

10 June 2021

Mr Ken Kua
Acting Director
Individual and Intermediaries
Australian Taxation Office

By email: TaxPractitionerConsultations@ato.gov.au

Dear Mr Kua,

Transition to strengthening client verification

The Taxation Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to provide comments on the Consultation paper entitled “Transition to strengthen client verification” (the **draft guidelines**).

The Committee recognises the problems associated with identity theft and fraud and that steps that prevent access to material that would make identity theft and fraud easier ought to be taken.

The Committee is concerned that the draft guidelines do not clearly identify to whom the standards will apply once they become compulsory.

While the content of the draft guidelines suggests they are limited to tax professionals who have direct interface with Australian Taxation Office (**ATO**) systems, namely registered tax and BAS agents, the draft guidelines use the terms “tax profession” and “tax practitioners” without defining these terms. To the extent that there is a “tax profession”, that profession is made up of accountants, registered tax agents, registered BAS agents, academics, people in government working in the taxation field and lawyers.

Not all of the professionals who fit into the “tax practitioner” category engage with the ATO in a way that carries a risk of identity theft or fraud. The risks that the draft guidelines appear to be targeting arise out of the use of the Tax Agent Portal and other ATO online platforms that provide access to sensitive information, allow agents to complete a range of transactions and give agents the ability to control or access both government (and therefore community) and client money. These platforms are only available to registered tax and BAS agents, not all “tax practitioners”. For this reason, the Committee considers that the standards should be clarified and only apply to registered tax agents and registered BAS agents, not “tax practitioners” more broadly.

The Committee does not consider that the standards should apply more broadly because the ATO's concerns seem to be that its own systems can be compromised in a manner that causes or facilitates identity theft and fraud. Those who do not have access to ATO systems do not interact with the ATO in a way that poses that type of risk. As a consequence, applying the proposed measures to anyone other than agents appears to the Committee to be unnecessary and would impose an unjustified compliance burden on the profession.

To the extent that the proposed measures are intended to regulate the tax profession, and the Committee is not sure that the ATO is seeking to do that or that the proposed measures can do that, there are already a variety of regulators of the majority of those practitioners who fall under the "tax professional" umbrella. None of those regulators are the ATO. The Committee would be happy to expand on this if required.

In summary, the Committee considers that the guidelines should avoid using generalised terminology like "tax profession" and "tax practitioners" and should clearly state that they apply to registered agents.

Thank you again for the opportunity to provide comments. Should you wish to discuss any aspect of this submission further, please do not hesitate to contact Angela Lee, Chair of the Committee (angela.lee@vicbar.com.au or 03 8600 1777).

Yours faithfully

A handwritten signature in black ink, appearing to read "Greg Rodgers". The signature is fluid and cursive, with the first name "Greg" and last name "Rodgers" clearly distinguishable.

Greg Rodgers
Chair, Business Law Section