29 July 2026

Treasury
Submitted online

Dear Treasury,

Review of tax and corporate whistleblowing in Australia

The Financial Advice Association of Australia[1] (FAAA) supports strong protections that encourage whistleblowers to disclose information to help identify and address misconduct and wrongdoing in the financial services sector and businesses more broadly.

Financial advisers fall under the whistleblower regimes in two ways:

- as an authorised representative providing services on behalf of the authorising Australian Financial Services Licensee. In this instance the adviser would fall within the definition of ‘associate’, and
- as a provider of services to individuals, companies and trusts under the tax whistleblower regime.

The FAAA welcomes the opportunity to provide the following feedback to Treasury’s review of the tax and corporate whistleblowing regimes.

We have four key recommendations, further outlined below:

1. The corporate and tax whistleblower regimes should recognise the role of AUSTRAC and make clear how the AML/CTF regime interacts with the whistleblowing requirements and protections
2. Individuals and entities who disclose information in good faith to professional bodies should have access to whistleblower protections.
3. Professional bodies who receive information from whistleblowers in good faith and pass the information onto a relevant legal authority or government agency, should be afforded third party whistleblower protection.
4. The whistleblower regimes should permit regulators and government agencies to share information with TPB recognised professional bodies and ASIC prescribed associations.

<u>Regulatory overlap and clarity</u>

The Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Act requires AUSTRAC reporting entities to submit a Suspicious Matter Report (SMR) if they suspect, on reasonable grounds, that a customer, or potential customer, or a transaction involving a customer is linked to a crime. This includes offences such as tax evasion and Commonwealth, State or Territory offences. Strict tipping-off provisions apply to the SMR regime.

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. FAAA advocates for the interests of financial advisers and their clients across the country.

It is unclear how the provisions in the whistleblowing regimes interact with the AML/CTF SMR obligations. We seek clarity on how this regime applies in that context.

As stated in the consultation paper, civil and criminal penalties apply to the disclosure of information which may identify a whistleblower, except in cases where the disclosure is made to the Commissioner (ATO), the AFP, TPB, IGT or the ACNC (under the tax regime). The tax regime includes individuals and companies to whom services are provided, as eligible entities. Suspected tax evasion is a reportable matter under the AML/CTF SMR obligations and requires information to be included about the person who formed the suspicion about the entity subject to the report – i.e. the whistleblower. Yet AUSTRAC is not included as an exception to these civil and criminal penalties. We believe that it should be.

This is important given the definitions in the tax whistleblower regimes would capture individuals, trusts and companies as consumers of services. These same consumers are also captured by the AML/CTF regime, meaning both regimes would apply inconsistently to the same consumers in relation to the same matter.

There are also potential inconsistencies in the investigation requirements between the AML/CTF Act and the whistleblowing regimes. Both whistleblower regimes require the entity to investigate concerns. However, under the AML/CTF regime, once a reporting entity has formed reasonable grounds for a suspicion, it must report the matter within the set timeframes and monitor the behaviour and transactions of the customer. Critically, this must be done in a manner that avoids the risk of tipping-off, particularly in relation to clients.

We note that the AML/CTF Act provides its own protections for reports made under the SMR obligations and that the consultation paper states that disclosures to regulators other than ASIC and APRA are not protected under the whistleblowing regimes. However, the corporate and tax whistleblower regimes should recognise the role of AUSTRAC and make clear how the AML/CTF regime interacts with the whistleblowing requirements and protections.

Professional bodies

The current whistleblowing regimes recognise that whistleblowers may not always feel comfortable or be able to disclose information about suspected misconduct directly to the regulated entity that the whistleblower is associated with. This is evident through the extension of the protections to include the disclosure of information by whistleblowers to ASIC, APRA or other prescribed Commonwealth Authorities. The regimes also permit persons or bodies that are eligible recipients in relation to all regulated entities, or in relation to a class or classes of regulated entities, to be prescribed in the regulations.

Professional bodies have an ongoing relationship with their members and offer a unique opportunity to combat misconduct and other wrongdoing. As a professional body, the FAAA is privy to concerns of misconduct and can gather valuable information and data via our formal complaint investigations and our anonymous disclosure service. We conduct investigations into reports received, with disciplinary determinations made by our independent Conduct Review Commission.

The FAAA is accredited by the Tax Practitioners Board as a Recognised Tax Agent Association. The recognition of the role of professional associations is grounded in the Tax Agent Services regime, with ‘membership of a professional association’ set out in Item 206 of the TAS Regulations as a registration option for tax agents.

Similarly, s127(4) of the ASIC Act permits ASIC to share information with prescribed associations.

The fact that professional bodies are not currently identified within the whistleblowing laws creates a loophole in the regimes that could leave disclosers unknowingly unprotected and exposed to potential detriment. Financial advisers and other financial advice staff who disclose information about suspected misconduct to their professional body might assume the whistleblower protections would apply.

It also exposes professional bodies, like the FAAA, who may receive such disclosures from its members, businesses and consumers. The FAAA investigates reports it receives to determine if a breach of our professional standards has occurred. We also determine if the conduct is required to be referred to ASIC for investigation. In these referrals, ASIC would seek information about the person reporting the complaint (if it was available to us), to assist the Regulator in their investigations – i.e. the whistleblower. As professional bodies are not included in the whistleblowing regimes, we are concerned that disclosing information about the whistleblower to ASIC could put us at risk of breaching the whistleblowing laws and incurring a penalty.

The FAAA makes the following recommendations to bring professional bodies, including the FAAA, into the whistleblower protection regime:

- Individuals and entities who disclose information in good faith to professional bodies should have access to whistleblower protections.

- Professional bodies who receive information from whistleblowers in good faith and pass the information onto a relevant legal authority or government agency, should be afforded third party whistleblower protection.

- The whistleblower regimes should permit regulators and government agencies to share information with TPB recognised professional bodies and ASIC prescribed associations.

We would welcome the opportunity to discuss the matters raised in our submission with you further.

Yours sincerely,

Sarah Abood
Chief Executive Officer
Financial Advice Association Australia (FAAA)