

Senate Economics Legislation Committee, Public Hearing: Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

To be read by David Castle, Member, Taxation Committee, Business Law Section

The Law Council acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples participating in the Public Hearing today.

I note that I and other Committee representatives appearing today volunteer our time in assisting the Law Council in responding to various policy measures. The Law Council draws on a diverse range of perspectives when responding to Inquiries. In this instance, we have endeavoured to provide access to practitioners who can speak to the breadth of issues raised in the Bill.

The Law Council's submission to this Inquiry responds to the first four schedules of the Treasury Laws Amendment (Tax Accountability and Fairness) Bill. These schedules largely seek to implement measures in response to the 'PwC tax leaks scandal'.

The events surrounding the PwC scandal have highlighted the need for reform to the regulatory arrangements applying to tax practitioners, and the Law Council welcomes appropriate measures designed to strengthening the integrity of our tax system. In particular, we support the Government's public interest objective in ensuring that the tax profession respects its professional and ethical responsibilities. While acknowledging this important goal, the Law Council has identified a number of key areas in which we consider the Bill can be improved.

Schedule 1 seeks to ensure that promoter penalty laws operate appropriately and effectively deter the promotion of tax avoidance and tax evasion schemes. This is an important objective. However, the Law Council queries whether all the amendments proposed in Schedule 1 are necessary and proportionate. In this regard, we recommend that:

- additional limitations are required to ensure that technical breaches, where there is no intention to promote a scheme, are not captured;
- the scale of proposed penalties be reconsidered to ensure that they are appropriately targeted to those participating in the wrongful conduct; and
- the proposed lowering of the threshold for the application of the penalties from receiving a 'benefit' to receiving 'consideration' be narrowed.

Schedule 2 seeks to amend the Taxation Administration Act to extend whistleblower protections to eligible whistleblowers who make disclosures to the Tax Protection Board. The Law Council supports these reforms but suggests that additional limitations should apply to the subsequent disclosure of information provided by whistleblowers.

Additionally, we reiterate the Law Council's position in favour of developing a more cohesive and unified whistleblower protection scheme more generally, supported by a centralised Whistleblower Protection Authority with oversight of the implementation of the whistleblower regimes for both the public and private sectors.

Opening Statement



Schedule 3 seeks to implement several amendments arising from the Independent Review of the TPB. The Law Council supports, in principle, the measures contained in Schedule 3. However, an exception is the current drafting of clause 5 which seeks to allow the TPB to publish decisions against an entity even where registration has been deliberately allowed to expire. While supporting this policy intent, we suggest an alternative approach which better aligns with the current legislative framework.

Finally, Schedule 4 seeks to better allow information to pass between the ATO, Treasury, the TPB and professional disciplinary bodies. We support this objective. However, further clarification is required as to the practical operation of these provisions to ensure that an appropriate practice for information sharing with disciplinary bodies is implemented.

Thank you for the opportunity to appear today. We would be happy to respond to any questions.