

6 August 2023

Professions must adhere to professional and ethical standards

The Law Council welcomes the Australian Government's careful consideration of reforms with the broad objective of strengthening the integrity of the tax system, as set out in its joint Ministerial media release of 6 August 2023.

"We look forward to engaging with the Australian Government during its consultation on these proposed reforms, having regard to the views of the legal profession," Law Council of Australia President, Mr Luke Murphy said.

"In particular, the Law Council supports the Government's public interest objective in ensuring that all members of a profession adhere to their professional and ethical responsibilities.

"It must be noted that the Australian legal profession is subject to one of the most stringent regulatory frameworks of any profession in Australia. Should legal practitioners fail to uphold their obligations under these regulations, their practising certificate may be suspended or cancelled as a result."

The Law Council supports amendments to the tax secrecy provisions to ensure that if the Australian Tax Office or Tax Practitioners Board have concerns about the professional conduct of legal practitioners (for example, the misuse of legal professional privilege claims, or promotion of tax avoidance schemes contrary to law), those agencies will be able to raise those matters directly with state and territory legal profession regulators and have them dealt with under the comprehensive legal profession complaints and disciplinary arrangements. The Law Council also supports legal profession disciplinary referrals where a legal practitioner breaches a personal confidentiality undertaking given to the Government. These existing disciplinary arrangements, operating across eight Australian jurisdictions, are strong and effective.

"We also look forward to working closely with Treasury and the Attorney-General's Department regarding their joint review of the use of client legal privilege in Commonwealth investigations," Mr Murphy said.

"Client legal privilege, or legal professional privilege as it also referred to, belongs to the client rather than the lawyer and is an important aspect of Australia's system of administration of justice and facilitates the rule of law in the public interest.

"The privilege exists to protect the administration of justice and the right of individuals and other entities/organisations to obtain confidential advice about their legal circumstances. This promotes compliance with the law. Since lawyers owe a duty to the court and serve the administration of justice, they are required to encourage clients to obey the law."

An exception to the privilege is where communications facilitate fraudulent or criminal activity, or actions taken for illegal or improper purposes.

If there are concerns about misuse of client legal privilege, there are avenues to challenge this through the courts. The Law Council's view is that client legal privilege must always be respected and that if any contention arises between an individual or organisation and regulator in regard to client legal privilege, the court should be the ultimate decision maker.

Contact: Kristen Connell, P. 0400 054 227, E. kristen@talkforcemedia.com.au

The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.