

Law Division
Treasury
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Parkes ACT 2600

Email: PwCResponse@treasury.gov.au

Wednesday 4 October 2023

Dear Treasury,

PwC Response – Tax Practitioners Board Reforms, Information Sharing and Whistleblower Protections

The Financial Advice Association of Australia¹ (FAAA) welcomes the opportunity to provide feedback on the PwC Response package of reforms.

The FAAA is broadly supportive of all the proposals that have been put forward as part of this package.

We have set out our response to three of the four separate legislative measures below. Whilst we are supportive, we do not intend to make specific comment on the reform of promoter penalty laws as this is not directly relevant to the activities of the majority of our members.

Tax Practitioners Board Reforms

The FAAA supports the following proposals:

- Extending the time allowed for the TPB to undertake an investigation of suspected misconduct.
- Improve the functionality of the TPB Register and better enable the disclosure of misconduct of practitioners on the register.

Whilst we support the extension of the time period that the TPB has to undertake investigations of misconduct from 6 months to two years, we believe that it remains important for the TPB to undertake these investigations in as timely a manner as possible.

The FAAA supports the draft legislation to formalise the existence of a register of tax practitioners, however we question the decision to specify the detail of the contents of this register through regulations. This is inconsistent with the fact that the contents of the Financial Adviser Register are spelt out in Section 922Q of the Corporations Act. We recommend that this approach be reviewed.

¹ The Financial Advice Association of Australia (FAAA) was formed in April 2023, out of a merger of the Financial Planning Association of Australia Limited (FPA) and the Association of Financial Advisers Limited (AFA), two of Australia's largest and longest-standing associations of financial planners and advisers. The FPA was a professional association formed in 1992 as a merger between The Australian Society of Investment and Financial Advisers and the International Association of Financial Planning. In 1999 the CFP Professional Education Program was launched. As Australia's largest professional association for financial planners, the FPA represented the interests of the public and (leading into the merger) over 10,000 members. Since its formation, the FPA worked towards changing the face of financial planning, from an industry to a profession that earned consumer confidence and trust, and advocated that better financial advice would positively influence the financial wellbeing of all Australians. The AFA was a professional association for financial advisers that dated back to 1946 (existing in various forms and under various names). The AFA was a national membership entity that operated in each state of Australia and across the full spectrum of advice types. The AFA had a long history of advocating for the best interests of financial advisers and their clients, through working with the government, regulators and other stakeholders. The AFA had a long legacy of operating in the life insurance sector, however substantially broadened its member base over a number of decades. The AFA had a strong focus on promoting the value of advice and recognising award winning advisers over many years. The AFA had strong foundations in believing in advocacy for members and creating events and other opportunities to enable members to grow and share best practice.

We also support the inclusion of a record of misconduct on the Register, however we offer the caution that this should be for more material matters of misconduct and not merely administrative matters. We also have reservations about the legislation empowering the TPB through Item 12 to publish a finding when the TPB had previously made the decision to take no further action. This seems to be retrospective, although we note the right of appeal to the AAT exists. In these circumstances, we believe that this should only apply in the case of more serious matters.

Information Sharing

The FAAA supports the following proposals:

- The ATO and the TPB sharing protected information with Treasury about misconduct related to suspected breaches of confidence by intermediaries engaging with the Commonwealth.
- The ATO and the TPB sharing protected information with prescribed disciplinary bodies (including professional associations).
- The Treasury on-disclosing protected information with relevant Ministers.

We believe that each of these three proposals will better enable action to be taken against those who commit misconduct and will thus serve to better protect Australians from such misconduct.

At this stage we have no concerns with respect to the proposal related to the prescribing of disciplinary bodies. This is an important step in better recognising the full range of disciplinary solutions, including those operated by professional associations.

We are not aware of any potential shortcomings in this draft legislation, nor do we feel that it inappropriately removes any genuine rights that taxpayers and intermediaries have.

Whistleblower Protections

The FAAA supports the following proposals:

- Extending whistleblower protections for disclosures to the TPB and other bodies.
- Enabling the Australian Taxation Office, ACNC and TPB to share disclosed information more effectively.

The FAAA supports the expansion of entities that whistleblowers are protected in disclosing to, including professional associations, medical practitioners and psychologists. However, we seek clarity on the legal implications of an employee of a professional association disclosing information received from a whistleblower to a regulatory body.

We would welcome the opportunity to discuss this submission with Treasury. If you have any questions, please contact me on (02) 9220 4500.

Yours sincerely,



Phil Anderson
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Financial Advice Association of Australia