





# **Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 16 December 2021

David Hurley  
Governor-General

By His Excellency's Command

Jane Hume  
Minister for Superannuation, Financial Services and the Digital Economy

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## 1 Name

This instrument is the *Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2022.	1 January 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following:

- (a) the *Australian Securities and Investments Commission Act 2001*;
- (b) the *Corporations Act 2001*;
- (c) the *Tax Agent Services Act 2009*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Australian Securities and Investments Commission Regulations 2001*

#### 1 After Part 2A

Insert:

### Part 2B—Financial Services and Credit Panels

#### 12N Circumstances in which ASIC must convene a Financial Services and Credit Panel

- (1) For the purposes of subsection 139(2) of the Act, ASIC must convene a Financial Services and Credit Panel to perform functions or exercise powers under the corporations legislation in relation to a relevant provider if:
  - (a) a circumstance specified in subregulation (2) applies in relation to the relevant provider; and
  - (b) ASIC has not exercised, and does not propose to exercise, any of its powers under the corporations legislation against the relevant provider in relation to the circumstance.
- (2) The following circumstances are specified for the purposes of paragraph (1)(a):
  - (a) the relevant provider becomes an insolvent under administration and ASIC is aware of the insolvency;
  - (b) the relevant provider is convicted of fraud and ASIC is aware of the conviction;
  - (c) ASIC reasonably believes that the relevant provider is not a fit and proper person to provide personal advice to retail clients in relation to relevant financial products (all within the meaning of Chapter 7 of the Corporations Act), having regard to:
    - (i) the matters specified in paragraphs 921U(a) to (k) of the Corporations Act (subject to Part VIIC of the *Crimes Act 1914*); and
    - (ii) any other matter ASIC considers relevant;
  - (d) ASIC reasonably believes that the relevant provider has contravened:
    - (i) subsection 921BA(1), (2) or (3) of the Corporations Act (relevant providers to meet education and training standards); or
    - (ii) subsection 921F(4) of the Corporations Act (about the provision of a Statement of Advice by a provisional relevant provider to a retail client); or
    - (iii) section 921Y of the Corporations Act (unregistered relevant providers not to provide personal advice);
  - (e) ASIC reasonably believes that:
    - (i) the relevant provider has contravened a financial services law (including a restricted civil penalty provision); and
    - (ii) the contravention is serious;
  - (f) both of the following apply:

- (i) the relevant provider has been involved in the contravention of a financial services law (including a restricted civil penalty provision) by another person;
- (ii) ASIC reasonably believes that the contravention is serious;
- (g) subregulation (3) applies to the relevant provider.

Note: Subsection 921E(3) of the Corporations Act (relevant providers to comply with the Code of Ethics) is a financial services law.

(3) This subregulation applies to the relevant provider if:

- (a) the relevant provider has, at least twice, been linked to a refusal or failure to give effect to a determination made by AFCA relating to a complaint that relates to:
  - (i) a financial services business; or
  - (ii) credit activities (within the meaning of the *National Consumer Credit Protection Act 2009*); and
- (b) ASIC reasonably believes that the refusal or failure:
  - (i) has resulted, or is likely to result, in material loss or damage to a client of the relevant provider; or
  - (ii) has resulted, or is likely to result, in a material benefit to the relevant provider; or
  - (iii) involves dishonesty or fraud.

Note: To work out whether a relevant provider has been linked as described in paragraph (a), see section 910C of the Corporations Act.

(4) A contravention is *serious* for the purposes of subparagraph (2)(e)(ii) or (f)(ii) if it:

- (a) has resulted, or is likely to result, in material loss or damage to a client of the relevant provider; or
- (b) has resulted, or is likely to result, in a material benefit to the relevant provider; or
- (c) involves dishonesty or fraud.

## **12P Allowances and expenses payable for attendance at hearings of a Financial Services and Credit Panel**

For the purposes of section 166 of the Act, a person who appears at a hearing of a Financial Services and Credit Panel in accordance with a summons issued under subsection 165(1) of the Act is entitled to be paid allowances and expenses in accordance with Schedule 2.

## **2 Schedule 2 (note to Schedule heading)**

Omit “12 and 43”, substitute “12, 12P and 43”.

## **3 Items 1, 2 and 3 of Schedule 2**

Omit “Panel or the Board”, substitute “Panel, the Board or a Financial Services and Credit Panel”.

## ***Corporations Regulations 2001***

### **4 After subparagraph 7.6.02A(2)(a)(ii)**

Insert:

- (ia) subsection 921BA(5) in so far as it relates to subsection 921BA(4);
- (iib) subsection 921BB(4);
- (iic) subsection 921E(3);

### **5 After regulation 7.6.06C**

Insert:

#### **7.6.06D Register of Relevant Providers—prescribed instruments**

- (1) For the purposes of subsection 922Q(3) of the Act, the following kinds of instrument made under subsection 921K(1) of the Act are prescribed:
  - (a) a direction (other than a direction covered by subregulation (2)) that a relevant provider:
    - (i) undertake specified training; or
    - (ii) receive specified counselling; or
    - (iii) receive specified supervision; or
    - (iv) report specified matters to ASIC;
  - (b) a registration suspension order;
  - (c) a registration prohibition order.
- (2) A direction is covered by this subregulation if:
  - (a) on a particular occasion, one or more instruments are made under subsection 921K(1) of the Act in relation to a relevant provider; and
  - (b) the direction is that instrument or one of those instruments; and
  - (c) that occasion is the first occasion on which an instrument is made under that subsection in relation to the relevant provider.

### **6 At the end of Part 7.6**

Add:

#### **7.6.07B Exam for existing providers**

- (1) For the purposes of paragraph 1684B(a) of the Act, 1 October 2022 is prescribed in relation to an existing provider who is a relevant provider if, at least twice before 1 January 2022, the existing provider sat an exam approved for the purposes of subsection 921B(3) of the Act as in force immediately before 1 January 2022.
- (2) In this regulation:

*existing provider* has the meaning given by section 1546A of the Act.

### **7 After paragraph 9.5.01(a)**

Insert:

- (b) subsection 921G(2) (Approving or refusing to approve foreign qualifications);

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(ba) subsection 921G(4) (Specifying courses);

### ***Tax Agent Services Regulations 2009***

#### **8 Regulation 3 (definition of *recognised tax agent association*)**

Repeal the definition, substitute:

*recognised tax agent association* means:

- (a) an organisation recognised by the Board under regulation 5B; or
- (b) an organisation that, immediately before 1 January 2022, was a recognised tax (financial) adviser association within the meaning of this instrument as in force at that time.

#### **9 Regulation 3 (definition of *recognised tax (financial) adviser association*)**

Repeal the definition.

#### **10 Regulation 3 (paragraph (b) of the definition of *requirements for recognition*)**

Omit “Schedule 1; or”, substitute “Schedule 1.”.

#### **11 Regulation 3 (paragraph (c) of the definition of *requirements for recognition*)**

Repeal the paragraph.

#### **12 Regulation 4**

Omit “registered tax agents, BAS agents and tax (financial) advisers”, substitute “registered tax agents and BAS agents”.

#### **13 Subregulation 5D(1)**

Repeal the subregulation, substitute:

- (1) This regulation applies if the Board gives a recognised tax agent association a written request that the association tell the Board the reasons why it is still appropriate for the association to be a recognised tax agent association.

#### **14 Division 2A of Part 1A**

Repeal the Division.

#### **15 Regulation 6**

Repeal the regulation, substitute:

#### **6 Publication of certain information on Board’s website**

The Board must publish the following on its website:

- (a) notice of the following decisions:
  - (i) a decision by the Board to recognise an organisation as a recognised BAS agent association under regulation 4D;
  - (ii) a decision by the Board to terminate the recognition of a recognised BAS agent association under regulation 4G;

- (iii) a decision by the Board to recognise an organisation as a recognised tax agent association under regulation 5B;
- (iv) a decision by the Board to terminate the recognition of a recognised tax agent association under regulation 5E;
- (b) if, immediately before 1 January 2022, an organisation was a recognised tax (financial) adviser association (within the meaning of this instrument as in force at that time)—notice that, on that day, the organisation became a recognised tax agent association because of paragraph (b) of the definition of *recognised tax agent association*.

## 16 Paragraph 6A(d)

Omit “regulation 5E;”, substitute “regulation 5E.”.

## 17 Paragraphs 6A(e) and (f)

Repeal the paragraphs.

## 18 Regulation 6B

Omit “recognised BAS agent association, recognised tax agent association or recognised tax (financial) adviser association”, substitute “recognised BAS agent association or recognised tax agent association”.

## 19 Regulation 8A

Repeal the regulation.

## 20 Subregulation 9(1)

Repeal the subregulation, substitute:

- (1) For the purposes of paragraph 20-20(2)(b) of the Act, the fee for an application of a kind referred to in column 1 of an item of the following table is the fee set out in column 2 of that item.

<b>Processing fees</b>		
<b>Item</b>	<b>Column 1 Kind of application</b>	<b>Column 2 Fee</b>
1	Application for registration as a tax agent that relies on a requirement in any of items 201 to 210 of Schedule 2	\$704 (subject to indexation under subregulation (2))
2	Application for registration as a tax agent that relies on the requirement in item 211 of Schedule 2	Nil
3	Application for registration as a BAS agent	\$141 (subject to indexation under subregulation (2))

## 21 Regulation 12 (heading)

Omit “**tax agents, BAS agents and tax (financial) advisers**”, substitute “**tax agents and BAS agents**”.

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**22 Subregulation 12(1)**

Omit “registered tax agents, BAS agents and tax (financial) advisers”, substitute “registered tax agents and BAS agents”.

**23 Subregulation 12(1)**

Omit “for each registered tax agent, BAS agent and tax (financial) adviser”, substitute “for each registered tax agent and BAS agent”.

**24 Paragraphs 12(1)(a) to (f)**

Omit “registered tax agent, BAS agent or tax (financial) adviser”, substitute “registered tax agent or BAS agent”.

**25 Subregulation 12(1) (note)**

Omit “registered tax agent, BAS agent or tax (financial) adviser”, substitute “registered tax agent or BAS agent”.

**26 Subregulation 12(2)**

Omit “registered tax agents, BAS agents and tax (financial) advisers”, substitute “registered tax agents and BAS agents”.

**27 Subregulation 12(2)**

Omit “registered tax agent, BAS agent or tax (financial) adviser”, substitute “registered tax agent or BAS agent”.

**28 Subregulation 12(3)**

Omit “registered tax agents, BAS agents or tax (financial) advisers”, substitute “registered tax agents or BAS agents”.

**29 Subregulation 12(4)**

Omit “tax agents, BAS agents and tax (financial) advisers” (wherever occurring), substitute “tax agents and BAS agents”.

**30 At the end of subregulation 13(1)**

Add:

- ; (m) subject to subregulation (2), a tax (financial) advice service provided between 1 January and 31 December 2022 by an entity that:
  - (i) immediately before 1 January 2022, was a registered tax (financial) adviser (within the meaning of the Act as in force at that time); and
  - (ii) is not a relevant provider.

**31 After subregulation 13(1)**

Insert:

- (2) Paragraph (1)(m) does not cover a service provided by an entity if:
  - (a) on or after 1 January 2022, the entity applies, under section 20-20 of the Act, for registration as a tax agent; and
  - (b) the service is provided:
    - (i) if the Board grants the application—after the registration commences;
    - or

- (ii) if the Board rejects the application—after the Board notifies the entity of its decision.

**32 Schedule 1 (note to Schedule heading)**

Omit “regulations 4D, 5B and 5H”, substitute “regulations 4D and 5B”.

**33 Paragraphs 210(a) and (b) of Schedule 1**

Omit “the discipline of accountancy”, substitute “a relevant discipline (within the meaning of Part 2 of Schedule 2)”.

**34 At the end of item 210 of Schedule 1**

Add:

- ; (f) the member has the equivalent of 6 years of full-time experience in providing tax (financial) advice services in the past 8 years.

**35 Part 3 of Schedule 1**

Repeal the Part.

**36 Schedule 2 (heading)**

Omit “BAS agent, tax agent or tax (financial) adviser”, substitute “BAS agent or tax agent”.

**37 Schedule 2 (note to Schedule heading)**

Omit “regulations 7, 8 and 8A”, substitute “regulations 7 and 8”.

**38 At the end of Division 1 of Part 2 of Schedule 2**

Add:

*Tertiary qualifications—tax (financial) advice services*

207 A requirement is that:

- (a) the individual has been awarded:
  - (i) a degree or a post-graduate award from an Australian tertiary institution in a relevant discipline; or
  - (ii) a degree or award that is approved by the Board from an equivalent institution in a relevant discipline; and
- (b) the individual has successfully completed a course in commercial law that is approved by the Board; and
- (c) the individual has successfully completed a course in Australian taxation law that is approved by the Board; and
- (d) the individual has been engaged in the equivalent of 12 months of full-time relevant tax (financial) advice experience in the preceding 5 years; and
- (e) the individual is, or was within the preceding 90 days:
  - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
  - (ii) a representative of a financial services licensee mentioned in paragraph (a) of the definition of *representative* in section 910A of the *Corporations Act 2001*.

Note 1: The Board may approve a course by an approval process, an accreditation scheme, or by other means.

Note 2: If the Board grants an application for registration, the Board may impose one or more conditions to which the registration is subject (see subsections 20-25(5) to (7) of the Act).

*Diploma or higher award—tax (financial) advice services*

208 A requirement is that:

- (a) the individual has been awarded a diploma or higher award from:
  - (i) a registered training organisation; or
  - (ii) an equivalent institution;
 in a relevant discipline; and
- (b) the individual has successfully completed a course in commercial law that is approved by the Board; and
- (c) the individual has successfully completed a course in Australian taxation law that is approved by the Board; and
- (d) the individual has been engaged in the equivalent of 18 months of full-time relevant tax (financial) advice experience in the preceding 5 years; and
- (e) the individual is, or was within the preceding 90 days:
  - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
  - (ii) a representative of a financial services licensee mentioned in paragraph (a) of the definition of **representative** in section 910A of the *Corporations Act 2001*.

Note 1: The Board may approve a course by an approval process, an accreditation scheme, or by other means.

Note 2: If the Board grants an application for registration, the Board may impose one or more conditions to which the registration is subject (see subsections 20-25(5) to (7) of the Act).

*Work experience—tax (financial) advice services*

209 A requirement is that:

- (a) the individual has successfully completed a course in commercial law that is approved by the Board; and
- (b) the individual has successfully completed a course in Australian taxation law that is approved by the Board; and
- (c) the individual has been engaged in the equivalent of 3 years of full-time relevant tax (financial) advice experience in the preceding 5 years; and
- (d) the individual is, or was within the preceding 90 days:
  - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
  - (ii) a representative of a financial services licensee mentioned in paragraph (a) of the definition of **representative** in section 910A of the *Corporations Act 2001*.

Note 1: The Board may approve a course by an approval process, an accreditation scheme, or by other means.

Note 2: If the Board grants an application for registration, the Board may impose one or more conditions to which the registration is subject (see subsections 20-25(5) to (7) of the Act).

*Membership of professional association—tax (financial) advice services*

210 A requirement is that:

- (a) the individual is a voting member of a recognised tax agent association; and
- (b) the individual has been engaged in the equivalent of 6 years of full-time relevant tax (financial) advice experience in the preceding 8 years; and
- (c) the individual is, or was within the preceding 90 days:
  - (i) a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001*; or
  - (ii) a representative of a financial services licensee mentioned in paragraph (a) of the definition of **representative** in section 910A of the *Corporations Act 2001*.

Note: If the Board grants an application for registration, the Board may impose one or more conditions to which the registration is subject (see subsections 20-25(5) to (7) of the Act).

*Registered tax (financial) advisers*

211 A requirement is that:

- (a) immediately before 1 January 2022, the individual was a registered tax (financial) adviser within the meaning of the Act as in force at that time; and
- (b) the individual's application for registration, under section 20-20 of the Act, is made before 1 January 2023.

Note: If the Board grants an application for registration, the Board may impose one or more conditions to which the registration is subject (see subsections 20-25(5) to (7) of the Act).

### **39 Division 2 of Part 2 of Schedule 2**

Repeal the Division, substitute:

#### **Division 2—Definitions**

212 In Division 1:

**relevant discipline** includes a discipline related to finance, financial planning, commerce, economics, business, tax, accountancy, or law.

**relevant experience** means work by an individual:

- (a) as a tax agent registered under the Act; or
- (b) as a tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before 1 March 2010; or
- (c) under the supervision and control of a tax agent registered under the Act; or
- (d) under the supervision and control of a tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before 1 March 2010; or
- (e) as an Australian legal practitioner; or
- (f) of another kind approved by the Board;

in the course of which the individual's work has included substantial involvement in one or more of the types of tax agent services described in

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section 90-5 of the Act, or substantial involvement in a particular area of taxation law to which one or more of those types of tax agent services relate.

**relevant tax (financial) advice experience** means work by an individual:

- (a) as a registered tax (financial) adviser within the meaning of the Act as in force immediately before 1 January 2022; or
- (b) as a tax agent registered under the Act, or under Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before 1 March 2010; or
- (c) under the supervision and control of a registered tax (financial) adviser within the meaning of the Act as in force immediately before 1 January 2022; or
- (d) under the supervision and control of a tax agent registered under the Act, or under Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before 1 March 2010; or
- (e) as a qualified tax relevant provider; or
- (f) under the supervision and control of a qualified tax relevant provider; or
- (g) of another kind approved by the Board;

that included substantial involvement in one or more of the types of tax (financial) advice services described in section 90-15 of the Act, or substantial involvement in a particular area of taxation law to which one or more of those types of tax (financial) advice services relate.

#### **40 Part 3 of Schedule 2**

Repeal the Part.