



ATTORNEY-GENERAL

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. It is to be read in conjunction with the 'Guidelines for Seeking Advice from the Solicitor-General's Office'.
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. The Crown is entitled to claim privilege and keep confidential:
 - (a) communications made for the dominant purpose of seeking, or providing legal advice for Government which are protected by client legal privilege (sometimes known as legal professional privilege);
 - (b) communications made for the dominant purpose of seeking, or providing Government with professional legal services in a proceeding in a Court or tribunal which are also protected by client legal privilege.
4. 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

5. 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. Alternatively, the request can be made through the Office of the Solicitor-General ('SGO').

6. The substance of any legal advice given, or received, 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.
7. Disclosure by an officer or employee of the Crown's legal advice in the absence of authority will contravene the Code of Conduct under s 9 of the *State Service Act 2000*.

Inadvertent waiver

8. A waiver of privilege in part of the advice may result in a waiver of the privilege in the whole of the advice.
9. Privilege may inadvertently be 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.
10. 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 substance of the advice?' the answer should be to the effect that it is privileged and will not be disclosed.
11. By example, 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'.
12. By further example, the following statement is *likely* to amount to a waiver. 'The Solicitor General has advised the Agency that you are not entitled to a permit.'
13. 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, for example, by showing a person a copy of the advice.

Agencies should seek advice about disclosure

14. 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
Level 8, 15 Murray Street
HOBART

Phone: 6165 3614
Email:
Solicitor.General@justice.tas.gov.au