



19 February 2016

Tax Practitioners Board
GPO Box 1620
SYDNEY NSW 2001

Via email: tpbsubmissions@tpb.gov.au

Attention: Mr Ian Taylor Chair

Dear Sir

Comment on Exposure draft

TPB Information Sheet TPB(I) D31/2015

Code of Professional Conduct – Confidentiality of client information for tax (financial) advisers

Thank you for the opportunity to comment on the Exposure Draft of TPB Information Sheet TPB(I) D31/2015.

We commend the Tax Practitioners' Board's (TPB) efforts to raise awareness of the important role tax (financial) advisers have in protecting the confidentiality of their client's personal and sensitive information.

The TPB's the treatment of third party access to client confidential information differs from the approach taken in the Privacy Act 1988 (Cth) and to 'principal and agent' principle underpinning Chapter 7 of the Corporations Act 2001 (Cth).

Under **TPB(I) D31/2015**, individual practitioners and entities must each treat anyone external to the practitioner and client or the firm and client relationship, as a third party. For a practitioner, this means treating their employer and/or their Australian Financial Services licensee as a third party for the purposes of disclosure and consent to access. Our members will find this impractical.

We wonder whether this approach is intentional or necessary.

The Privacy Act 1988 (Cth) treats the acts done by, or consents given to the individual in certain capacities as the acts of the organisation: [see Division 3 of Part 2 of the Privacy Act 1988 (Cth)] The Corporations Act similarly treats the acts of a representative of an AFS licensee as the acts of the licensee for most purposes. Under the TPBs approach, practitioners may not be in a position to contest their employer or licensee's requirements that they collect, utilize and disclosure to third parties their client's confidential information.

Under existing Privacy Act and Corporations Act obligations, most financial institutions manage financial services customer privacy consents through a group privacy policy. Larger groups utilize shared access to client confidential information to deliver important adviser monitoring and supervision systems and processes with scale efficiencies that fulfil licensing requirements and can enhance consumer protection.

Administering conflicting privacy, Corporations Act and TPB client confidential information regimes may impose significant compliance costs on businesses at a time of other significant regulatory change. Such costs are likely to be passed onto consumers in the form of higher costs for financial advice. It is unclear whether the differing approach will deliver any net benefit to consumers.

FPA's preferred approach

The FPA would prefer the TPB amended the Exposure Draft to ensure consistency with current Privacy Act and Corporations Act requirements for advisers. The TPB should permit practitioners and firms to conjointly manage client consents and disclosures.

In particular, the TPB should treat the acts done by, or consents given to the individual practitioner as a representative and/or employee of an AFS licensee, or by or to a Corporate Authorised Representative as the acts of the AFS licensee or Corporate Authorised Representative and vice versa.

Alternatively, if the TPB has evidence that current industry use of group privacy policies to share client confidential information is having a detrimental impact on consumers, the TPB could consider introducing arrangements to restrict or quarantine client information sharing beyond the practitioner and the advice licensee.

The FPA would also like the TPB to include reference in the information sheet to practitioner and entity responsibilities to ensure that letters of engagement and/or disclosures and consents do not unduly restrict the practitioner's capacity to meet any obligations to cooperate and share information with professional bodies for the purposes of disciplinary investigations and complaints, or with their licensee to enable licensing obligations to be met.

We would welcome the opportunity to discuss any of the issues raised in this submission and potential solutions.

Sincerely



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