The Tax Institute

27 April 2026

Director
Legal Policy Unit
The Treasury
Langton Crescent
Parkes ACT 2600

By email: taxadministrationconsultation@treasury.gov.au

Dear Director,

Tax Practitioners Board sanctions reforms – draft legislation

The Tax Institute welcomes the opportunity to make a submission to the Treasury in respect of its consultation on the:

- exposure draft Treasury Laws Amendment Bill 2026: Enhancing Tax Practitioners Board (**TPB**) sanctions framework (**draft Bill**); and
- accompanying explanatory memorandum (**draft EM**).

In developing this submission, we have closely consulted with our National Technical Committees to prepare a considered response that represents the views of The Tax Institute's broader membership.

Consultation timeframe

We are concerned that the two-week consultation window for these changes does not provide sufficient time for stakeholders to properly analyse the proposals, assess their practical impacts, or engage meaningfully with the reform process – particularly in the present case, where the proposed sanctions framework includes significant new penalties and expands TPB's powers. Our concerns are exacerbated by the overlap of two other Treasury consultations, each contemplating significant changes to the tax system, and each with equally short consultation periods.

Stakeholders within the tax profession require adequate time to understand the practical and operational implications of multiple reform proposals, which may involve obtaining feedback from members, before finalising positions and making informed recommendations. Rushed consultation processes reduce their effectiveness, increase the risk of poor policy outcomes and unintended consequences, and undermine public confidence in the tax system.

The Office of Impact Analysis states in its March 2023 *Australian Government Guide to Policy Impact Analysis* report (**OIA Report**) that when detailed information is provided as part of a consultation, stakeholders require sufficient time to understand, consider and respond, and that consultation periods should not be less than 30 days, and may be as much as 60 days depending on complexity. The OIA Report further notes that, where proposals are large or sensitive, additional time may be required to allow responses to progress through boards or other governance frameworks.

We encourage Treasury to consider the OIA Report when planning future consultations to ensure stakeholders can effectively contribute to and support the Government in designing and implementing changes to the tax system for the benefit of all Australians and our economy.

Summary of key concerns

The Tax Institute supports the objective of strengthening the integrity of the tax system and ensuring the TPB has effective tools to address serious and egregious misconduct and a range of sanctions to respond to other kinds of misconduct. We welcome the implementation of the 2019 Independent Review of the Tax Practitioners Board (**James Review**) recommendation that the TPB be provided with a broader range of sanctions.

Effective regulation requires a balance of appropriate enforcement tools and well-designed safeguards that promote fairness, accountability and trust in the tax system and the profession.

The ability of the TPB to issue infringement notices, engage in enforceable voluntary undertakings, and suspend tax practitioners will help ensure that the TPB can apply proportionate and appropriate sanctions. The availability of criminal sanctions and an additional civil penalties for unregistered providers of tax agent services in general is also a positive step to ensuring greater consumer protection.

However, we have some concerns about the design of the proposed sanctions framework, particularly the expansion of powers without adequate safeguards. As drafted, certain elements of the framework risk undermining procedural fairness and public confidence, yielding outcomes inconsistent with the reforms' stated objectives.

Our submission focuses on how the proposed framework could be refined to better achieve these outcomes.

In particular, we have the following key concerns:

- interim suspension powers are too broad and lack appropriate safeguards;
- the legislative threshold for interim suspension does not reflect the seriousness described in the explanatory material;
- procedural fairness, including natural justice and early review rights, are unduly limited despite severe and potentially irreversible consequences of proposed sanctions;
- the civil and criminal penalty regimes raise concerns about proportionality and fairness;
- legal practitioners, unregistered employees and in-house personnel could face unintended exposure under the unregistered conduct provisions;

- criminal sanctions for unregistered conduct are insufficiently targeted and may apply as a first resort rather than a last resort; and
- the framework relies too heavily on regulatory discretion rather than embedded legislative safeguards.

Our detailed observations and recommendations to improve the policy design of the sanctions framework are contained in **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Tax Counsel, John Storey, on (03) 9603 2003.

Yours faithfully,

Julie Abdalla	**Tim Sandow**
Head of Tax & Legal	President

APPENDIX A

We have set out below our detailed comments and recommendations for your consideration.

Preliminary comments

Tax practitioners are integral participants in the operation of Australia's self-assessment system. In practice, tax practitioners:

- support voluntary compliance by helping taxpayers understand and meet their obligations;
- act as intermediaries between taxpayers and the government; and
- play a material role in the efficient administration of the tax system.

This role has been consistently recognised in previous reviews of the TPB, including the James Review.

We are concerned that a sanctions regime that does not include sufficient safeguards may:

- erode trust between the profession and the regulator;
- encourage defensive or disengaged behaviour;
- reduce openness and early engagement with the TPB and the ATO; and
- ultimately weaken voluntary compliance outcomes across the system.

Safeguards are a core element of sound regulatory design and serve the public interest by:

- improving the quality and reliability of decision-making;
- constraining the impact of error;
- strengthening accountability; and
- supporting confidence in the regulatory framework.

For tax practitioners, the consequences of regulatory action, particularly interim sanctions, can be severe and cause irreparable damage to reputation and livelihood. Where regulatory decisions carry serious and immediate consequences, safeguards must be embedded in the legislative design rather than solely in explanatory materials or administrative policy.

Properly designed safeguards enhance the effectiveness of regulation. They support public confidence in regulatory action, encourage cooperation, and reinforce the shared public interest in maintaining a fair and functioning tax system.

Interim suspension powers

We recognise that the TPB must be able to act swiftly in cases involving serious and egregious misconduct, particularly where there is a genuine and immediate risk of harm to clients, or a significant threat to the integrity of the tax system. Interim suspension powers can be an appropriate regulatory tool in such circumstances.

However, we have significant concerns about the breadth of the interim suspension powers as drafted and the limited procedural fairness protections that accompany them.

While the draft EM states that interim suspension is intended to apply only in very exceptional circumstances, the legislative threshold does not reflect this intent. Proposed subparagraph 40-17(1)(b)(i) allows the TPB to suspend a practitioner's registration if one or more clients are likely to suffer loss or damage if the registration is not suspended. We are concerned that this threshold is too low, as it does not require:

- the loss or damage to be serious or substantial;
- the harm to be immediate; or
- a clear nexus between the alleged conduct and a significant risk to clients or the tax system.

We note that these concepts are expressly referred to in paragraph 1.54 of the draft EM**.** We recommend that this wording, or equivalent language, also be incorporated into the operative provision itself, namely subparagraph 40-17(1)(b)(i), to ensure the legislative threshold appropriately reflects the stated policy intent. As drafted, the provision could apply even to minor or technical issues that cause some sort of loss or damage, which is inconsistent with the explanation that interim suspension is intended to be reserved for the most serious cases.

The absence of procedural fairness safeguards in the interim suspension process substantially compounds these concerns. In particular:

- the TPB is not required to commence or complete an investigation before exercising the power;
- the practitioner is not given notice or an opportunity to be heard before suspension; and
- the decision to impose an interim suspension is not subject to immediate merits review by the Administrative Review Tribunal.

We are of the view that natural justice is not a procedural technicality, but a foundational element of sound administrative decision-making. It plays a critical role in:

- reducing the risk of error;
- recognising the fallibility of decision-makers; and
- maintaining the legitimacy and acceptance of regulatory decisions.

Interim suspension decisions can have immediate and potentially irreversible consequences, including:

- loss of the ability to practice;
- disruption to client affairs and tax obligations; and
- severe reputational damage, which may not be capable of being undone even if the decision is later overturned.

Given the seriousness of these consequences, we are concerned that the proposed framework allows for such outcomes without early hearing rights or effective review mechanisms. Reliance on post-suspension review processes does not adequately address these risks, as the most significant harm often occurs at the point the suspension is imposed.

We consider that the combination of:

- a low statutory threshold;

- broad discretionary power; and
- limited procedural safeguards

creates an unacceptable risk of unjust or disproportionate outcomes and undermines confidence in the regulatory framework.

Recommendation:

We recommend the following:

- The threshold for interim suspension should be explicitly raised in the legislation to require a serious and immediate risk of substantial harm to clients or to the integrity of the tax system, consistent with the stated legislative intent.
- Procedural fairness safeguards should be strengthened, including:
    - providing practitioners with an opportunity to be heard before suspension, except in the most extreme and urgent circumstances; and
    - ensuring timely access to independent merits review of interim suspension decisions.

We consider that these changes are essential to ensure that interim suspension powers are effective, proportionate, and consistent with fundamental principles of fairness.

Impact on taxpayers

We are concerned about the collateral impact on taxpayers of sanctions on practitioners. Where practitioners are suspended, clients may miss lodgement and payment deadlines through no fault of their own.

This can result in penalties, interest and compliance issues for taxpayers, as well as broader impacts on public revenue.

This risk is particularly acute for small and sole practitioner practices, where there may be no other registered practitioner available to assume responsibility for client work during a suspension period. In such cases, the practical effect of an interim suspension may be to abruptly deprive clients of access to their tax agent altogether, heightening the risk of unintended taxpayer detriment.

The potential for disproportionately severe consequences in small practices underscores the importance of robust procedural fairness and carefully calibrated thresholds for interim suspension. Where the consequences of regulatory action are immediate and difficult to mitigate, natural justice protections become even more crucial to ensure that decisions are proportionate, accurate and fair.

Recommendation:

The TPB and the ATO should work together to develop mechanisms, including the use of administrative discretion, to protect taxpayers affected by practitioner suspensions.

In particular, this should include:

- the ability to grant temporary lodgement and payment relief for affected clients, including deferral of due dates, remission of penalties and interest, and suspension of compliance action, where appropriate;

- clear and timely communication to affected taxpayers outlining available relief and transitional arrangements; and
- consideration of transitional or continuity arrangements, particularly for small and sole practitioner practices, to mitigate the sudden loss of access to tax agent services where a practitioner is suspended.

False or misleading statements by unregistered persons

The Tax Institute acknowledges and supports the policy intent of addressing misconduct by unregistered providers of tax or Business Activity Statement (**BAS**) agent services. However, we have some concerns about proposed section 50-21, which introduces civil penalties for false or misleading statements made by unregistered persons to the Commissioner or the Tax Practitioners Board.

We note that similar offence and penalty provisions already exist under the *Taxation Administration Act 1953* (Cth) (**TAA**) and apply broadly to all persons. Against this background, proposed section 50-21 appears to duplicate existing enforcement mechanisms, creating potential overlap and uncertainty regarding the appropriate legislative framework and regulator.

The proposed penalties regime also raises concerns regarding scope, proportionality and legal certainty, particularly where individuals are already subject to other professional standard regulation regimes.

We are concerned about unintended consequences for legal practitioners and other non-registered representatives acting on behalf of taxpayers, noting that, as currently drafted, the provision does not include an express carve-out for legal services. This is unlike other provisions that address unregistered conduct. Sections 50-5, 50-10, 50-17 and 50-18, each contain specific carve outs where services are provided as legal services by unregistered parties. The absence of an equivalent carve-out in section 50-21 appears anomalous. We consider this omission creates uncertainty and may unintentionally extend the provision to legal practitioners acting in a representative capacity.

From a statutory construction perspective, the absence of a carve out creates a real risk that a court would conclude that section 50-21 is intended to apply to legal practitioners who fall within its terms. In particular, we are concerned that a court may contrast section 50-21 with the surrounding provisions and infer that the difference in drafting reflects a deliberate legislative choice, rather than an oversight. That outcome would significantly alter the regulatory and penalty exposure for lawyers engaged in dispute, advisory, or investigative work involving the ATO.

The definition of a ‘tax agent service’ is broad and includes representing a taxpayer in dealings with the Commissioner where reliance is placed on the service to satisfy obligations arising under taxation law. As a result, legal practitioners who advise and represent taxpayers in audits, objections, settlements and litigation may, depending on the nature of their engagement, be characterised as providing a tax agent service despite not being registered under the *Tax Agent Services Act 2009* (**TASA**). This creates real uncertainty at the boundary between regulated tax agent conduct and ordinary legal representation.

Although proposed section 50-21 is directed at known or reckless misstatements, the provision is silent on how those concepts are intended to operate in adversarial or investigative contexts. In those contexts, legal practitioners routinely communicate disputed factual positions, denials, or alternative constructions based on client instructions and professional judgment. Absent clearer statutory carve-outs and guidance, there is a risk that ordinary and legitimate professional conduct could be retrospectively characterised as reckless, particularly where the Commissioner later obtains contrary information from third parties beyond the practitioner's knowledge or control. The concern is not that penalties would inevitably be imposed, but that the breadth of the provision creates unacceptable uncertainty for good faith legal representation, advocacy and engagement with the ATO.

These concerns are amplified by the potential for overlapping regulatory regimes. Legal practitioners are already subject to comprehensive regulation under State and Territory legal profession legislation, including professional conduct rules, disciplinary processes, and court supervision in litigation contexts. The extension of a parallel Commonwealth civil penalty regime, administered by the TPB, to conduct that may fall within ordinary legal representation risks duplicative regulation and inconsistent standards being applied to the same conduct. In the absence of clear statutory boundaries, practitioners may be exposed to concurrent regulatory and penalty regimes for actions taken in the course of providing legal services, without clarity as to how those regimes are intended to interact.

Recommendation:

We recommend that proposed section 50-21 be reconsidered. If retained, it should be more narrowly targeted to address genuine regulatory gaps, include an express legal services carve-out, and avoid duplicating existing provisions under the TAA.

We would be pleased to continue to work with Treasury and the TPB to ensure that the final framework clearly distinguishes between deliberate or reckless misconduct, and good faith errors, reasonable professional judgment, and ordinary professional advocacy in complex areas of tax law. We consider that this would best be achieved through clearer statutory thresholds, explicit recognition of reasonable care and professional judgment, and express clarification of how the sanctions regime is intended to operate in adversarial and investigative settings.

Providing tax or BAS agent services while unregistered

We are also concerned about proposed sections 51-5 and 51-10, particularly their application to legal practitioners, unregistered employees, and in-house personnel who may provide tax-related services, such as providing a legal opinion on a position taken in a tax return, as part of their ordinary professional or business roles.

The provisions introduce criminal penalties for unregistered persons providing tax or BAS agent services. While the draft EM states that legal practitioners authorised under State or Territory law are intended to be excluded, we are concerned that this assurance is not clearly reflected in the operative provisions.

In particular, there appears to be an inconsistency between the draft EM at paragraph 1.8 and the narrowing of the legal services exception in proposed subsection 51-5(1). This creates uncertainty and may inadvertently capture legitimate legal work that necessarily involves tax returns or BASs as part of broader legal representation, including:

- acting for clients in dealings with the ATO;

- advising on, or acting on behalf of clients in relation to, tax debts, payment arrangements, remissions or recovery proceedings;
- advising on superannuation matters; and
- preparing or lodging objections under Part IVC of the TAA.

If any of these activities consists of advising on how returns are lodged or the lodging of returns with the ATO as part of legal proceedings, then the legal services exception does not appear to be applicable. This may have unintended outcomes for legal practitioners that advise on tax and represent taxpayers in these areas.

Under these provisions, legal practitioners providing legal services in these areas can be penalised if they are not also registered as a tax or BAS agent. Legal practitioners should not be restricted in the types of legal advice they give to clients and should not be forced to be registered under the TASA regime if they represent clients on tax law matters.

We are especially concerned that legal practitioners may be exposed to criminal liability despite acting within the proper scope of their professional role. Further uncertainty arises from the proposed subsection 51-5(4), which provides only a narrow exception for trustees or legal personal representatives, potentially implying that other tax-related legal services are intended to be within scope.

The criminal nature of the sanctions compounds these concerns. Although the previous Enhancing the Tax Practitioners Board's sanctions regime consultation paper indicated that criminal penalties are intended to target repeated serious or deliberate unregistered misconduct, the provisions, as drafted, allow criminal prosecution on a first occurrence, instead of as a last resort. Further, the inclusion of strict liability elements in subsections 51-5(2) and 51-10(2) increase the risk of inadvertent criminal exposure, including for unregistered employees, in-house staff, or individuals acting on behalf of their own entities.

We consider the combined effect of:

- narrow and unclear legal services exceptions;
- strict liability elements; and
- the potential for first-instance criminalisation,

create a real risk of over-inclusion and disproportionate outcomes that are inconsistent with the stated policy intent.

We strongly consider that legal practitioners should not be exposed to criminal penalties merely because their legal services intersect with those of tax or BAS agent. Legal practitioners frequently undertake work that other professions cannot, particularly where tax issues arise in complex disputes or advisory matters, and the proposed framework should not inhibit that role.

Likewise, unregistered employees and business owners doing work for their own business entities should be exceptions from these provisions.

Recommendation:

We recommend that sections 51-5 and 51-10 be amended to:

- clearly and expressly exclude authorised legal practitioners providing legal services from criminal liability;

- broaden and clarify the legal services exception to align with State and Territory legal professional standards regulation;
- confine criminal sanctions to deliberate and serious unregistered misconduct, applied only as a last resort; and
- include explicit exclusions for unregistered employees, in-house personnel and business owners acting within the scope of their ordinary roles.

Advertising tax or BAS agent services while unregistered

We also have similar concerns regarding proposed sections 51-15 and 51-20, which introduce criminal penalties for advertising tax or BAS agent services while unregistered.

We consider that references to 'preparing' a return may be interpreted broadly and could capture legal advice that informs how returns are prepared. When combined with the limited legal services exception, this may unintentionally expose legal practitioners to criminal liability for advertising lawful legal services that include tax advice.

Recommendation:

We recommend that the legal services exception in sections 51-15 and 51-20 be widened, consistent with sections 51-5 and 51-10, to ensure that legal practitioners can advertise legitimate legal services without risk of criminal penalty.

Infringement notices

We have concerns about the operation of the proposed section 52-5, which sets out the circumstances under which infringement notices may be issued.

Proposed paragraph 52-5(2)(c) allows an infringement notice to be issued where the conduct consists of a failure to comply with a provision of the Code of Professional Conduct (**Code**) that is prescribed by regulations. It is unclear how this provision is intended to operate alongside paragraph 52-5(2)(b), which outlines the application of infringement notices to Code obligations prescribed under TASA.

We are concerned that the interaction between subsections 52-5(2)(b) and 52-5(2)(c) is ambiguous, and that the purpose and scope of subsection 52-5(2)(c) is not evident from the drafting or explanatory material. This lack of clarity may create uncertainty about when infringement notices can be issued for Code breaches and how the provisions are intended to work together.

Recommendation:

We recommend that the interaction and intended purpose of subsections 52-5(2)(b) and 52-5(2)(c) be clarified, either through redrafting or additional explanatory material, to ensure the infringement notice regime operates consistently and predictably.

Civil penalties

The proposed amendments significantly increase both the scale and the quantum of civil penalties. The legislation does not distinguish between sole practitioners and large or multinational practices, nor does it indicate proportionality in relation to culpability. We consider that this raises issues of proportionality and fairness, particularly for small practices.

The absence of clear legislative signals regarding calibration and enforcement creates a risk of misalignment between commonplace compliance failures and the level of exposure theoretically available under the proposed framework.

While we recognise that legislation typically sets maximum penalties, clearer guidance in the draft EM is needed to explain how penalties are intended to be applied in practice across different practice sizes and circumstances.

Recommendation:

The explanatory material and related TPB guidance should include examples demonstrating proportionate application of civil penalties, taking into account practice size, conduct and degree of culpability.

Guidance and compliance focus

At this stage, it is not clear how the TPB intends to use its expanded powers, and how sanctions will be applied in practice. This needs to be clearly explained in guidance that is practical, accessible and easy to understand.

We support an education-focused compliance approach by the TPB that:

- encourages early engagement;
- supports practitioners in meeting their obligations; and
- reserves the strongest sanctions for genuinely serious misconduct.

Recommendation:

We encourage the TPB to work closely with the profession to develop clear, transparent guidance that supports compliance and reflects Parliament's intent.

Other matters

Minor comments

We have identified the following technical and drafting issues in the exposure draft that would benefit from clarification or correction:

- Section 52-5(9): it is unclear why subsection 52-5(1)(e) is not referenced in this subsection.
- Section 45-5: we query whether the reference to subsection 45-5(1) on page 19 of the draft Bill should instead refer to subsection 45-5(2).
- Section 70-10: we note that section 70-10 of the TASA currently contains two subsections labelled '(ha)'. We recommend that this duplication be corrected as part of the current amendments to improve clarity and legislative consistency.