

23 September 2021

Some concerns remain for the Law Council over ATO draft privilege protocol

The Law Council of Australia remains concerned about aspects of the Australia Taxation Office's draft legal professional privilege (LLP) protocol which was released this week for further consultation.

"The Taxation Committee of the Law Council's Business Law Section has been in consultation with the Australian Taxation Office over a proposed set of guidelines for managing claims to LPP in response to information requests from the Commissioner of Taxation," Law Council of Australia President, Dr Jacoba Brasch QC explained.

"This work was designed to find a balance between protecting the confidentiality of communications between clients and their lawyers and providing the ATO with information it needs to meet its obligations.

"However, the draft protocol released yesterday in places overreaches in the extent of detail of communications that the ATO recommends taxpayers and their lawyers provide in order to maintain a claim of privilege, and seeks to impose expectations on lawyers over and above their professional duties and obligations.

"Client privilege has been the basis of the client/solicitor relationship for over 500 years. Clients cannot receive effective representation unless they can speak freely and frankly with their lawyers. Privilege is vital to the administration of justice in this country. Incursions against privilege must be opposed.

"The Law Council will continue its efforts to ensure that 'best practice' procedures to enable the efficient and effective resolution of client legal privilege claims raised in the context of investigations by the Commissioner should not impinge upon clients' fundamental right to confidential privileged communications with their lawyers."
