

4 June 2021

Niki De Mel  
Strategic Policy Adviser  
Strategy Group  
Australian Securities and Investments Commission

By email: [br.submissions@asic.gov.au](mailto:br.submissions@asic.gov.au)

Dear Niki,

### Consultation Paper 340 – Breach reporting and related obligations

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia supports ASIC's proposed approach to provide high-level and principles-based guidance for AFS licensees on how they can comply with the breach reporting obligations commencing on 1 October 2021.

However, after reviewing draft Regulatory Guide 78 we believe many AFS licensees, particularly those without dedicated compliance resources, such as small financial planning practices or sole practitioners, will find the guidance in its current form impenetrable without additional support. This will require licensees to dedicate additional staff resources to compliance activities or engage external compliance consultants. Either path will add to the increasing compliance burden faced by licensees and financial advisers and ultimately impact on the cost of providing financial advice and the ability for consumers to access affordable professional advice.

CPA Australia research conducted in 2019 and contained in the [Regulatory Burden Report](#) demonstrated the rising cost and time burden faced by professional advisers when meeting the increasing compliance and regulatory obligations associated with providing quality advice. One third (36.0 per cent) of professional accountants who were currently providing financial planning advice were reconsidering their offering, as a result of the complex legislative and regulatory framework. Despite the increasing demand for financial planning advice, professional accountants who were authorised representatives of an AFS licensee were hesitant about continuing to provide financial planning advice, as the associated costs become unreasonable and compliance burden becomes too onerous.

We strongly support principles-based regulation and guidance. However, we are concerned that unless the record keeping and reporting requirements are clear, concise and easily understandable, differing interpretation of the requirements by licensees will result in a broad range of approaches from minimalist, with greater risk of omission or mistakes being made, to completely over-engineered, costly and never fully utilised.

Our primary concern with draft RG 78 is that it is not a self-contained document. There is considerable cross-referencing to sections of various Acts of Parliament and associated regulations, such as the Corporations Act, the Corporations Regulations, ASIC Act and National Credit Act, other legislative instruments, regulatory guides and even explanatory memoranda to legislative bills.

For example, in Table 2 on page 15:

*The trustee may have breached s912A, 1017D and 1041H of the Corporations Act and s12CA, 12CB, 12DA, 12DB, 12DF and 12DI of the ASIC Act.*

Further, in Table 3 *Factors that determine whether a breach (or likely breach) is 'significant'*, licensees will need to consider "any other matters prescribed by regulations" and:

*You should check to see whether the regulations have specified any further factors.*

For completeness, licensees will need to refer to these other legislative instruments on a regular basis to ensure they are meeting their obligations, which seems to be counterproductive to having a single regulatory guide in place.

Of further concern is that it is being left to licensees to interpret many undefined terms, such as 'material loss or damage' where it is suggested "licensees should be guided by the Parliamentary intent in the Explanatory Memorandum".

The additional complexity, regulatory burden and risk of mis-interpretation resulting from the need to consult multiple reference material has recently been highlighted by the Australian Law Reform Commission as part of their [Review of the Legislative Framework for Corporations and Financial Services Regulation](#).

The breach reporting obligations go hand in hand with the notify, investigate and remediate obligations. As such, we strongly recommend that ASIC develop a single, high-level guide or information sheet for licensees that combines and highlights the key obligations detailed in RG 78 and RG 256 in a plain language, easy to understand format to ensure these obligations are not lost in the detail of the regulatory guides. The draft information sheet, INFO 000, could provide the foundation for such a document.

We also note that the commencement of the new breach reporting requirements from 1 October 2021 may see the volume of matters that need to be considered by ASIC and increase significantly. The severity of these breaches will range from minor or inadvertent disclosure issues through to matters that will cause significant detriment to consumers. Full transparency of ASIC's processes to respond to these reports will be required to manage community and industry expectations. Service level agreements should be put in place, committed to by ASIC and publicly communicated to ensure matters are dealt with in a timely manner.

If you have any queries about this submission, please contact Michael Davison, Senior Manager, Advocacy and Retirement Policy on [REDACTED]

Yours sincerely

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**Ms Keddie Waller**  
**Head of Public Practice and SME**