Law Council
OF AUSTRALIA

Business Law Section

24 April 2026

Director
Legal Policy Unit
The Treasury
Langton Crescent
Parkes ACT 2600

By email: taxadministrationconsultation@treasury.gov.au

Dear Treasury

Tax Practitioners Board sanctions reforms—draft legislation

1. The Taxation Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to comment on the:

   (a) Exposure Draft of the Treasury Laws Amendment Bill 2026: Enhancing TPB Sanctions Framework (**Exposure Draft**); and

   (b) Exposure Draft Explanatory Materials to the Treasury Laws Amendment Bill 2026: Enhancing TPB Sanctions Framework (**Explanatory Materials**)

   —together the **Draft Legislation**.

2. On 13 August 2024, the Law Council wrote to Treasury about its *Review of eligibility requirements for registration with the Tax Practitioners Board*, setting out the Law Council's submission that the *Tax Agent Services Act 2009* (**TASA**) should not be amended to require legal practitioners who provide tax agent services to register with the Tax Practitioners Board (**TPB**). The Committee endorses and repeats the 13 August 2024 submission, a copy of which is **enclosed** and which should be read together with the comments in this letter.

Key points

3. As currently drafted, the Draft Legislation exposes legal practitioners who are not required to be registered as tax agents to penalties under section 50-21 of the Exposure Draft.

4. This is contrary to the policy underpinning the TASA as currently enacted and contrary to the policy underpinning the other proposed sanctions imposed by the Draft Legislation, which do not apply to legal practitioners.

5. The Committee assumes that the application of the proposed sanctions to legal practitioners who are not required to be registered as tax agents is unintended.

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If that is not the case—if the extension of sanctions under the TASA to legal practitioners who are not required to be registered tax agents *is* intended—the Committee requests an opportunity to discuss with Treasury what will be potentially fundamental changes to the regulation of the legal profession and to the scope and remit of the TPB.

6. The Committee recommends:

   (a) proposed section 50-21 be revised to include an express exclusion of the form of sections 50-5(1)(e) and 50-10(1)(d) of the TASA and proposed sections 51-5(1)(e), 51-10(1)(e), 51-15(1)(d), and 51-20(1)(c) of the Exposure Draft for legal practitioners who are authorised under State or Territory legal professional laws to provide the relevant services as a legal service; and

   (b) paragraphs 1.32 to 1.34 of the Explanatory Materials be updated to include statements about section 50-21 similar to those in paragraphs 1.8, 1.13, and 1.17.

7. The 2024 *Review of eligibility requirements for registration with the Tax Practitioners Board* did not result in a requirement for legal practitioners to register with the TPB.[1] This makes it even more inexplicable that the proposed new section 50-21 does not have a carve-out for legal practitioners.

Submission

The current framework for lawyers

8. One of the objects of regulating the conduct of tax agents and requiring their registration with the TPB is to ensure that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct.

9. Insofar as legal practitioners are concerned, the TASA has from its inception exempted lawyers from needing to be registered as tax agents. This is achieved by section 50-5, which prohibits the provision of a "tax agent service" (**TAS**) if unregistered, but carves out the provision of a TAS by legal practitioners provided the provision of those services is not prohibited under a State or Territory law regulating legal practitioners and the provision of legal services.

10. The effect of the carve out in section 50-5(1)(e), together with that in section 50-10(1)(d), is that a legal practitioner is not required to register as a tax agent but can still:

    (a) provide TAS; or

    (b) advertise to provide TAS,

    provided the legal practitioner is not prohibited from providing legal services under a law that regulates the conduct of legal practitioners.

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[1] See paragraph 2 above.

11. The policy reason for excluding lawyers who provide a TAS from the requirement to register with the TPB reflects a desire to avoid multiplicity of regulation given that the regulation of the legal profession is primarily a State and Territory responsibility. No doubt it also recognises that the legal profession is the most comprehensively regulated profession in Australia with regulation generally consistent across all States and Territories in key areas (for more detail, please see the 13 August 2024 submission).

A registered tax agent making false or misleading statements

12. Section 50-20 of TASA imposes civil penalties where a registered tax agent makes "false or misleading statements".

13. Section 50-20 provides that a registered tax agent contravenes that section if they are registered and:

    (a) make a statement to the Commissioner of Taxation (**Commissioner**); or

    (b) prepare a statement that they know, or ought reasonably to know, is likely to be made to the Commissioner by an entity; or

    (c) permit or direct an entity to do a thing mentioned in (a) or (b); and

    (d) know, or are reckless as to whether the statement:

        (i) is false, incorrect or misleading in a material particular; or

        (ii) omits any matter or thing without which the statement is misleading in a material respect.

14. In *Farah Constructions Pty Ltd v Say-Dee Pty Ltd*,[2] the High Court approved of four "knowledge categories" following the English decision in *Baden v Societe Generale*,[3] which are as follows:

    (a) actual knowledge;

    (b) wilfully shutting one's eyes to the obvious;

    (c) wilfully and recklessly failing to make such enquiries as an honest and reasonable person would make; and

    (d) knowledge of circumstances which would indicate the facts to an honest and reasonable person.

15. For an agent to be found to have been reckless would therefore arguably require:

    (a) wilful ignorance of the veracity of their client's instructions; or

    (b) failure to make enquiries about whether a statement is correct; or

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2 [2007] HCA 22.
3 (1993) 1 WLR 509.

(c) knowledge of facts that would cause a reasonable person to make further enquiries.

16. Omission of a matter or thing without which the statement is misleading in a material aspect is also captured: section 50-20(c).

17. Currently, the civil penalties under section 50-20 are 250 penalty units for an individual and 1,250 penalty units for a corporation.

An unregistered person providing TAS and making false or misleading statements

18. The Exposure Draft introduces new section 50-21 which would apply in similar circumstances to section 50-20 but to *unregistered* persons providing a TAS. However, the penalties imposed under proposed new section 50-21 are substantially higher than those for breaching section 50-20: 2500 penalty units for an individual and 50,000 penalty units for a corporation.

19. Section 50-21 is breached by an unregulated person providing TAS where each of the following elements is satisfied:

    (a) the making of a statement to the Commissioner or TPB, or preparation of a statement that is likely to be made to the Commissioner (only);

    (b) there is the requisite knowledge (or lack of knowledge but otherwise reckless); and

    (c) that the statement is incorrect in a material particular.

20. The Explanatory Materials states at paragraph 1.33:

> *… This provision is intended to target **aggravated behaviour**, where the unregistered preparer makes these statements in addition to providing services without registration.*
>
> ***(Emphasis added)***

21. As currently drafted, new section 50-21 would arguably apply to any lawyer who provides a TAS and who makes a false or misleading statement to the Commissioner in representing a client, subjecting them to a substantial civil penalty when the making of the statement is not the "aggravated behaviour" the provision seeks to target. That is, the TASA already expressly relieves lawyers from the need to register as a tax agent, yet new section 50-21 will effectively penalise the lack of registration and the making of the false or misleading statement but at a rate of nearly 10 times the penalty for an individual (40 times for a corporation) that would otherwise apply for contraventions of both sections 50-10 and 50-20.

22. Given that sections 50-5 and 50-10 exclude legal services provided in accordance with State or Territory laws regulating legal practice from being contraventions of the TASA, the Committee assumes that the omission of an equivalent exclusion from new section 50-21 is an unintended oversight.

23. The Committee also notes that the Explanatory Materials reflect a consistent policy in relation to other proposed measures in the Draft Legislation. Specifically:

> *[1.8] Consistently with existing exceptions in the TAS Act,* ***the new criminal penalties do not apply to legal practitioners who are authorised under State or Territory legal professional laws to provide the relevant services as a legal service.***
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> *…*
>
> *[1.13] Consistent with existing exceptions in the TAS Act,* ***the offence does not apply to legal practitioners who are authorised under State or Territory legal professional laws to provide the relevant services as a legal service.***
>
> *[1.14] The offence also does not apply to a legal practitioner who is not otherwise authorised to provide certain tax agent services but provides the service as a legal service in the course of acting for a trust or deceased estate as trustee or legal personal representative. …*
>
> *…*
>
> *[1.17] Consistent with existing exceptions in the TAS Act,* ***the offence does not apply to legal practitioners who are authorised under State or Territory legal professional laws to provide the relevant services as a legal service****.*
>
> *[1.18] The offence also does not apply to a legal practitioner who is not otherwise authorised to provide certain tax agent services but provides the service as a legal service in the course of acting for a trust or deceased estate as trustee or legal personal representative. …*
>
> ***(Emphasis added)***

24. That is, the Exposure Draft expressly excludes legal practitioners from the proposed measures that prescribe criminal penalties for providing unregistered TAS (section 51-5), for providing unregistered BAS services (section 51-10) and for advertising tax agent services / BAS services while unregistered (sections 51-15 and 51-20). The Committee assumes that the failure to include the same exclusion in proposed section 50-21 is an unintended oversight rather than reflecting an intent for the TPB to start regulating the legal profession.

25. The Committee recommends:

    (a) proposed section 50-21 be revised to include an exclusion for legal practitioners of the form of sections 50-5(1)(e) and 50-10(1)(d) of TASA, and in proposed sections 51-5(1)(e), 51-10(1)(e), 51-15(1)(d), and 51-20(1)(c) of the Exposure Draft, for legal practitioners who are authorised under State or Territory legal professional laws to provide the relevant services as a legal service; and

    (b) paragraphs 1.32 to 1.34 of the Explanatory Materials be amended to include statements about section 50-21 similar to those in paragraphs 1.8, 1.13, and 1.17.

Further contact

26. The Committee would be pleased to discuss any aspect of this submission. Please contact Neil Brydges (Chair) [redacted] if you would like to do so.

Yours faithfully



Adrian Varrasso
Chair, Business Law Section