



3 May 2023

Advice and Investment Branch
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Email: FinancialAdvice@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL 2023: FINANCIAL ADVISER PROFESSIONAL STANDARDS EXPOSURE DRAFT

The SMSF Association welcomes the opportunity to provide this submission in response to the Government's exposure draft legislation on the education standards for experienced financial advisers and technical fixes for new entrants. Two essential elements of the Association's mission are professionalism and integrity. This is underpinned by our core beliefs which includes education and accreditation for advisers operating in the SMSF sector.

Experienced Adviser Pathway

The reforms to the financial adviser education standards introduced in 2017 have had a significant impact on the professional, ethical and education standards of financial advisers. Many in the profession have embraced this obligation, despite the challenges and pressures impacting them and the sector more broadly. Education and professional standards provide an important foundation to the provision of quality advice to clients. The adoption of an experience only pathway to satisfy the education requirements does not meet the original policy intent of enhancing professional standards and moving financial advisory services towards becoming a true profession.

The profession would have been better served with clear education pathways and options, that recognised the diverse financial advice system ecosystem. Not the rigid one size fits all approach adopted. There is a need for greater recognition of prior learning under existing tertiary education standards, and the approval of courses and education pathways set by a body comprising of regulators, professional associations, and tertiary education providers. These would have avoided the need for a watering down of the provisions and, in all likelihood, would have resulted in more advisers remaining in the profession.

We acknowledge the concern around declining financial adviser numbers and the importance of retaining experienced financial advisers in the industry. There will be advisers who need time to prepare for their retirement and not be forced to sell their businesses under fire sale conditions. They will need an opportunity to transition their businesses and hand over to the next generation. Given



the impacts of COVID-19 and various natural disasters, there is a need to allow time for this to occur post 1 January 2026. For this purpose, we support the experience pathway.

Sunset Clause

It is essential that the proposed pathway includes a sunset clause. The sunset date should provide sufficient time for advisers who are registered in the FAR under the experienced pathway to transition out of the profession should they choose to, and to do so in an orderly and fair and reasonable manner. The lack of a sunset clause is a risk to the profession and consumers and could leave the door open for advisers, who have not satisfied the education requirements, to remain in the profession indefinitely. Anyone seeking to continue to practice beyond this date should be required to meet the education requirements.

Ethics Bridging Course

Regardless of the level of education attained or required, all existing advisers have been required to complete an approved AQF8 level course in ethics. As a minimum, this requirement must be maintained. It should be noted that no recognition of prior learning can be awarded for the ethics bridging unit. Nor can CPD be applied to meet this core obligation.

Coupled with the underlying policy intent and rationale for its introduction, the requirement to complete an approved bridging course in ethics for professional advisers must be maintained.

Continuing Professional Development

Advisers who have exited the profession and now seek re-entry or who have been removed from the financial adviser register for a period exceeding 18 months, should be required to have completed at least 20 hours of CPD relevant to their authorisation prior to reregistration. This ensures that the currency of their knowledge is maintained, and competencies are current. It will avoid situations where an individual is now seeking reregistration but, in the years, immediately preceding their reregistration has not maintained at least a minimum level of CPD relevant to their authorisation.

Clean Record

We understand the desire for simplicity and certainty for the adviser, licensee, and regulators. However, the proposed 31 December 2021 'line in the sand' approach leaves a significant gap in time which risks an outcome contrary to the policy intent.

The proposed pathway could see an adviser subject to an enforceable undertaking (or some other form of ASIC sanction), still satisfy the experience adviser pathway criteria because that action arose after 31 December 2021. This outcome, whilst not intended, could be very damaging to the financial advice profession.

To reduce the risk of this occurring we recommend that the requirement to have a clean record should apply up until the date of Royal Assent of these amendments.

Looking forward, advisers who are authorised and registered on the FAR using the experienced pathway need certainty and fair consideration. Where an adviser is deemed to meet the education requirements, no matter how that has been achieved, it should be treated as one and the same.

The existing disciplinary framework available to ASIC, the use of the FSCP, and available sanctions can then be applied, noting the FSCP has a range of sanctions available to it. An education directive could



be given where the FSCP identifies in the matter before them, a deficiency in the adviser's knowledge or the need for re-education on a particular knowledge area. Such matters should be addressed on a case-by-case basis regardless of the adviser's education pathway.

Ministerial Approval – Approved Qualifications

The use of Ministerial approval as proposed provides certainty and an avenue for real world issues to be fairly considered and addressed. The current system can be very impractical and rigid, with measures strictly enforced.

In addition, ASIC should be granted discretionary powers to address simple administrative matters. This will alleviate the need for all issues to be referred to the Minister for resolution or approval.

Issues such as an alternative unit code applied for the same course, or a typographical error of a unit code appearing in the approved course register, and that is confirmed by the tertiary education provider in writing, should be dealt with on the front line by ASIC. The Minister can then be advised of any amendments required to update or correct the register.

Significant delays in resolving simple issues such as this can deny a professional year candidate from sitting their financial adviser exam. As limited sittings occur each year, this can significantly impact the completion of their professional year program.

A broader review of the financial adviser education is needed. The assessment of degrees and pathways should be made by a profession lead committee or organisation in conjunction with tertiary education providers and regulators. This would be in line with the core knowledge areas and competencies as defined by that same group.

The opportunity now exists for the profession to have greater involvement in the regulation of the sector, in line with other professions. We look forward to working with Government and Treasury on a review of the education pathways and progressing to a profession lead model.

Registered Tax Agents

The drafting of the transitional measures that applied to tax (financial) advisers under the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* did not appropriately address registered tax agents. This gap has caused significant concern and confusion for impacted advisers and their licensees. The result was a wide range of views and treatment of advisers, each with very different outcomes and implications for the advisers concerned.

We thank Treasury and Government for their engagement and willingness to work with industry on a solution for registered tax agents. These proposed amendments are welcomed.

Importantly, these amendments must commence on 1 January 2022 to align with the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*. This is to ensure regulatory consistency for all advisers. Financial advisers who are registered tax agents need legislative certainty that they could legally provide tax (financial) advice to service their clients from 1 January 2022 to the enactment of these amendments.



If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.13 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.