



ATTORNEY-GENERAL
THE HON. VANESSA GOODWIN MLC

**Guidelines for the Disclosure of Communications
protected by Client Legal Privilege**

Advice

1. This guideline addresses legal advice sought, or received by Government Ministers, Agencies and other statutory authorities comprising the Crown.
2. Legal advice will generally be sought from and given by Crown Law. It may be written, or oral. In this guideline, both forms are referred to as communications.

Client Legal Privilege

3. Communications made for the dominant purpose of seeking, or providing legal advice for Government is protected by client legal privilege (sometimes known as legal professional privilege).
4. Communications made for the dominant purpose of seeking, or providing Government with professional legal services in a proceeding in a Court or tribunal is also protected by client legal privilege.
5. The privilege means that the communications may be kept confidential. The privilege resides in the Crown, not the agency or officer to whom it is given. The custodian of the privilege is the Attorney-General.

Waiver

6. The privilege can only be waived with the express written permission of the Attorney-General. Requests to permit a waiver of privilege should be made in writing to the Attorney-General, specifying the communication(s) which are to be waived and providing a detailed explanation for the reason waiver is sought.
7. The fact that legal advice has been given, or the substance of the advice, should be kept confidential and not released or published to another person unless:
 - (a) it is to be provided to another agency or officer with a proper interest in receiving it; or
 - (b) the Attorney-General has given express written permission that it may be disclosed.

Inadvertent waiver

8. Privilege may be inadvertently waived if the *substance* of the legal advice is disclosed. It will not be waived if all that is disclosed is the *fact* that advice has been obtained.
9. For example, if a Government representative is asked whether legal advice has been obtained, the question may be answered “yes”. However, if the question is “what is the advice?”, or “what is the substance of the advice?” the answer should be to the effect that it is privileged and will not be disclosed.
10. The following statement is *unlikely* to amount to a waiver. “The Solicitor-General’s advice has been obtained. It is the government’s view that you are not entitled to a permit”.
11. The following statement is *likely* to amount to a waiver. “The Solicitor-General has advised that you are not entitled to a permit.”
12. An effective waiver may arise from circumstances, no matter how informal, by something written, or spoken, or by conduct sufficient to indicate that the privilege is not relied on, eg., by showing a person a copy of the advice.

Agencies should seek advice about disclosure

13. If an agency has any doubts, or concerns about whether a communication is privileged, or whether privilege may be waived, please refer the question to the Solicitor-General’s Office.

Solicitor-General’s Office
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