

EXPOSURE DRAFT



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

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 2021

David Hurley
Governor-General

By His Excellency's Command

Jane Hume [**DRAFT ONLY—NOT FOR SIGNATURE**]
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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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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 (other than section 921S of the Corporations Act (warnings and reprimands by ASIC)) 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;
 - (b) the relevant provider is convicted of fraud;
 - (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 (2)(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”.

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Schedule 1 Amendments

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:

- (aa) subsection 921G(2) (Approving or refusing to approve foreign qualifications);
- (ab) subsection 921G(4) (Specifying courses);

Tax Agent Services Regulations 2009

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

Repeal the definition.

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

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

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

Repeal the paragraph.

11 Regulation 4

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

12 Division 2A of Part 1A

Repeal the Division.

13 Paragraph 6(d)

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

14 Paragraphs 6(e) and (f)

Repeal the paragraphs.

15 Paragraph 6A(d)

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

16 Paragraphs 6A(e) and (f)

Repeal the paragraphs.

17 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”.

18 Regulation 8A

Repeal the regulation.

19 Subregulation 9(1)

Repeal the subregulation, substitute:

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Schedule 1 Amendments

- (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.

Processing fees		
Item	Column 1 Kind of application	Column 2 Fee
1	Application for registration as a tax agent that relies on a requirement in any of items 201 to 209 of Schedule 2	\$675 (subject to indexation under subregulation (2))
2	Application for registration as a tax agent that relies on the requirement in item 210 of Schedule 2	Nil
3	Application for registration as a BAS agent	\$135 (subject to indexation under subregulation (2))

20 Regulation 12 (heading)

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

21 Subregulation 12(1)

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

22 Subregulation 12(1)

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

23 Paragraphs 12(1)(a) to (f)

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

24 Subregulation 12(2)

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

25 Subregulation 12(2)

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

26 Subregulation 12(3)

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

27 Subregulation 12(4)

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

28 At the end of subregulation 13(1)

Add:

- ; (m) a service provided between 1 January 2022 and 30 September 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.

29 Subregulation 13(3) (after the definition of *related entity*)

Insert:

relevant provider has the same meaning as in Part 7.6 of the *Corporations Act 2001*.

30 Part 3 of Schedule 1

Repeal the Part.

31 Schedule 2 (heading)

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

32 Schedule 2 (note to Schedule heading)

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

33 At the end of Division 1 of Part 2 of Schedule 2

Add:

Tertiary qualifications—financial services licensees and their representatives

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, 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*.

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Schedule 1 Amendments

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—financial services licensees and their representatives

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, 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—financial services licensees and their representatives

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, 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).

Registered tax (financial) advisers

210 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).

34 Division 2 of Part 2 of Schedule 2

Repeal the Division, substitute:

Division 2—Definitions

211 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 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.

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

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Schedule 1 Amendments

(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.

35 Part 3 of Schedule 2

Repeal the Part.