



9 October 2019

Manager
Regulator Powers Reform Unit
Financial Services Reform Taskforce
Treasury
Langton Cres
Parkes ACT 2600

Email: ASICenforcementreview@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION ON THE ASIC ENFORCEMENT REVIEW TASKFORCE

The SMSF Association welcomes the opportunity to make a submission on certain draft legislation implementing recommendations from the Australian Securities and Investment Commissions' (ASIC) Enforcement Review Taskforce Report.

We are supportive of measures which sufficiently dissuade misconduct within the financial services industry and provide appropriate powers for ASIC. At the same time, it is important that the measures provide a healthy balance that allows ASIC to pursue intentional misconduct without imposing excessive regulation on the entire industry.

We provide comment on the draft legislation which is of most importance to our members:

[Fit and proper person requirement \(alignment of the AFS and ACL licensing regimes\)](#)

The SMSF Association supports updating the requirement for obtaining an Australian Financial Service (AFS) license by replacing the requirement that a person be of 'good fame and character' with the requirement that they be a 'fit and proper person' to provide the financial service covered by the licence.

We also support the alignment with the Australian Credit License (ACL) arrangements.

The change in requirement should not place any extra burden on AFS licensees and ensures that a more comprehensive test is used for applicants.

[Align the penalties for false and misleading statements in AFS and Credit Licence applications](#)

We also support the alignment of penalties for false and misleading statements in AFS and ACL applications. Submitting a document to ASIC that is materially false or misleading without taking reasonable steps to avoid the document being materially false or misleading should incur consequences.

This will ensure that applicants take greater care when applying for an ASIC license.



Extend ASIC's banning powers

The SMSF Association is supportive of the proposed increased banning powers. We believe the legislative intent of the legislation is to allow ASIC to impose appropriate administrative sanctions to a wider net of individuals after they have completed their investigations.

The implementation of the Financial Adviser Standards and Ethics Authority (FASEA) education requirements also mean that ASIC's banning powers are of more importance. It is expected that there will be a portion of current licensed financial advisers who will decide not to meet FASEA's education standard and no longer provide licensed advice. This means that there will be a move away from the traditional offering of financial advice and standard services.

For example, previously licensed financial advisers may move into the management or supervision of financial services or the design and distribution of financial products. Therefore, we believe the application on the prohibition on the performance of functions involved in a financial services business will be central. It is important ASIC are able to prohibit individuals from undertaking these actions when they are deemed to not be a fit and proper person and can materially impact negatively on consumers.

However, we believe it is appropriate that the banning orders are not exercised against individuals when they are not in position to materially and negatively impact on consumers. For example, it may be unnecessary to ban an individual who meets the less serious grounds of a banning order but continues to work as an employee in a financial services business without the responsibility of supervising, creating or impacting on the overall services provided. We believe it is important the legislation reflect that a banning order for 'performing any function' is to be used when the individual has capacity to cause consumer detriment or when the grounds involved are particularly serious or egregious.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

A handwritten signature in black ink that reads 'John L. Maroney'. The signature is fluid and cursive, with a large initial 'J' and 'M'.

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing SMSF sector which is comprised of over 1.1 million SMSF members who have more than \$750 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF



Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.