

Tax Practitioners Board  
GPO Box 1620  
SYDNEY NSW 2001

Via Email: [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au)

24 May 2024

Dear TPB,

### **Consultation – TPB(I) D53/2024 - Breach reporting under the TASA**

The Financial Advice Association of Australia<sup>1</sup> (FAAA) welcomes the opportunity to provide feedback to the TPB on the TPB Information Sheet D53/2024 – Breach reporting under the Tax Agent Services Act 2009.

The FAAA, as a professional association representing financial advisers, is very familiar with the Reportable Situations (Breach Reporting) regime that applies in the financial services sector. We are therefore aware of the challenges that come with defining what is a 'significant breach' and ensuring that a regime of this nature is applied consistently across the broader industry. It is important to note that most of our practicing members are Qualified Tax Relevant Providers and will therefore not be covered under the TPB breach reporting regime.

The Australian Financial Services Licensee reportable situations regime was significantly modified in 2021 as a result of recommendations in the 2019 Banking Royal Commission final report. These changes added significantly to complexity of the scheme and the cost of applying it in a business context. These changes also included an obligation to report financial advisers from other licensees, where there were reasonable ground to conclude misconduct had occurred. Those reforms made the mistake of unnecessarily lowering the threshold of what needed to be reported to ASIC, which has significantly increased the volume of reports and the workload for all in operating this regime. ASIC have recently expressed concerns about what they consider to be under-reporting. There is evidently inconsistent application of the obligation across the industry, however particularly in comparison between large licensees and some smaller licensees. In our view, the TPB can leverage this experience in the financial services sector and ensure that

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<sup>1</sup> The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

materiality is appropriately applied and cost implications for industry are carefully considered. It is also critical that there is a strong understanding of the obligation, with clear guidance provided.

## **Our Feedback**

We offer the following feedback with respect to the draft Information Sheet:

- We are concerned that the draft Information Sheet does not address the obligations of RPAs on receipt of a breach report. The FAAA investigates potential breaches of our professional standards, and in some cases this could involve the investigation of potential breaches of the law. We suggest the role and capacity of RPAs should be made clearer in the guidance.
- We believe that it would be better to deal with self reporting and reporting of others tax practitioners in separate sections of the information sheet. The threshold for reporting other practitioners would need to be higher, given the issues with access to confirming information/evidence. This is particularly important in terms of forming a view on “reasonable grounds”. More specific guidance on this would be helpful.
- Whilst the TPB have gone to great lengths to explain what a significant breach is, this is still very complex and confusing. It is likely that many practitioners would need to get legal advice. This is problematic as it will be costly, however it will also increase the risk that people will not report, as it is too confusing and costly.
- Whilst there is a clear reference to the utilisation of the “Notify a change in circumstances” form, this seems to be the wrong label for breach reporting and there is no explanation of what details are required to be provided to meet the breach reporting obligation. Neither is it clear what a report to an RPA needs to include. We believe that the guidance should address this.
- The penalties and consequences could be clearer. In the Information sheet, the penalties for breaching this reporting obligation should be set out.
- Often case studies are more useful when they reflect borderline issues, rather than obvious issues. Case study 2 is not very useful, as this is a very serious matter and obviously a breach. Someone undertaking criminal activity of this nature is unlikely to report themselves. Case study 4 is also very obviously a breach, making this less useful. In terms of timing and when someone had reasonable grounds to believe a breach had occurred, maybe this can be better highlighted by specific reference in each case to what would constitute reasonable grounds.
- It would be helpful if there was more cross-referencing within the document. For example, in the sections on the obligations, noting that the penalties under the TAA and sanctions under the TASA Code are detailed in paragraphs 153 – 168.

## **Conclusion**

The FAAA welcomes the opportunity to provide feedback on this consultation paper. Please contact me on 0417 280 270 if you have any questions.

Yours sincerely,



### **Phil Anderson**

General Manager Policy, Advocacy & Standards  
Financial Advice Association of Australia