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Protocol to provide balanced framework for Legal Professional Privilege claims

A new protocol dealing with legal professional privilege (LPP) being developed by the Law Council of Australia and the Australian Tax Office will help avoid unnecessary and protracted disputes over claims of LLP.

The work follows a meeting between Law Council President, Arthur Moses SC, and representatives of the Law Council's Business Law Section, with the Commissioner of the ATO to discuss concerns of both the legal profession and the ATO about LPP.

Mr Moses has raised concerns with the ATO about recent comments attributed to it, which had been interpreted as an attempt to undermine LLP in investigations, audit and assurance processes.

"The ATO has assured the Law Council it was not its intention to undermine the sanctity of LPP or to impugn the motives of lawyers seeking to raise legitimate claims in good faith to protect the rights and interests of their clients. I have accepted those assurances," Mr Moses said.

"LPP is a fundamental protection and pillar of the Australian legal system, with the chief purpose of facilitating the administration of justice. This means clients must be able to communicate freely and frankly with their lawyer, so that they can receive full and proper advice," Mr Moses said.

"LPP also 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."

The ATO has informed the Law Council that it fully supports taxpayers getting high quality independent legal advice, and as part of that, fully supports LPP.

The protocol will provide a set of guidelines for managing claims to LPP in response to information requests from the Commissioner, including what information should be provided to the ATO concerning the claim and context in which it has been made.

There is an important balance to be struck between providing the Commissioner with the information and materials he is entitled to under law and the preservation of the confidentiality of communications between taxpayers and their lawyers that the community is entitled to have respected through the long-established LPP doctrine.

Finding this balance is difficult and the protocol will provide a framework for lawyers when dealing with information requests from the ATO, some of which potentially capture a very large number of documents and emails.

Mr Moses said that clarification is required for all concerned. The Law Council has also raised concerns with the ATO about parties not being provided sufficient time to respond to information requests, which the protocol may help overcome.

"The Law Council supports the development of guidelines and 'best practice' procedures to enable efficient and effective resolution of LPP claims raised in investigations by Commonwealth agencies," Mr Moses said.

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

Media Release



“The confidence LPP gives clients is necessary to help them develop a full understanding of their rights and responsibilities under Australia’s complex and ever-changing system of laws.

“Most people and corporations genuinely attempt to fulfil their legal obligations and lawyers play an important role in enabling them to do this by advising on relevant obligations and helping detect and address potential and actual breaches.

“It is essential ATO statements do not result in a chilling effect on the client-lawyer relationship. Incursions against privilege could have a deleterious impact, by impairing the trust and confidence a client would otherwise have.”

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