise on existing superannuation funds, SMSFs and the rollover of existing funds to an SMSF.
- Case studies outlining common examples of strategic superannuation advice provided by Accountants who are, in the main, small business advisers are provided as 'other documents.' These case studies illustrate the types of scenarios clients want to discuss with their Accountant and we believe are in the ordinary course of business of providing a tax agent service.
- Accountants who operate under a limited AFSL needing this relief are not seeking to provide any financial product advice as this advice does, and should be, the domain of a licensed adviser.
- It is estimated there are collectively 1,600 members of CA ANZ, IPA and SMSFA that are currently authorised to provide limited advice, and that a further 1,500 practitioners who are members of CA ANZ, IPA and SMSFA have attained the SMSFA or CA ANZ SMSF Specialist Advisor designation. We do not anticipate this number will grow substantially over time.

Reason for change:

- Due to escalating licensing costs, ongoing compliance costs, and the unintended consequences of the FASEA regime, almost all of the estimated 1,600 members of the major accounting bodies and the SMSFA, who are authorised to provide limited advice, will soon cease to do so. For many members, providing strategic superannuation advice represents only a small portion of their business and it is simply no longer viable for these members to provide this advice.
- Consumers need access to affordable strategic superannuation advice, which can be delivered through an efficient and effective model, utilising suitably highly qualified professionals with adequate consumer protections in place.

Proposed solution:

Amend the definition of tax agent service in section 90-5 of the *Tax Agent Services Act 2009*, to allow:

- a. A 'qualified accountant' (defined in s88B of the *Corporations Act 2001* as a member of one of the major accounting bodies)
- b. AND who operates under a Certificate of Public Practice
- c. AND who is a Registered Tax Agent (RTA) with the Tax Practitioners Board (TPB)
- d. AND who is either:
 - I. Listed on the Register of Relevant Providers as at the date the legislation is passed or
 - II. Accredited as an SMSF specialist adviser to provide a service, in the ordinary course of business as an RTA, that relates to advising on and assisting with:

- Calculating and making contributions to an existing superannuation fund; or
- Establishing a pension and calculating payments in connection with a pension payable from an existing superannuation fund; or
- Establishing or winding up an SMSF

This amendment will have the effect of removing an additional layer of regulation for a qualified accountant who only provides a tax agent service as defined in section 90-5, from the financial advice system under the *Corporations Act 2001* and *Corporations Regulations 2001*.

Consumer protections will be strengthened by requiring the accountant to be a qualified accountant and an RTA. A comparison of the FASEA Code of Ethics and the Accounting Professional and Ethical Standards Board (APESB) APES 110 Code of Ethics and the TPB Code of Professional Conduct illustrates that the ethical standards under the APESB and TPB codes are more extensive and consumer-oriented than under the FASEA regime.

In addition, qualified accountants are subject to other professional and ethical standards under the APESB, which cover a range of requirements relating to risk management, engagement, client monies and so on. Unlike ASIC regulatory guides, these are mandatory in nature and are enforced by the professional accounting bodies. Please refer to <https://apesb.org.au/> for further information.

Another layer of regulatory oversight to which all of the professional accounting bodies, which have a Professional Standards Scheme, are subject to is the professional standards legislation administered by the Professional Standards Councils (PSC). The 'vision' of the PSC is 'protecting consumers by improving professional standards.' Please refer to <https://www.psc.gov.au/> for further information.

The *Tax Agent Services Regulations 2009* will also prescribe that the qualified accountant must hold an SMSF specialist advisor designation from either the SMSFA or CA ANZ or be a SMSF specialist adviser as prescribed by the TPB. This requirement will be included in regulations and is an integral part of the proposal.

Stakeholder consultations:

We have met with both Government and Opposition Ministers, The Treasury, ASIC, the De-regulation taskforce, the Office of PM&C and there has been uniform acknowledgement this proposed solution for Australian consumers is considered 'non-controversial'. Major industry groups have provided bipartisan support with no significant objections.

Our ask of the TPB:

To consider and assess our proposal; and if there is agreement, to implement the measures through the most appropriate means available to the TPB.

We have proposed that the measures could be introduced through amendments to the TASA and TASR; or through the TASR alone. We refer to the draft amendments which have been prepared by Maddocks Lawyers and provided with this briefing. There may be other options which we have not considered so in this regard, we are happy to be guided by the TPB.

The issue we are seeking to address is based on the needs of Australian consumers to obtain competent and affordable advice from their chosen professional adviser. We believe that our proposal aligns with the policy objectives underpinning the recommendations of the TPB Review and especially, the pursuit of appropriate deregulation whilst ensuring consumer protection.

We welcome the opportunity for further discussion if the TPB and TPB Board believe there is merit in our proposal.

Other documents:

Series of four schematics and four case studies.

Draft Legislative Instrument - To make appropriate changes to the TASR to expand the definition of a tax agent service for appropriately qualified accountants in strictly prescribed circumstances

Draft Legislative Instrument

The proposed legislative instrument is made pursuant to the *Tax Agent Services Regulations 2009*:

Requirements for providing a tax agent service

- (1) (a) The Board may, by legislative instrument, specify that another service is a tax agent service.
- (b) For the purposes of regulation 13A of the Tax Agent Services Regulations 2009, the following services are specified as tax agent services for the purposes of the Tax Agent Service Act 2009 when provided at the same time as services that are, other than because of this instrument, tax agent services for the purposes of the Act.
- (2) A tax agent service is any service provided by:
- (a) a qualified accountant that relates to advising on and assisting with:
- (i) calculating and making a payment of any contribution to an existing superannuation fund or a self-managed superannuation fund; or
 - (ii) establishing a pension and calculating payments in connection with a pension payable from an existing superannuation fund or a self-managed superannuation fund; or
 - (iii) establishing a self-managed superannuation fund; or
 - (iv) winding up a self-managed superannuation fund; and
- (b) an individual that meets the requirements prescribed by regulations or specified by the Board by legislative instrument for the purposes of this sub-section;
- and
- (c) is provided in the ordinary course of the individual's business at the same time the individual is providing any tax agent service described in subsection 90-5(1) of the Act; and
- (d) when it is provided, the entity provides to a person receiving the service a memorandum that:
- (a) sets out the other tax agent services that were provided with the service;
 - (b) sets out the services that were provided that are tax agent services as a result of this instrument; and
 - (c) includes a recommendation that the person receiving the services obtains the advice of a holder of an Australian Financial Services Licence in respect of other aspects of their interest in a *superannuation fund*, *self-managed superannuation fund* or *pension*.
- (3) For the purposes of subsection 90-5(3)(b) of the Act, the following are the **requirements** for the purposes of subsection 90-5(3) of the Act:
- (a) the individual is a qualified accountant who holds a Certificate of Public Practice or equivalent issued by either Chartered Accountants Australia and New Zealand, Institute of Public Accountants or CPA Australia; and
 - (b) the individual is a Registered Tax Agent pursuant to the *Tax Agent Services Act 2009*; and
 - (b) either:

- (i) the individual is listed in the Register of Relevant Providers as at the date of the commencement of subsection 90-5(3) of the Act or within two years of this date; or
- (ii) the individual is accredited as an SMSF specialist advisor by Chartered Accountants Australia and New Zealand or SMSF Association Limited at the time the individual provides a tax agent service of the kind referred to in subsection 90-5(3)(a) of the Act; or
- (iii) the individual meets any SMSF specialist accreditation requirements specified by the Board by legislative instrument under subsection 90-5(3)(b) of the Act.

(4) For the purposes of this instrument:

- (a) **Act** means the *Tax Agent Service Act 2009*.
- (b) contribution means payment by a person that increases the benefit of a person in respect of a superannuation fund or a self-managed superannuation fund other than a payment in the form of income of the superannuation fund or self-managed superannuation fund; and
- (c) **financial service licensee** has the same meaning as in the *Corporations Act 2001*; and
- (d) **pension** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; and
- (e) **qualified accountant** has the same meaning as in the *Corporations Act 2001*; and
- (f) **Register of Relevant Providers** has the same meaning as in the *Corporations Act 2001*.
- (g) **self-managed superannuation fund** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; and
- (h) **superannuation fund** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*, but does not include a *self-managed superannuation fund.