

6 October 2023

Our ref: [LP:RL]

Law Division
Treasury
Langton Cres
Parkes ACT 2600

By email: [REDACTED]

Dear Law Division

Response to PwC – information sharing; Tax Practitioners Board reforms; whistleblower protections

Thank you for the opportunity to provide feedback on the Response to PwC consultation material. The Queensland Law Society (QLS) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Revenue Law Committee and Occupational Discipline Law Committee, whose members have substantial expertise in this area.

These reforms seek to respond to myriad issues that have been made public over the last few months and which require a considered policy and legislative response. We consider further consultation with stakeholders is necessary before a bill is introduced to ensure the reforms appropriately address the issues of concern and that there are no unintended consequences.

In the time available, QLS has predominantly concentrated its review on the issue of information sharing, specifically the proposed amendments to enable the Australian Taxation Office (ATO) and Tax Practitioners Board (TPB) to refer ethical misconduct by advisers (including but not limited to confidentiality breaches) with prescribed professional associations for disciplinary action.

This submission outlines the initial views of QLS and does not constitute an exhaustive review. Our comments in that respect are therefore, necessarily general in nature.

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Proposed new table item 15 of the table in sub-section 355-65(8) in Schedule 1 to the *Tax Administration Act 1953* (Cth) (**TAA**) provides that a taxation officer may disclose information that concerns an entity (the first entity) and an act or omission (or a suspected act or omission) of the first entity that the taxation officer reasonably suspects may constitute a breach by the first entity of the prescribed disciplinary body's code of conduct or professional standards.

QLS makes the following observations and recommendations in relation to proposed reforms to information sharing.

- The proposed amendments to introduce a referral function within the TAA raises a number of complex legal, practical and ethical considerations.
- The grounds for use and disclosure in accordance with proposed item 15 should clearly exclude use for the purpose of monitoring, surveillance or intelligence gathering. There must be a reasonable basis for suspecting an act or omission amounts to a reasonable suspicion that warrants disclosure of the information to a relevant professional disciplinary body.
- Defining the scope of what information can be referred to prescribed disciplinary bodies is crucial. Any proposed amendments in this regard should make clear what types of acts or omissions warrant referral, and there should be strict criteria in place to prevent improper use of a provision of this kind. For instance, we recommend consideration be given to the inclusion of a 'proper purpose' requirement in relation to the potential disclosure, to ensure that there is no perception that the ATO might make, or propose to make, a disclosure for the purpose of influencing the response of the client or member in relation to an audit or current matter. This should coincide with appropriately drafted provisions about the derivative use of evidence.
- Consideration ought to be given to including a requirement that the ATO/TPB enquire with the relevant prescribed disciplinary body, prior to any disclosure, to confirm that the disclosure of the information will enable or assist the TDB to perform or exercise one or more of its functions or powers. This may involve the development of a Memoranda of Understanding between the ATO and relevant professional disciplinary bodies. However, we reiterate our call for any power to disclose or obligation for disclosure to be set out in the legislation so that it is clear for users, especially considering the penalties that may attach to any improper disclosure.
- There are certain steps that a disciplinary body must take when investigating a matter, including what particulars should be put into a 'show cause' notice. These particulars must enable the individual to understand the alleged misconduct and provide appropriate information and responses. Information received from the ATO/TPB would ideally allow the disciplinary body to comply with its obligations to provide natural justice and procedural fairness to the individual. We are concerned the current drafting may not require the ATO/TPB to provide the information necessary for the disciplinary body to take appropriate further action.

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- For many regulators and disciplinary bodies, the receipt of such information from entities such as the ATO/TPB will not be the typical way they receipt information or complaints. Consideration will therefore need to be given as to how an investigation by the disciplinary body deals with confidentiality issues and, in the case of legal practitioners, legal professional privilege.
- In addition, the factsheet provided with the exposure draft material, 'Disclosure of information to prescribed disciplinary bodies' indicates 'applying associations' will likely be expected to provide 'commitment to providing relevant information to the ATO or the TPB in relation to circumstances where relevant practitioners may have been involved in significant breaches of Commonwealth laws or other ethics standards'. We advise that QLS will not be able to disclose information to the ATO or the TBP without clear legislative power to do so pursuant to section 705 of the *Legal Profession Act 2007 QLD (LPA)*.
- The factsheet, '[Government response to PwC tax leaks scandal](#)' indicates that, Commonwealth procurement frameworks will be strengthened:

'by enabling Australian government agencies to terminate contracts with parties that receive adverse findings against them from a legal or professional body.'

We advise that while the decisions of disciplinary bodies can be public, there are instances where professional bodies make an adverse finding against a person or an entity that is not made public and can only be disclosed as provided for under legislation. This is the case with decisions made by QLS relating to legal practitioners and law practices that can only be disclosed as provided for under the LPA (for example to the Legal Services Commission or corresponding regulatory authorities in certain circumstances). In the case of adverse findings made against a solicitor who also holds registration as an accountant or tax practitioner or adverse findings about a multi-disciplinary partnership, in which a solicitor is in a partnership with a tax practitioner or an accountant, amendments to the LPA would be needed to facilitate disclosure of the adverse findings to an Australian government agency.

- Additionally, we query the threshold proposed to be used to make these determinations. An 'adverse finding', for example, is potentially a very low threshold and different regulatory/disciplinary bodies will have different thresholds.
- Finally, any right or obligation to disclose information should not impose an undue administrative burden on the disclosing body.

Tax Practitioners Board reforms and whistleblower protections

QLS has not undertaken a comprehensive review of these proposed amendments. However, reforms relating to improving transparency and regulation of this sector are broadly welcomed.

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We also express our support for the extension of whistleblower protections for disclosures to the TPB, as well as a number of bodies that provide assistance in relation to whistleblower disclosures.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully



Chloé Kopilović
President