29 July 2026

The Treasury
Langton Crescent
PARKES ACT 2600

BY ELECTRONIC LODGEMENT

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – Review of tax and corporate whistleblowing in Australia

The SMSF Association welcomes the opportunity to provide this submission in response to Treasury's review of tax and corporate whistleblowing in Australia.

We support the objective of ensuring greater consistency between the tax and corporate whistleblowing frameworks, to encourage the disclosure of misconduct while maintaining appropriate protections for whistleblowers. It is also important that elements of the frameworks are reviewed to ensure they remain fit for purpose and aligned with the evolving regulatory environments in which businesses and intermediaries operate.

For example, ASIC has an increasingly broad regulatory remit. Section 127(4)(d)(i) of the *Australian Securities and Investments Commission Act 2001* permits ASIC to disclose certain information to prescribed professional disciplinary bodies where the information will assist the body to perform one of its functions, having regard to its confidentiality obligations. However, the list of prescribed professional disciplinary bodies in section 8AA of the *Australian Securities and Investments Commission Regulations 2001* is limited when compared with the number of professional bodies ASIC engages with as part of its regulatory oversight functions. Given this, we recommend that the list of prescribed professional bodies be expanded to better reflect the professional bodies ASIC works with, and in turn support both ASIC and those bodies to perform their co-regulatory functions more effectively.

Further, as professional bodies are not statutory bodies, we believe it is important that protections are embedded in the framework for professional bodies, their boards, employees and disciplinary committee or panel members when considering disciplinary matters where information is shared between the professional body and the regulator in good faith, and in accordance with these provisions.

We note that the consultation paper also highlights that preparatory acts are unlikely to qualify for protection, notwithstanding that the corresponding tax and corporate whistleblowing provisions have not been tested on this issue. These steps are often necessary for an individual to assess whether they should disclose misconduct. Without certainty of protection, this is likely to act as a

SMSF Association Limited
ACN 103 739 617
Level 3, 70 Pirie Street
Adelaide SA 5000
Tel 1300 779 096
enquiries@smsfassociation.com
www.smsfassociation.com

deterrent and undermine the objective of the framework. As such, we believe the framework should be amended to provide certainty, recognising that while this would operate at the federal level, gaps may still exist at the state and territory level that should also be addressed.

We also believe there should be consistency in the penalties for engaging in, or threatening to engage in, detrimental conduct across the tax and corporate whistleblowing frameworks. Civil penalties should therefore also apply under the *Tax Administration Act 1953* (TAA 1953), consistent with the position under the *Corporations Act 2001*.

Consideration should also be given to ensuring consistency across other regulatory obligations and associated protections. This includes professionals and businesses operating under the *Corporations Act 2001* and the TAA 1953 that must be enrolled with the Australian Transaction Reports and Analysis Centre (AUSTRAC) as reporting entities. In this role, they must comply with a statutory obligation under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) to report suspicious behaviour through a suspicious matter report (SMR).

A reporting entity must lodge an SMR with AUSTRAC if they form a suspicion on reasonable grounds that:

- information they have may be relevant to a crime
- a customer, future customer or their agent isn't who they claim to be, or
- a person is planning a money laundering, terrorism financing or proliferation financing offence.

This often requires the reporting entity to undertake further investigation, or preparatory steps, before forming a suspicion on reasonable grounds and lodging the SMR. AUSTRAC may then share this intelligence with public and private entities, including law enforcement agencies.

The AML/CTF Act provides protection from an action, suit or proceeding, whether criminal or civil, for compliance with the AML/CTF Act. However, there is no option for a reporting entity to make an anonymous disclosure, regardless of the seriousness of the conduct they are legally required to report in an SMR.

Further, it is a criminal offence for a reporting entity, or an officer, employee or agent of a reporting entity, to disclose information about an SMR to another person where it would, or could reasonably be expected to, prejudice an investigation. This is commonly known as 'tipping off'.

While we acknowledge that SMRs play a critical role in gathering financial intelligence to support AUSTRAC to deter, detect and disrupt financial and other serious crimes, consideration should be given to whether the current protection from liability is sufficient. This is particularly important given that more than 30,000 additional individuals and businesses across the accounting, legal and real estate sectors have now enrolled with AUSTRAC as reporting entities under the recent tranche 2 reforms.

If you have any questions about our submission, please do not hesitate to contact Keddie Waller, Head of Professional Standards, via email at keddiewaller@smsfassociation.com.

Yours sincerely,

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.2 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.