Law Council
OF AUSTRALIA

Client legal privilege and federal regulators

Guidance note

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Contents

Introduction

1. This Guidance Note has been produced to support the Australian legal profession in navigating the tension that may arise when federal regulators seek documents or information that are or might be exempt from production obligations, because those documents and that information are affected by the client legal privilege (**CLP**)[1] doctrine.

2. Federal regulators such as the ATO, ASIC, ACCC and AUSTRAC possess significant statutory powers to compel the production of documents and information for regulatory, compliance, and enforcement purposes. These powers serve important public interest objectives, but they are not without legal limits.

3. One key limitation is the common law right of CLP, which protects the confidentiality of communications between legal practitioners and their clients where the dominant purpose of the communication is the giving or receiving of legal advice, or use in existing or anticipated litigation. In regulatory contexts, CLP performs the same critical function as it does in court proceedings and in non-court settings where legal advice is sought or given. The CLP doctrine safeguards legal advice and promotes the administration of justice by ensuring that clients can seek legal counsel without fear of compelled disclosure.[2]

4. Australian lawyers are frequently involved in responding to federal regulator requests either as:

    - an advisor and service provider to their clients who are the subject of federal regulators' enquiries; or
    - the subject of federal regulators' enquiries—because enquiries are directed to them personally in respect of their own records—and those records and that information includes documents and information affected by the CLP doctrine.

5. In either type of enquiry, a legal practitioner has a professional duty to maintain confidentiality unless the client expressly or impliedly authorises disclosure, or the privilege (where privilege applies) is abrogated by a statute.

6. Maintaining a client's claim of CLP when challenged by a regulatory body can be a complex, time consuming, and costly process for legal practitioners and their clients.

7. Relatively contemporary public statements have intensified scrutiny of the legal profession's use of CLP. In August 2023, allegations of improper claims of privilege in that context led to the announcement of a joint review by the Commonwealth

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1 There is a statutory concept of CLP in Part 3.10 of the *Evidence Act 1995* (Cth) and its State legislation equivalents, and a common law concept of legal professional privilege. In this Guidance Note, the term CLP is used to embrace both concepts. The term CLP is preferred because it better reflects the party who has the relevant privilege, namely the client.

2 Often described as a common law "right", the High Court has clarified that CLP operates in substance as an immunity from compulsion to disclose privileged communications, rather than a positive right enforceable by injunction or other action. See *Glencore International AG v Commissioner of Taxation* [2019] HCA 26, [34]; see also *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 ('*Daniels*'), [43]-[49].

Attorney-General's Department and Treasury. This most recent line of inquiry follows an earlier review by the Australian Law Reform Commission that examined the operation of CLP in relation to the investigatory and regulatory powers of Commonwealth agencies arising from the findings of the 'Oil-for-Food' royal commission.[3]

8. The importance of a careful approach to privilege claims and management has been underscored by high profile cases, including *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278 (the **PwC case**).

9. The PwC case highlighted significant legal and reputational risks arising from the improper assertion of CLP. PwC had asserted privilege over thousands of documents and the claims were challenged in the Federal Court. A review of a sample of approximately 100 documents was conducted, and the Court had the benefit of submissions from the parties and amicus curiae. As a reflection of the difficulties that can be anticipated when CLP claims are made, the Federal Court did not accept all of the submissions of either of the parties or the amici and found a little over half of the sample of claims examined to be inadequately supported. These conclusions were reached without any findings of impropriety.[4] These events[5] have led to intensified regulatory scrutiny, growing expectations for the provision of sufficient information to substantiate a privilege claim and explanatory materials, and renewed calls for reform to privilege protocols.

10. A further development impacting on the way the legal profession is expected by federal regulators to respond to their information requests is the introduction of agency level protocols and guidelines on how to articulate claims of privilege. The Law Council maintains the view that any protocol or guideline established by a federal regulator must always seek to achieve the three-fold goals of:

    - providing federal regulators with the information, material and documents relevant to an inquiry to which they are entitled under the law;
    - preserving confidentialities that CLP claimants are entitled to preserve; and
    - providing clarity, guidance and consistency about the information provided to regulators to substantiate any claim for privilege without compromising those confidentialities.

11. The Law Council supports a commonsense, proportionate approach to privilege review and substantiation. The processes adopted should be tailored to the scale and complexity of a federal regulator's information request and should take into account the resources available from all parties involved, ensuring that practitioners

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3 Australian Law Reform Commission, Privilege in Perspective: Client Legal Privilege in Federal Investigations (ALRC Report 107, tabled in Parliament on 13 February 2008). See, in particular, recommendations 8-10 to 8-15.

4 *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [21]-[23] ('PWC Case').

5 The Law Council is unaware of any unreported similar events.

can meet their professional obligations without imposing unnecessary administrative burden.

12. In light of the above developments, this Guidance Note has been developed to support the Australian legal profession by providing:

    - guidance on the principles of CLP to assist the legal profession when dealing with federal regulators on behalf of their clients on CLP matters;
    - practical assistance on engaging with federal regulators and their protocols or guidelines, including professional conduct implications of compliance (or non-compliance); and
    - federal regulators with insights to the profession's approach to CLP claims and what underlies them.

13. The Law Council acknowledges the contemporary developments in anti-money laundering and counter-terrorism legislation. These developments, which raise unique issues with respect to CLP, are being considered separately to this Guidance Note. The Law Council will review and consider any necessary updates to the Guidance Note once the developments in this area have been settled. This Guidance Note is therefore not intended to assist legal practitioners to resolve issues of CLP arising in this particular area of law.

14. A range of challenging CLP issues also arise in the context of electronic surveillance by law enforcement and security agencies, including access to stored communications pursuant to the *Telecommunications (Interception and Access) Act 1979* (Cth). These issues are not addressed in this Guidance Note, however the Law Council continues to engage with policy development in this area to ensure that the substance and value of CLP is not effectively 'hollowed out' as a result of access to privileged information through covert electronic surveillance.[6]

15. This Guidance Note is intended to provide broad practical support, however, it should not be relied upon as legal advice, nor as a substitute for more detailed application of the law to specific circumstances, noting that CLP claims are often highly contextual and the ability to make such claims, or the manner in which they are to be made, is at times affected by a particular legislative framework. A legal practitioner is encouraged to contact their local Law Society or Bar Association for confidential advice on professional obligations. Further, as this Guidance Note is intended to assist practitioners rather than prescribe any one approach, non-compliance with its guidance does not in itself constitute unethical conduct.

16. The Law Council acknowledges the contributions of its Constituent Bodies, and in particular its Client Legal Privilege Working Group, in the preparation of this Guidance Note.

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[6] See, for example, Law Council of Australia, 'Reform of Australia's Electronic Surveillance Framework: Discussion Paper', (Submission to Department of Hom Affairs, 18 February 2022), 39.

Part 1: Understanding CLP

The nature of CLP

17. CLP is an immunity that can be claimed or asserted in a setting where the production of information, documents or things can be compelled: for example, in discovery processes, by warrants and by operation of various statutory information gathering powers administered by government agencies.

18. Confidential communications between a lawyer and their client, and at times others involved in providing legal services to the client, made for the dominant purpose of:

    - providing legal services in connection with actual or contemplated litigation; or
    - giving or receiving legal advice

    are immune, or protected, from compulsory disclosure.[7]

19. The nature of privilege as an immunity means there are limits. In *Glencore International AG v Commissioner of Taxation* [2019] HCA 26, the High Court confirmed that CLP cannot be used as the basis for injunctive relief—which would restrain how disclosed information is used—once privileged documents are in the public domain.[8] In that case, stolen documents obtained through a data leak came into the possession of the Commissioner of Taxation, who was permitted (and arguably obliged) to use them in making assessments. This case highlights the limits of CLP protection once confidentiality is irretrievably lost.[9]

The purpose of CLP

20. The purpose served by the CLP doctrine is to facilitate better dialogue between lawyers and their clients as part of the system of administration of justice and an effective adversarial system.

21. The strong protections afforded by CLP reflect the public interest in ensuring that clients can communicate openly with their lawyers, and that lawyers can provide full and frank advice without fear of disclosure.[10] This requires a relationship grounded in trust and candour between a lawyer and their client. Importantly, CLP is the client's privilege—not the lawyer's[11]—and should only be waived with the client's clear and informed consent.

22. Unrestricted access to legal advice supports the rule of law and assists the system of administration of justice and an effective adversarial system by helping individuals and organisations manage their affairs within legal boundaries.[12]

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7 See, eg, *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49, [12], [61] (Gleeson CJ, Gaudron and Gummow JJ) ('*Esso*').
8 *Glencore International AG v Commissioner of Taxation* [2019] HCA 26, [34] ('*Glencore*').
9 Ibid.
10 *Esso*, [35].
11 *Baker v Campbell* (1983) 153 CLR 52, 85 (Murphy J).
12 Law Council of Australia, Rule of Law Principles (Policy Statement, March 2011).

23. The rationale for CLP has been articulated in *Grant v Downs*,[13] where the High Court held:

> *… it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure ... The existence of the privilege reflects ... the paramountcy of this public interest over a more general public interest, … . in the interests of a fair trial litigation ... that all relevant documentary evidence is available.*[14]

24. The *Grant v Downs*[15] doctrine has been referred to over 1000 times by first instance tribunals and courts and appellate courts.

25. The common law CLP right also acknowledges that, while the courts are the visible apex of the justice system, much of the legal process is carried out by legal professionals in private practice, government, or in-house roles.[16] In Australia, more than 107,000 lawyers[17] support a justice system served by approximately 1,100 judicial officers.[18]

26. The CLP doctrine reflects the balance struck by the general law, that the public interest in protecting legal communications prevails over competing interests, including truth-seeking in litigation or investigatory functions of government agencies.[19] Notwithstanding rare and explicit exceptions, CLP remains an important feature of the legal system and the system of administration of justice.

Statutory and common law basis of CLP

27. CLP has statutory and common law foundations.

28. CLP is now a substantive rule of law under the Evidence Acts of the Commonwealth, states, and territories.[20] While statutory provisions across jurisdictions are largely harmonised—based on the *Evidence Act 1995* (Cth)—they are not identical. Where

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13 *Grant v Downs* (1976) 135 CLR 674.

14 Ibid, 685 (Stephen, Mason and Murphy JJ). See also *Glencore,* [27]-[30]; *Cantor v Audi Australia Pty Ltd* [2016] FCA 1391, [56] (Bromwich J); *Kennedy v Wallace & Ors* (2004) 142 FCR 185, [201] (Allsop J).

15 135 CLR 674.

16 See *Daniels,* [44] and *Baker v Campbell* (1983) 153 CLR 52, 130 (Dawson J).

17 Law Council of Australia, About Us (Law Council Website, last updated 13 August 2025).

18 The Australasian Institute of Judicial Administration, AIJA Judicial Gender Statistics (June 2022, revised on August 2023) 3.

19 *Carter v Managing Partner, Northmore Hale Davy & Leake and Others* (1995) 129 ALR 593, 601 (Deane J). See also *Waterford v Commonwealth* (1987) 163 CLR 54, 74-5 (Brennan J).

20 CLP is provided for by statute in the federal jurisdiction (*Evidence Act 1995* (Cth) ss 118, 119), New South Wales (*Evidence Act 1995* (NSW)), Victoria (*Evidence Act 2008* (Vic)), the ACT (*Evidence Act 2011* (ACT)), the Northern Territory (*Evidence (National Uniform Legislation) Act* 2011 (NT)), Tasmania (*Evidence Act 2001* (Tas)), and Norfolk Island (*Evidence Act 2004* (NI)). Also see *Baker v Campbell* (1983) 153 CLR 52, 116-117; *Glencore International AG v Commissioner of Taxation* [2019] HCA 26, [34] and *Daniels*, [43]-[49].

statutory privilege applies, it prevails over the common law to the extent of any inconsistency.[21]

29. At common law, CLP comprises two distinct limbs:

- Advice privilege protects confidential communications between a client and lawyers (or between lawyers) made for the dominant purpose of giving or receiving legal advice. The concept of 'legal advice' is interpreted broadly to include advice on legal rights, obligations, and recommended actions.[22] This privilege may extend to a lawyer's work product, and documents and communications prepared by third parties (lawyers and non-lawyers) who facilitate the provision of legal advice.[23] Legal advice privilege will extend to communications with a third party where the communication was to enable a client to receive legal advice.
- Litigation privilege applies to confidential communications between a client and lawyer, or between a lawyer and third parties, made for the dominant purpose of providing legal services in relation to actual or reasonably anticipated legal proceedings. The proceedings may be in Australia or overseas. While litigation need not be on foot at the time of communication, it must be reasonably anticipated[24]—a factual question to be determined objectively having regard to the circumstances at the time the document was created.[25] The authorities throwing light on what "reasonably anticipated" means have subtle variations. The joint reasons in *Ensham Resources Pty Ltd v AIOI Insurance Co Ltd*[26] have a useful summary. While there are those subtle variations, it is safe to proceed on the basis that there must be a *real* (as distinct from 'mere') possibility of litigation, but it does not have to be 'more likely than not'.[27]

CLP reach

30. The CLP immunity may include confidential communications or documents—created by persons other than the lawyer or the client—so long as they were created for the dominant purpose of giving or obtaining legal advice or legal services related to anticipated or actual litigation—that would reveal, or allow a third party to infer, the content or substance of legal advice sought or given.[28]

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21 The Evidence Acts were intended to codify the rules of evidence, including those relating to privilege, in proceedings to which the Acts apply. Under *Evidence Act 1995* (NSW) s 9, the Act does not displace common law or equitable principles of evidence unless it does so expressly or by necessary implication (see *Meteyard v Love* (2005) 65 NSWLR 36, [129]-[132]). *Evidence Act 1995* (Cth) s 9 does not contain this specific provision, but still addresses the relationship between the Act and other laws.

22 *AWB Ltd v Cole* (2006) 152 FCR 382, [90], [100]-[103].

23 *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 207 ALR 217, [42]–[43].

24 *Grant v Downs* (1976) 135 CLR 674,682.

25 Ibid.

26 (2012) 209 FCR 1, [46]-[57] (Lander and Jagot JJ).

27 *Mitsubishi Electric Australia Pty Ltd v Victorian WorkCover Authority* [2002] VSCA 59, [19] ('*Mitsubishi*'). See also *Ensham Resources Pty Ltd v AIOI Insurance Co Ltd* (2012) 209 FCR 1, [55]-[56].

28 *AWB Ltd v Cole* (No. 5) (2006) 155 FCR 30, [29] ('*Cole (No. 5)*'); *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501, 585; applied in *Song v Commissioner of Taxation* [2018] FCA 840, [109].

31. Whether CLP applies depends on the dominant purpose for which a communication or document was created. This is an objective question of fact, and when asserted and challenged needs to be assessed as at the time the communication was made.[29]

32. Where a document was created for multiple purposes, CLP will apply if the privileged purpose was the 'ruling, prevailing, or most influential purpose'.[30]

33. Privilege may also extend to:

> *… a document brought into existence for the purpose of a client being provided with professional legal services notwithstanding that some ancillary or subsidiary use of the document was contemplated at the time.*[31]

34. The mere fact that advice comes from a legal adviser does not, by itself, mean the advice is privileged. Subject to the other requirements being met, privilege will only attach to communications if:

- the advice concerns a legal matter or service;[32]
- the advice is provided by the legal adviser in their capacity as a professional legal adviser;[33] and
- particularly in cases of salaried or in-house lawyers, the legal adviser is relevantly both competent and independent—the latter requiring 'professional detachment', 'objective impartiality', or 'an absence of fear or favour'.[34]

35. A professional lawyer-client relationship may arise outside of a formal engagement or written retainer between a client and lawyer, noting the lawyer needs to have provided consent to act.[35]

36. While all, or a large range of communications with lawyers may be confidential, only those made for this privileged purpose attract the protection of CLP.

37. The concept of legal advice is broad. It includes professional guidance on what a party should 'prudently or sensibly do in the legal context in which it arises'.[36] However, it does not extend to advice that is 'purely commercial or of a public relations character'.[37]

38. CLP is not limited to use in court proceedings. The immunity can also be relied on outside of court, for example, when responding to requests or compulsory notices for

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29 *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 136 FCR 357.
30 *Mitsubishi* [10]. See also *AWB Ltd v Cole* (2006) 152 FCR 382 [105]-[106].
31 *Commissioner of Taxation (Cth) v Pratt Holdings Pty Ltd* [2005] FCA 1247, [30] citing *Esso Australia Resources Ltd v Federal Commissioner of Taxation* [1999] HCA 67, 72 [58] (Gleeson CJ, Gaudron and Gummow JJ). See also *Commissioner of Taxation v Alcoa of Australia Ltd* [2025] FCA 651, [73]-[79].
32 *Esso,* [35]; Daniels, [9]-[11], [44]; *Asahi Holdings (Australia) Pty Ltd v Pacific Equity Partners Pty Ltd (No 2)* [2014] FCA 481, [47].
33 *Waterford v The Commonwealth* (1987) 163 CLR 54, 86 (Deane J).
34 See *Rich v Harrington* [2007] FCA 1987, [36]-[46]; *Martin v Norton Rose Fulbright Australia (No 2)* [2019] FCA 96, [187]-[188].
35 *Apple v Wily* [2002] NSWSC 855, [11].
36 *Cantor v Audi Australia Pty Ltd* [2016] FCA 1391, [62]. See also *Cole (No. 5)*, [44(7)].
37 See *Cole (No 5)*, [44(7)].

information and documents from federal regulators such as the ATO, ASIC or ACCC.[38]

Limitations on CLP

Statutory exceptions to privilege

39. Some statutes expressly limit or abrogate the protection of CLP in narrow and clearly defined circumstances. For example, the *Crimes Act 1914* (Cth) and *Proceeds of Crime Act 2002* (Cth) contain provisions that abrogate privilege in limited, specified situations.[39] In addition, section 121 of the *Evidence Act 1995* (Cth) provides for certain exceptions to the privilege. These exceptions are statutory incursions into the general rule of privilege, and are designed to operate only where Parliament has explicitly and clearly articulated the extent of the incursions.

40. In the absence of clear legislative intent to override privilege, CLP remains protected—even where disclosure of otherwise client confidential information and documents would otherwise be compelled by statute.[40]

Communications made for an illegal or improper purpose

41. The CLP doctrine does not and has never extended to communications made for an illegal or improper purpose, including to facilitate fraudulent or criminal conduct.[41] This principle is well established at common law and is reflected in Commonwealth legislation at section 125 of the *Evidence Act 1995* (Cth). This includes communications furthering a fraudulent activity or other improper conduct by a client or third party, regardless of the lawyer's involvement.

42. The concept of fraud is not limited to legal fraud, and may extend to conduct such as an employee secretly using their employer's time and money to build a competing business, involving the diverting of customers and staff for their own profit after leaving.[42] This exclusion also includes where a client seeks legal advice in order to help them commit fraud—even if the lawyer does not know that is the client's purpose.[43]

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38 *Baker v Campbell* (1983) 153 CLR 52, 122; *O'Reilly v The Commissioners of the State Bank of Victoria* (1983) 153 CLR 1 and *Daniels.*

39 *Crimes Act 1914* (Cth) s 3ZZJD states that the privilege against self-incrimination is not abrogated, except for s 3ZZUE. This means that, in general, individuals retain their right to refuse to answer questions, provide information, or produce documents if doing so might incriminate them, except in the specific context of s 3ZZUE. *Proceeds of Crime Act 2002* (Cth) s 206 provides that a person is not excused from producing a document or making it available under a production order on the grounds of self-incrimination, breach of confidentiality, or legal professional privilege. However, for natural persons, the document is not admissible in criminal proceedings against them, except in cases involving false or misleading information under ss 137.1 or 137.2 of the Criminal Code. See also *Proceeds of Crime Act 2002* (Cth) s 271, sch 1, cl 5.

40 Australian Solicitors' Conduct Rules: Commentary (March 2024) 38.

41 *Attorney-General (NT) v Kearney* (1985) 158 CLR 500, [12] (Gibbs CJ). See also *Commissioner of Australian Federal Police v Propend Finance* (1997) 188 CLR 501, [42] (Brennan CJ) referring to *R v Cox and Railton* (1884) 14 QBD 153.

42 *Carbotech-Australia Pty ltd v Yates* [2008] NSWSC 1151, [21].

43 Ibid [22].

Professional conduct rules

43. Professional conduct rules explicitly contemplate limited exceptions to maintaining confidentiality:

    - Rules 9.21 to 9.2.6 of the *Australian Solicitors' Conduct Rules* (**ASCR**); and
    - Rules 114 and 82 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015.*

44. The ASCR recognise that a solicitor may disclose client confidential information where, for example: the client has expressly or impliedly consented (rule 9.2.1); the solicitor is permitted or is compelled by law to disclose (rule 9.2.2); the disclosure is made for the sole purpose of avoiding the probable commission of a serious criminal offence (rule 9.2.4); or the disclosure is made for the purpose of preventing imminent serious physical harm to the client or to another person (rule 9.2.5).[44]

Other documents and information to which CLP does not attach

45. Privilege does not extend to:

    - documents that effect or evidence transactions, such as contracts or deeds, which are not themselves the giving or receiving of legal advice or part of the conduct of actual or reasonably anticipated litigation;[45]
    - facts that the lawyer observes while acting in the course of the retainer;[46] or
    - finalised proofs of evidence created by a party for the purpose of being served on the party's opponent in litigation, and in fact served on that opponent party.[47]

46. Where a document or communication contains both legal and non-legal matters, the portion containing the legal matters, namely the request for legal advice, the facts on which legal advice is sought or given, and the legal advice given, will be privileged and the non-legal matters will not be. Non-legal matters include advice that is purely commercial or of a public relations character.[48] If the privileged material cannot be in 'one distinct part' of the communication or document and differentiation is therefore not possible, the 'dominant purpose' rule will apply. That is, for the document or communication to be protected, dominant purpose of its existence must be the seeking or provision of professional legal advice.[49]

47. While privileged communications are always confidential, not all client confidential information attracts CLP, as noted above. Nevertheless, legal practitioners need to be mindful that if the CLP doctrine does not apply, it does not automatically follow

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[44] See Law Council of Australia, Australian Solicitors' Conduct Rules 2022: Commentary (March 2024), 32-41.

[45] *Grant v Downs* (1976) 135 CLR 674, 678 (Barwick CJ); *Baker v Campbell* (1983) 153 CLR 52, 86-87 and 122-123; *O'Reilly v State Bank of Victoria Commissioners* (1983) 153 CLR 1, 27.

[46] *Z v New South Wales Crime Commission* [2007] HCA 7; (2007) 231 CLR 75, [35]; *Commissioner of Taxation v Coombes* [1999] FCA 842; 92 FCR 240, [31]; cf *Hamdan v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCA 1267, [20].

[47] *Australian Competition and Consumer Commission v Cadbury Schweppes Pty Ltd* (2009) 174 FCR 547, [37]; *Clifford v Vegas Enterprises Pty Ltd* (No 2) (2010) 182 FCR 448, [36], [47], [49].

[48] See *Cole (No 5)*, [44(7)]; See also *Waterford v Commonwealth* (1987) 163 CLR 54, 73, 75.

[49] *Waterford v Commonwealth* (1987) 163 CLR 64, [12].

that the duty to protect all and any client confidential information is lost. In the absence of express or implied consent by the client, government agencies seeking access to non-privileged client confidential information will still need to establish that disclosure is compelled under statutory disclosure or information gathering powers before confidential yet non-privileged information is disclosed.[50] The government agencies will need to invoke their coercive powers to access client confidential information of documents without the client's express or implied consent.

Waiver of CLP

48. Waiver is an 'intentional act done with knowledge whereby a person abandons a right (or privilege) by acting in a manner inconsistent with that right (or privilege). It may be express or implied'.[51]

- **Express waiver** occurs when the client, or their legal representative acting on the client's instructions, clearly communicates an intention to waive privilege—typically in writing.
- **Implied waiver** arises when there is an inconsistency[52] between the conduct of a party that discloses a privileged communication, and maintaining the confidentiality of the communication which the privilege is intended to protect. Implied waiver arises by reason of the inconsistency, even if there was no subjective intention to waive the privilege.[53] This can occur where the substance of a privileged communication is disclosed in a non-confidential communication or in a manner that is inconsistent with maintaining confidentiality, for example where the privilege holder puts in issue the content of the privileged document or communication in pursuing a right or claim.[54]

49. It is important to note that not every disclosure of privileged information necessarily constitutes a waiver, and that some disclosures of privileged material, whether they constitute a waiver or not, might still be able to be used by a regulator.

50. If a privileged document is disclosed inadvertently, courts may permit the error to be corrected and may order the return of the document, particularly if the receiving party refuses to do so.[55] In *Expense Reduction,* the High Court reaffirmed that inadvertent disclosure of privileged documents during legal proceedings does not necessarily result in waiver. Much depends on the circumstances. Where disclosure occurs by

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50 Law Council of Australia, Australian Solicitors' Conduct Rules: Commentary (March 2024) 39.

51 See *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* [2013] HCA 46, [30]; 250 CLR 303, [30]; with reference to *Craine v Colonial Mutual Fire Insurance Co Ltd* (1920) 28 CLR 305, 326; [1920] HCA 64; *Grundt v Great Boulder Pty Gold Mines Ltd* (1937) 59 CLR 641 at 658; [1937] HCA 58.

52 For further discussion on what is meant by 'inconsistency' see: *Thomason v Campbelltown Municipal Council* (1939) 39 SR NSW 347, 354–355; *Ampolex Ltd v Perpetual Trustee Co (Canberra) Ltd* (1995) 37 NSWLR 405, 412–414; *Telstra Corporation Ltd v BT Australasia* [1998] FCA 901; 85 FCR 152, 165–166; *Fort Dodge Australia Pty Ltd v Nature Vet Pty Ltd* [2002] FCA 501, [10]; *Federal Commissioner of Taxation v Rio Tinto Ltd* [2006] FCAFC 86, [24]–[45]; *Bailey v Department of Lands and Water Conservation* [2009] NSWSC 100, [131].

53 *Mann v Carnell* (1999) 201 CLR 1, [29]; *Osland v Secretary to the Department of Justice* [2008] HCA 37, [23].

54 *Federal Commissioner of Taxation v Rio Tinto Ltd* [2006] FCAFC 86, [52]-[53].

55 *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* (2013) 250 CLR 303, [45]. See also Law Council of Australia, Australian Solicitors Conduct Rules (24 August 2015), Rule 31.

mistake, courts may allow the mistake to be corrected and may order the return of the documents to preserve confidentiality—especially if the receiving party refuses to return them.[56] In inadvertent disclosure cases, questions of waiver need to be addressed and, among others, the court will assess whether the client's conduct was inadvertent on the one hand or inconsistent with maintaining confidentiality on the other. As to waiver, considerations of 'fairness' will be relevant to this assessment.[57]

51. In some contexts, the document disclosed can be used by regulators, nevertheless. Section 166 of the *Income Tax Assessment Act 1936* (Cth) gives the Commissioner of Taxation an ability and obligation (in the assessing function) to use information that escapes (including by theft or accident) from the control of its owner. The information that can be used includes privileged information.[58]

Contemporary case law guidance on waiver and loss of privilege

52. Two contemporary Federal Court decisions provide guidance on how CLP may be waived or lost, particularly through disclosure—whether inadvertent, intentional, or arising from wider public dissemination.

53. In *Australian Securities and Investments Commission v Macleod*,[59] the Full Federal Court examined whether the voluntary provision of documents to a regulator constituted a waiver of privilege.[60] The Court clarified that:

- waiver requires a clear and intentional act, done with knowledge of the privilege;
- merely disclosing documents in the course of cooperation with regulators does not automatically waive privilege unless the conduct is inconsistent with maintaining the privilege;
- the principles from *Expense Reduction* remain applicable—privilege is not waived through inadvertence alone;[61] and
- a regulator's derivative use of information voluntarily provided (such as relying on the factual content of documents to guide investigations or ask further questions) does not amount to disclosure of privileged communications themselves. In other words, using information derived from privileged material does not of itself waive privilege over the underlying documents.[62]

54. Most recently, in *Commissioner of Taxation v Alcoa of Australia Ltd* (***Alcoa***)[63] the Federal Court clarified that CLP is not automatically waived by partial disclosure of

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56 *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* [2013] HCA 46, [45]-[50].

57 *Mann v Carnell* (1999) 201 CLR 1, [29].

58 See *Denlay v Commissioner of Taxation* [2011] FCAFC 63, [79]-[81]; *Federal Commissioner of Taxation v Donoghue* (2015) 237 FCR 316, [72]-[74]. While not a case about waiver as such, *Glencore International AG v Commissioner of Taxation* [2019] HCA 26, [7] referred to s 166 but found it unnecessary to consider it. The outcome was that the Commissioner was permitted to use the privileged material in his possession because CLP being an immunity from compulsory disclosure did not create an associated remedy in a setting of already disclosed material.

59 [2024] FCAFC 174.

60 See especially *Australian Securities and Investments Commission v Macleod* [2024] FCAFC 174, [132], [135]-[136], [138] (waiver principles), [140]-[147] (derivative use).

61 Ibid [138]; *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* [2013] HCA 46, [30]-[31].

62 *Australian Securities and Investments Commission v Macleod* [2024] FCAFC 174, [145]-[147].

63 [2025] FCA 651.

privileged material. The court emphasised that waiver requires conduct inconsistent with maintaining privilege, informed by considerations of fairness. The dominant purpose test remains central to determining whether privilege applies and there is no general principle that disclosure of the substance of advice results in a waiver over the whole of the advice.[64]

55. In *Alcoa* the Court also reaffirmed that documents or communications created for the dominant purpose of obtaining legal advice or for use in litigation remain protected, even if they are drafts or contain ancillary purposes.[65] The Court overturned the Tribunal's finding of waiver, noting that the Commissioner's conduct was not inconsistent with maintaining privilege, and there was no evidence of any forensic advantage being sought or obtained through the disclosures.[66]

56. For legal practitioners, *Alcoa* serves as a reminder to implement careful document management practices—ensuring that draft legal advice and working documents are treated with the same degree of confidentiality as final advice, and that privilege is preserved through all stages of legal work.

57. Together, these cases reinforce the principle that waiver is conduct-based. Privilege may be lost where the client's conduct is inconsistent with preserving confidentiality (as in public dissemination), but it can be preserved where disclosure is inadvertent, rectified promptly, and where the overall conduct remains consistent with maintaining privilege. Legal practitioners should be vigilant in managing document disclosure, particularly in regulatory investigations, and take proactive steps to preserve privilege and address any inadvertent disclosures immediately.[67]

Establishing and maintaining CLP claims

58. CLP, or any element required to establish it, is not established or proven merely by its assertion. Similarly, merely marking a document as privileged when it does not satisfy the elements to be a privileged document does not transform an otherwise unprivileged document into a privileged one.

59. While an assertion or claim is a necessary starting point, the party asserting privilege bears the burden of establishing the factual basis for the claim.[68] This burden applies irrespective of who initiates the process of testing a CLP claim. The burden continues to apply to the CLP claimant even in circumstances where the counterparty to the claim begins the process of testing the CLP claims made, e.g. in an application for a declaration—such as under section 39 of the *Judiciary Act 1903* (Cth)—that the documents are not privileged.[69]

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64 Ibid [32]-[50], [116], [117], [136].
65 Ibid [73]-[79].
66 Ibid [124], [132]-[133], [135].
67 These need to be in line with Rule 31 of the Law Council of Australia, Australian Solicitors Conduct Rules (24 August 2015).
68 *Grant,* 689; *Mitsubishi*, [10]; *Kenquist Nominees Pty Ltd v Campbell (No 5)* [2018] FCA 853, [18]; *Apple Inc v Samsung Electronics Co Ltd (No 2)* [2012] FCA 1358, [36], [53]; *Archer Capital 4A Pty Ltd (atf Archer Capital Trust 4A) v Sage Group Plc (No 2)* (2013) 306 ALR 384, [13]; *Australian Competition and Consumer Commission (ACCC) v NSW Ports Operations Hold Co Pty Ltd* [2020] FCA 1232, [49].
69 *Deputy Commissioner of Taxation v Nicholls (No 3)* [2009] FCA 785, [16], [25]-[26], [128]. See also *Deputy Commissioner of Taxation v Nicholls (No 2)* [2009] FCA 234, [5]; *Alpert v Secretary, Department of Defence* [2022] FCA 54, [60]; *Illinois Tool Works Inc v Airco Fasteners Pty Ltd* (2022) 166 IPR 514.

60. At times, communications of a professional nature between a lawyer and client can be presumed to be requests for legal advice or the giving of legal advice, and therefore likely to be privileged.[70] The presumption can also arise from an affidavit sworn by a lawyer.[71] Once the presumption is in place, a person disputing a claim has the evidentiary burden of establishing facts which prima facie rebut the presumption.[72] If the presumption is rebutted, then the party claiming CLP needs to prove the claim.[73]

61. If a court process is required to determine contested CLP claims, strict proofs are required and generalised assertions will not be sufficient.[74] That said, at least in some contexts steps directed to avoiding unduly complicated, extended and unacceptably expensive processes to determine privilege issues should be explored.[75]

62. In a court process to resolve CLP claims, the steps taken may be affected by procedural directions of the court, and if not, it is likely that document-by-document proofs will be required. Notably, courts have been known to proceed on a basis of a sample of documents claimed to be privileged.[76]

63. In non-court processes to resolve disputed CLP claims, parties can determine by agreement the steps to be taken to resolve claims. An independent review of CLP claims, or a sample thereof, with the parties submitting to the views of the independent reviewer, is an example of a non-court CLP dispute resolution process.

64. If a federal regulator wishes to test a CLP claim, the regulator can invoke their coercive powers to obtain information about the relevant document or communication.[77] Use of those powers creates an obligation to respond, however the federal regulator cannot, in any such request, compel provision of privileged information.

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70 *Dalleagles Pty Ltd v Australian Securities Commission* (1991) 4 WAR 325, 330.
71 *Australian Hospital Care (Pindara) Pty Ltd v Duggan* [1999] VSC 131, [67].
72 Ibid [68].
73 Ibid [70].
74 *Barnes v Commissioner of Taxation* [2007] FCAFC 88, [16]-[18]. And the authorities there cited.
75 *re Southland Coal Pty Ltd (recs and mgrs apptd) (in liq)* [2006] NSWSC 899; (2006) 59 ACSR 87, [30].
76 See PWC case (n 4).
77 *CUB Australia Holding Pty Ltd v Commissioner of Taxation* [2021] FCA 43, [10]; *CUB Australia Holding Pty Ltd v Federal Commissioner of Taxation* [2021] FCAFC 171, [10].

Part 2: Obligations on the legal profession

65. Lawyers' involvement in evaluating and making CLP claims usually arise in one of the two settings as noted in paragraph 4 above.

66. When involved in assisting a client respond to federal regulator's request for documents, the lawyers' involvement entails provision of services associated with assisting clients in:

    - discharging their obligations to produce documents and information that can be compelled; and
    - invoking their entitlements to immunities where they arise.

67. In this context, the terms of the client retainer define and govern the scope of lawyers' activities and duties in providing those services. While lawyers' actions and their scope are shaped by the retainer, federal regulators' responses to CLP claims will generally depend on the level of detail provided to support those claims, what federal regulators are entitled to receive, and the degree to which they wish to challenge the claims.

68. If the scope of the retainer does not require a thorough document-by-document review or detailed particularisation of the documents over which CLP claims are made, regulators can reasonably be expected to make further enquiries. Conversely, the more extensive the retainer and the more detailed the explanation of CLP claims provided to the regulator, the less likely further enquiries will be needed.

69. Legal practitioners must ensure they do not assert privilege claims at the direction of their client if no valid basis for a privilege claim exists. If the client presses and the privilege claim is without a valid basis, the legal practitioner must adhere to the professional duty in Australian Solicitors' Conduct Rule 8, to give effect only to a client's lawful, proper and competent instructions, and the professional obligation in Rule 4.1.4 to avoid any compromise to their integrity and professional independence. A legal practitioner can seek confidential advice on legal or ethical obligations from their local Law Society or Bar Association.[78]

70. When lawyers' involvement in making CLP claims is in a setting of enquiries made of their own records, then the situation is different. The lawyer is duty bound, unless and until the client waives the obligation, to maintain the confidentiality associated with their client related documents and records and to make CLP claims. Until released, lawyers must preserve the confidentiality of all aspects of documents and information over which the client is entitled to assert immunity.

71. The extent of information provided in support of CLP claims can be expected to inform a regulator's response to any claims made.

[78] Law Council of Australia, Australian Solicitors Conduct Rules (24 August 2015), Rule 9.2.3.

Key obligations

72. Legal practitioners have a professional duty to not disclose client confidential information outside of what is necessary, to deliver or administer the provision of the legal services for which the legal practitioner has been retained by the client. This obligation is expressed in unambiguous terms in professional conduct rules: Rule 9 of the ASCR[79] and Rule 114 of the Legal Profession Uniform Conduct (Barristers) Rules 2015.

73. The obligation to maintain confidentiality continues indefinitely, even after the client relationship ends or the client dies.[80]

74. Legal practitioners also have professional duties and statutory obligations that necessarily require a legal practitioner to keep a client informed and obtain instructions about matters that arise during the course of providing legal services to the client.[81]

75. As has been noted earlier:

    - two established exceptions to a solicitor's duty not to disclose client confidential are where the client expressly or impliedly authorises disclosure, or where the solicitor is permitted or compelled by law to disclose; and
    - so far as privileged communications are concerned, the common law right to resist disclosure on the grounds of privilege is the client's right, not the legal practitioner's right, and can only be waived by the client.

76. The combined effect of these duties, obligations and rights means that, in practice, in a continuing retainer setting, a solicitor who receives a statutory notice requiring the solicitor to disclose client confidential information or produce documents is professionally and statutorily obligated to inform the client of that fact; of what information or documents are called for by the notice; to provide legal advice about meaning and effect of the notice; the implications that compliance with the notice may have on both performance of the retainer and the legal costs involved; and to obtain client instructions—especially client instructions about whether the client will waive CLP over information of documents called for by the notice. Practitioners should note that the duty of confidentiality persists after the client engagement has ended.[82]

77. However, some statutory information gathering powers come with a prohibition on disclosing that such a power has been exercised—the most notable being the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**). Section 123 of the AML/CTF Act creates the criminal offence off "tipping off" which prohibits a person who is compelled to make certain reports or respond to certain notices to provide information or documents from disclosing the fact that such an obligation has arisen or has been met and what information or documents have been provided. While the AML/CTF Act contains provisions[83] that do not require the

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79 Ibid.
80 See Law Council of Australia, Australian Solicitors' Conduct Rules: Commentary (March 2024), 42.
81 See Law Council of Australia, Australian Solicitors Conduct Rules (24 August 2015), Rules 4.1 and 8, and Legal Profession Uniform Law Part 3.4, Division 3 – Costs disclosure obligations.
82 Ibid, Rule 10.
83 See ss 242 and 242A of the AML/CTF Act.

reporting or production of information or documents that are subject to legal professional privilege, a legal practitioner who becomes subject to any of these obligations is clearly unable to disclose that circumstance or seek client instructions, where doing so contravenes section 123 of the AML/CTF Act.

78. As mentioned above, this Guidance Note will be reviewed once the developments in this area have been settled to consider any necessary updates, noting that relevant guidance establishing how CLP will be managed in the context of the AML/CTF Act is not yet finalised. This Guidance Note is therefore not intended to assist legal practitioners to resolve issues of CLP arising under the AML/CTF Act, particularly with regards to the "tipping off" offence and suspicious matter reporting.[84]

79. Legal practitioners must also take particular care to avoid:

- inadvertent waiver, including partial disclosure of legal advice; and
- conduct inconsistent with maintaining privilege (as described in section 122 of the *Evidence Act 1995* (Cth)).[85]

In-house counsel

80. In-house counsel (or 'in-house lawyer') is a generic term for a legal practitioner who is an employee engaged in legal practice on an exclusive basis for his or her employer. Although the structure of the laws regulating the legal profession and the provision of legal services varies, and nuances exist across State and Territory jurisdictions,[86] the two key statutory characteristics of an in-house counsel are:

- an Australian legal practitioner who engages in legal practice only in the capacity of an in-house lawyer for his or her employer or a related entity; and
- the legal services are provided only in relation to a proceeding or transaction to which the corporation or the related body corporate is a party.[87]

81. The underlying concept is straightforward—an in-house counsel is an employee legal practitioner with only one 'client' (or set of related body corporate clients) who provides legal services only in connection with that or those clients' legal matters.

82. However, as an employee, especially within a large organisation, a legal practitioner may be called upon to occupy other positions or roles; may become involved in

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84 For further information see AUSTRAC, Legal professional privilege (Reform) (Webpage, last updated 20 October 2025)

85 Under s 122(5) of the Uniform Evidence Acts, certain forms of disclosure do not constitute a waiver of privilege. These include disclosures made under duress, as a result of deception, or under compulsion of law.

86 Not all jurisdictions mandate a practising certificate, but nevertheless authorise an in-house counsel to engage in legal practice on the strict condition that legal services are provided only to the employer or a related body corporate-see for example Legal Profession Act 2006 (ACT) sections 16(1) and (4)(a) where the prohibition on engaging in legal practice when not an Australian legal practitioner (i.e. an Australian lawyer who holds a current practising certificate) does not apply to an employee providing legal services to his or her employer or a related entity in the ordinary course of employment and for no reward other than ordinary remuneration as an employee).

87 See, for example, Legal Profession Uniform Law (applicable in New South Wales, Victoria and Western Australia), s 6; *Legal Profession Act 2007* (Qld) Schedule 2, Dictionary; and *Legal Profession Act 2007* (Tas) s 45(2)(b).

broader business and commercial matters of the organisation; and may work within an organisational environment where communications and access to information and documents may be relatively open.

83. This can in turn lead to challenges in demonstrating that CLP attaches to an in-house counsel's advice, having regard to:

- the capacity in which an in-house counsel developed and provided "advice" (i.e. whether as a legal practitioner engaging in legal practice, or in some other role, office or capacity within the organisation);
- whether the dominant purpose of the advice provided by an in-house counsel is legal advice, or whether the dominant purpose of the advice is for broader business, commercial or organisational purposes; and
- whether providing access to or disseminating legal advice within the organisation compromises the confidentiality upon which CLP necessarily depends.

84. The points above for in-house counsel might be summarised as follows:

> The advice must be provided in his or her *capacity* as a legal practitioner, for the *dominant purpose* of providing legal advice in relation to proceedings or transactions; and is shared on a *confidential* basis only with those who have a common interest in the proceedings or transactions to which the legal advice relates.

85. To satisfy a federal regulator that a claim of CLP over communications and documents passing between an in-house counsel and employer are well-founded, each of the three potential areas of challenge—as outlined above—need to be addressed. These three potential areas should not be regarded as distinct in themselves, but as an interrelated combination of factual circumstances to be established about the communication in question. A mere assertion as to each of these is insufficient, but there are useful indicators that may be pointed to, to provide an assurance that a CLP claim is well-founded.

Capacity

86. Where an in-house counsel occupies other roles or undertakes other functions within an organisation a proposition or question immediately arising is whether the communication over which CLP is claimed was created in his or her "capacity" as a legal practitioner, or his or her "capacity" as an officer[88] or employee of the corporation.

87. Answering this proposition or question is not resolved by formal labelling, or a statement about the distribution or separation of functions and roles of a person within an organisation into 'legal' and 'non-legal'. Whether it is possible to make such a clear distinction between different "capacities" in which certain tasks are undertaken by a person in this situation was greatly doubted by the High Court in

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[88] Section 9 of the *Corporations Act 2001* (Cth) defines an ***officer*** of a corporation to mean, inter alia: a director or secretary of the corporation; or a person who makes, or participates in making, decisions that affect the whole or a substantial part of the business of the corporation.

Shafron v Australian Securities and Investments Commission,[89] but is a question of fact having regard to both the office held and to the actual responsibilities the person has in the organisation, regardless of how or why those responsibilities came to be imposed on that officer:[90]

> *It is not possible to sever Mr Shafron's responsibilities into watertight compartments, one marked "Company Secretary" and the other marked "General Counsel". The expression "company secretary" is not a term of art. The responsibilities of company secretaries can vary from company to company, within companies, and over time.*[91]

88. The correct question to answer, articulated by the majority of the High Court in *Waterford v The Commonwealth*[92] relates to the circumstances in which the communication in question arose:

> *Whether in any particular case the relationship is such as to give rise to the privilege will be a question of fact. It must be a professional relationship which secures to the advice an independent character notwithstanding the employment.*[93]
>
> *… there is authority in this Court and elsewhere for the proposition that legal professional privilege may attach to communications passing between a salaried legal adviser and his employer, provided that the legal adviser is consulted in a professional capacity in relation to a professional matter and the communications are made in confidence and arise from the relationship of lawyer and client. For this reason the legal adviser must be qualified to practise law and, it seems, subject to the duty to observe professional standards and the liability to professional discipline.*[94]

Independence

89. The question of what "independence" entails for a communication between an in-house counsel and employer to attract CLP was considered in *Archer Capital 4A Pty Ltd as trustee for the Archer Capital Trust 4A v Sage Group plc (No 2)*.[95] Archer Capital asserted that for the dominant purpose test to be satisfied in respect of an in-house solicitor, it must be established that "the communication was sent or received by the solicitor in his capacity as an independent legal adviser".[96]

90. While the Court accepted that independence may be a relevant consideration, it did not treat it as a separate, stand-alone requirement. Instead, it emphasised that the key question remains whether the communication was made for the dominant purpose of obtaining or giving legal advice. The fact that an in-house lawyer is an

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89 (2012) 247 CLR 465, [11].
90 Ibid [14], [18], [19].
91 Ibid [41] (Heydon J).
92 [1987] HCA 25.
93 Ibid [4] (Mason and Wilson JJ).
94 Ibid [7] (Dawson J).
95 [2013] FCA 1098.
96 *Archer Capital 4A Pty Ltd as trustee for the Archer Capital Trust 4A v Sage Group Plc (No 2)* [2013] FCA 1098, [56].

employee does not, of itself, disqualify them from providing privileged advice—but it does require careful attention to the role in which the lawyer is acting at the time.[97]

91. The subsequent decision of *Martin v Norton Rose Fulbright Australia (No 2)*[98] reinforces the approach that independence is better understood as a matter of professional capacity—that is, whether the lawyer was acting as a legal adviser exercising professional judgment in relation to the particular communication or communications at issue, rather than in a business or managerial role. As in-house lawyers are often involved in both legal and commercial/organisational decision-making, the more closely advice is tied to organisational or strategic considerations, the harder it may be to establish that the dominant purpose of the communication was legal.[99]

92. Practical indicators of independence may include holding a current practising certificate, maintaining a distinct legal function within the organisation, being structurally positioned to give objective legal advice, and acknowledgement that in providing legal advice and services the in-house counsel must adhere to the ethical duties and professional obligations of a legal practitioner. Demonstrating that communications were made in a legal capacity—for example, through clear labelling, restricted circulation, and separation of legal and commercial work—can assist in supporting a claim of privilege if later challenged.

Confidentiality

93. CLP fundamentally depends on the confidentiality of communications. For in-house lawyers in Australia, care should be taken when providing access to, or sharing, legal advice within an organisation, as the broader the circulation, the greater the risk that privilege may be compromised.

94. In assessing whether confidentiality has been maintained, relevant indicators include whether the recipient is directly involved in implementing or acting on the legal advice, whether the communication is marked and treated as confidential, and whether internal policies limit access to those necessary for the legal purpose. *Archer Capital 4A Pty Ltd as trustee for the Archer Capital Trust 4A v Sage Group Plc (No 2)*[100] underscores that in-house counsel must be mindful of internal dissemination: advice circulated too widely or to individuals whose involvement is primarily commercial may jeopardise privilege.[101]

95. Practical measures that can assist in preserving privilege include clear labelling, restricting circulation to relevant personnel, maintaining separate files or folders for legal and non-legal matters, effective information barriers to preserve the confidentiality of communications and advising recipients of the confidential nature of the material. While privilege is not automatically lost by reasonable internal sharing for the dominant legal purpose, these steps help demonstrate that the communication was intended to remain confidential and was made for legal advice purposes.

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97 Ibid [72]-[73].
98 [2019] FCA 96.
99 See *Martin v Norton Rose Fulbright Australia (No 2)* [2019] FCA 96, [151]-[152], [158].
100 [2013] FCA 1098, [17].

Multidisciplinary practices

96. Lawyers in MDPs work in firms that offer both legal and non-legal professional services—such as accounting, consulting, or financial advisory—under a single business structure.

97. Lawyers working in MDPs will encounter similar considerations to in-house lawyers due to their close collaboration with non-legal professionals such as accountants, consultants, and tax advisors. This similarity creates an additional factor when assessing whether CLP may apply to communications to or from a lawyer acting in that capacity, and the need to ensure the capacity, dominant purpose and confidentiality aspects in their work, as provided above, is equally applicable. However, the MDP context often gives rise to specific considerations relevant to recognising and preserving privilege noted below.

Distinguishing legal advice from other professional services

98. CLP is generally limited to communications made in the course of providing legal services. Within an MDP, it may therefore be helpful for lawyers to:

- clearly distinguish legal advice from financial, consulting, or other non-legal services (as required by Australian Solicitors' Conduct Rule 39);
- avoid, where practicable, combining legal content with broader commercial or strategic commentary; and
- ensure, as far as possible, that documents over which CLP claims might be made are the product of legal practitioners' professional legal work and legal practitioners have been responsible for their content.

99. Practical measures such as using document headers (e.g. "Privileged and Confidential—Legal Advice"), maintaining separate files for legal and non-legal work, and establishing effective information barriers, may assist in managing information that demonstrates the relevant status of a document. As noted above, however, mere labelling of communications or documents is not sufficient to establish CLP.

100. Privilege may be put at risk if confidential legal communications are shared beyond those involved in providing legal services. Accordingly, lawyers within MDPs may wish to:

- limit access to privileged information to non-lawyer staff only where they are necessary to the legal service and are subject to equivalent confidentiality obligations; and
- establish systems that restrict access to privileged material.

101. Disclosure of privileged material to non-lawyers who are not assisting in the legal work may, in some circumstances, risk waiving privilege.[102]

[102] Refer to Rule 9.1 of the Law Council of Australia, Australian Solicitors' Conduct Rules 2022: Commentary (March 2024).

Maintaining professional independence

102. Professional independence remains a key consideration for lawyers practising within MDPs. Lawyers may need to remain alert to circumstances where commercial or organisational structures could affect their duties of loyalty and confidentiality to the client, or their ability to exercise independent professional judgment.

103. It is generally advisable for lawyers to:

- act in accordance with the legal profession laws and all relevant professional conduct rules;
- be alert to any arrangements that may compromise independence; and
- take steps to clarify and document the scope of their legal role within the MDP.

104. Lawyers may also wish to ensure clients understand:

- which aspects of their engagement are likely to be covered by privilege;
- when privilege may not apply, particularly in relation to non-legal services within the MDP; and
- the possible implications of sharing privileged material with other professionals in the practice.

105. Separate legal retainers identifying the scope of the legal services, and when CLP may apply, can assist in managing these issues.[103]

Responding to regulator information requests

106. When lawyers in an MDP receive information requests from federal regulators, their approach will often be similar to that of lawyers in single-discipline firms. It may be prudent to:

- consider whether privilege could apply to the requested material;
- distinguish legal material from non-legal or mixed-purpose documents;
- where a privilege claim is made, clearly articulate the basis on which it is asserted (exercising caution to ensure there is no inadvertent waiver of privilege);
- consult with and obtain instructions from the client before disclosing material that may be privileged (unless restricted by law); and
- seek external advice where the privilege status of a communication is uncertain.

[103] Noting Rule 39 of ibid, which requires lawyers to "take all reasonable steps" to ensure that the client is clearly informed about the nature and the terms of legal and non-legal services provided.

Part 3: Responding to requests from federal regulators

Balancing tensions between regulatory powers and CLP

107. Regulatory powers must be exercised within the bounds of enabling legislation, such as the *Taxation Administration Act 1953* (Cth)*,*[104] *Australian Securities and Investments Commission Act 2001* (Cth),[105] and *Competition and Consumer Act 2010* (Cth).[106]

108. CLP is an immunity from disclosure and production by the privilege-holder, which only the privilege-holder can waive. However, there are circumstances in which a regulatory authority may come into possession of a privileged communication. For example, where:

- the legislation abrogates or modifies the privilege-holder's right to the immunity. Legislation can do this either expressly or by necessary implication,[107] and may provide for the way that communication is to be treated by the regulatory authority. The Law Council does not support such abrogation given the fundamental purpose that CLP serves in the public interest, as set out in paragraphs [2020]–[21] above;
- the privileged communication is given to the regulatory authority by mistake;[108]
- the privileged communication is provided subject to conditions agreed to between the privilege-holder and regulatory authority;[109]
- where the regulatory authority comes into possession of the privileged communication through a third-party.[110]

109. In each of the above, tensions will arise between the exercise of regulatory powers and the preservation of CLP.

110. If privileged information or communication comes into the possession of a regulatory authority other than by an express waiver of the privilege (for example, through a third party), questions arise about the way in which the communication came into the regulatory authority's possession, what effect this has on the status of the communication as privileged, what uses the regulatory authority may make of the privileged communication, and whether the regulatory authority is permitted to disclose that privileged communication to other regulatory authorities.

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[104] See especially *Taxation Administration Act 1953* (Cth) sch 1, subdiv 353-10.
[105] *Australian Securities and Investments Commission Act 2001* (Cth) s 30–33.
[106] *Competition and Consumer Act 2010* (Cth) s 155.
[107] See *AWB Ltd v Australian Securities and Investments Commission (ASIC)* (2008) 216 FCR 577, [29], [43]-[44], [51]. Legislative purpose, statutory context and the public interest also play crucial roles in this determination. See *Daniels Corp International Pty Ltd v Australian Competition and Consumer Commission (ACCC)* (2002) 213 CLR 543, 553 (Gleeson CJ, Gaudron, Gummow and Hayne JJ) and 563 (McHugh J); *Lee v New South Wales Crime Commission* (2013) 251 CLR 196, [29] (French CJ); *Hamilton v Oades and Corporate Affairs Commission of New South Wales* (1989) 166 CLR 486, [3] (Deane and Gaudron JJ); *Pyneboard Pty Ltd v Trade Practices Commission*(1983) 152 CLR 328, 341 (Mason ACJ, Wilson, and Dawson JJ).
[108] See, for example, the facts and circumstances considered in *Expense Reduction,* [7].
[109] For example, ASIC, *Information Sheet 165 – Claims of legal professional privilege* (updated July 2024).
[110] *AWB Ltd v Australian Securities and Investments Commission (ASIC)* (2008) 216 FCR 577, [29].

111. Responding to requests for documents from a regulator requires an approach that promotes lawful compliance while protecting the rights of clients. Where a request appears overly broad or unclear, practitioners should:

- consider seeking clarification from the regulator, and attempt to have the request appropriately narrowed;
- consider making formal objections to the request/elements of the request or consider judicial review, where appropriate;
- document all CLP claims made clearly. If the claims are documented in accordance with relevant protocols (as applicable) practitioners can legitimately expect fewer follow up questions of regulators. If not increased follow up can be expected;
- ensure CLP claims have a valid basis; and
- exercise caution to ensure there is no inadvertent waiver of privilege.

Technology, volume, and the rising complexity of privilege claims

Expansion of data volumes and regulatory reach

112. Technological developments—including widespread digitisation, cloud storage, and the use of online communication platforms (e.g. email, messaging, collaborative tools)—have significantly expanded the volume and accessibility of information held by entities and their legal advisers. One consequence of these developments is that regulatory information-gathering powers to access broad datasets in support of enforcement and compliance initiatives potentially affect vast quantities of documents and records.[111]

113. These information requests now routinely encompass tens or hundreds or thousands of documents, often drawn from entire corporate inboxes, servers, or document repositories. While this enables more efficient data capture, it significantly increases the risk of capturing privileged communications—particularly internal legal advice, draft documents, and mixed-purpose communications.

114. Practitioners are therefore required to assess large volumes of material for potential privilege, often under strict regulatory timelines.[112] This poses difficulties, as 91 per cent of the legal profession are either sole practices or small businesses of up to four practitioners.[113]

115. The increasing scale of information requests has led to practical challenges, including:

- resource strain on legal teams assessing privilege across large data sets, costs which are ultimately borne by the client;
- higher risk of inadvertent waiver through oversight or insufficient detail in the provision of information to substantiate a privilege claim;

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[111] See, for example, ATO, *Legal Professional Privilege Protocol* (June 2022); ASIC, *Information Sheet 145 - ASIC's compulsory information-gathering powers* (last reissued in March 2020); ACCC, *ACCC Guidelines – Use of section 155 powers* (July 2022).

[112] Law Council of Australia, *Review of the Use of Legal Professional Privilege in Commonwealth Investigations* (Submission, 14 March 2025) [66].

[113] Urbis, 2024 National Profile of Solicitors (Prepared for Law Society of NSW, 13 June 2025) 28.

- difficulty applying the 'dominant purpose' test to multi-author, multi-purpose or hybrid communications;[114]
- regulator expectations for detailed justifications of privilege claims, including under voluntary protocols;[115]
- requests being made to entities where privilege belongs to the client, as opposed to the entity; and
- errors being made in response to a notice or compulsory process due to the size and complexity of the task.

116. To manage these challenges, legal practitioners should:

- implement clear processes for preserving relevant documents and reviewing them to identify and track privileged content early;
- consider privilege review tools where appropriate, with caution, safeguards and legal oversight;[116]
- maintain clear protocols for privilege review, documentation, and escalation within legal teams;
- engage early with regulators to clarify and negotiate scope, discuss appropriate search terms, raise privilege concerns, and propose practical solutions to any conflict or tensions (e.g. review of privilege claims by an independent third-party, staged production of documents and/or communications that privilege may be claimed over); and
- make corrections without fear of reprisal or the belief that a correction will, instead of being welcomed or encouraged, result in criticism.

117. Where a lawyer (whether external or in-house) has been involved in advising on the underlying matters that are the subject of a regulator's information request, it may be appropriate to consider additional measures to support the independence of the privilege review. In some cases, this could include having another lawyer or team—ideally with no prior involvement in the underlying advice—take primary responsibility for the review or for preparing substantiation.

Reliance on regulator protocols for asserting CLP

118. Several federal regulators have developed protocols or guidance on how to claim CLP in response to information requests. These protocols and guidance are intended to assist legal practitioners and entities in understanding regulators' expectations in connection with CLP claims when responding to formal information-gathering powers. Generally, such protocols aim and should continue to aim to:

- promote consistency in the assertion of privilege;
- facilitate timely and efficient regulatory investigations by reducing ambiguity in privilege claims;

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[114] See *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49, [61]–[62]; where the High Court affirmed the "dominant purpose" test as determinative of LPP.

[115] ATO, *Legal Professional Privilege Protocol* (June 2022) [38]; noting that the ATO encourages detailed privilege claim particularisation but does not compel it.

[116] See the Law Council of Australia's online portal for guidance, commentary and tools from the Law Council's Constituent Bodies, and other relevant bodies across Australia.

- encourage substantiated, clearly articulated privilege assertions to avoid disputes;
- maintain procedural fairness for all parties while ensuring regulators can perform their statutory functions; and
- support the use of schedules or confidentiality agreements to manage sensitive material.

119. As regulators issue more comprehensive guidance on privilege claims, legal teams must exercise sound professional judgment in navigating these frameworks. While protocols such as the ATO's LPP Protocol offer structure,[117] it is important to note that they do not replace the core legal and ethical obligations of the practitioner.

120. The Law Council encourages legal professionals to engage constructively with these protocols and guidance, and to ensure privilege assertions and their particularisation:

- comply with professional obligations;
- are clearly identified and legally grounded;
- are supported by appropriate documentation; and
- are consistent with the legal test for privilege, and unless made to preserve the status quo to allow an examination to be undertaken are not strategic or blanket in nature.

121. While use of these protocols remains voluntary, it is important to acknowledge that failure to follow them may lead to increased scrutiny, further requests for information, or challenges from regulators. Notwithstanding potential increased scrutiny, practitioners should remain mindful that:

- protocols do not displace or override the common law relating to CLP;
- entities are not legally required to adopt the regulator's preferred format or process (unless required by specific statutory rule);
- regulators are not entitled to privileged information in observance of their preferred formats or processes; and
- alternative methods for asserting CLP may be equally valid, provided they meet the relevant legal standards. For example, a conclusion that the relevant content of a document concerns a legal matter can be particularised in a variety of ways without disclosing privileged content.

122. A decision not to follow a protocol should be clearly documented, with reasoning and context provided, particularly in high-risk or contested regulatory environments.

123. The Law Council considers that this balanced approach protects client rights while maintaining professionalism and good faith in regulatory interactions.

Subject lines and topics of privileged advice/communications

124. Federal regulator protocols, such as the *ATO LPP Protocol*,[118] may request legal practitioners to provide extensive particulars when asserting CLP over documents or

[117] ATO, *Legal Professional Privilege Protocol* (June 2022); see also ASIC, *Information Sheet 165 – Claims of legal professional privilege* (updated July 2024).
[118] ATO, *Legal Professional Privilege Protocol* (June 2022).

communications. This may include the title or subject line of the communication, or the name of the privilege holder (i.e. the client).

125. Practitioners should exercise caution when responding to protocol requests that seek disclosure of a document's subject line or topic. While regulators may view such particulars as relevant to assessing the validity of a privilege claim, practitioners must assess whether disclosure of the subject line may inadvertently reveal part of the substance or tenor of the privileged communication.

126. The Law Council has previously observed that the topic or subject matter on which legal advice is given—or sought—may itself form part of the confidential communication protected by privilege.[119] Requiring its disclosure could expose sensitive client information and may place a legal practitioner at risk of breaching their duty to maintain confidentiality.

127. Where a request under a protocol seeks this level of detail, practitioners should:

- assess whether the subject line discloses privileged content;
- consider providing an appropriately generalised description;
- and include a notation that further particularisation would risk waiver or breach of duty.

Client names and CLP

128. Some protocols suggest that the name of the client (privilege holder) be included to assist regulators in assessing claims of privilege. While it is generally accepted that the identity of a client is not inherently privileged, there are exceptions—particularly where disclosure would reveal the existence, nature, or content of a privileged communication.

129. Where the disclosure of a client's identity might attract CLP, practitioners should consider withholding that detail and instead:

- clearly state the basis for non-disclosure in their covering correspondence; and
- where applicable, seek clarification from the regulator or propose a compromise (e.g. anonymised labels or codes).

130. Protocols that invite disclosure of client names should also expressly warn that such particulars should not be provided if doing so would result in the disclosure of privileged information, or otherwise require a legal practitioner to breach their professional obligations or ethical duties.[120] Where a request under a protocol to provide client names is declined, practitioners should include a notation that this disclosure would risk waiver or breach of duty.

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[119] Law Council of Australia, *ATO Legal Professional Privilege Protocol* (19 November 2021) 18-19.

[120] The ATO Protocol, at para 10, states that the ATO does not expect legal practitioners to breach their ethical and professional obligations if a conflict arises between them and the recommendations outlined in the Protocol.

Practical tips for responding to regulator information requests

131. Responding to statutory information requests requires legal practitioners to navigate tight timeframes, client confidentiality obligations, and the risk of privilege disputes. The following practical guidance aims to help practitioners manage these demands effectively while protecting their clients' legal rights.

Before responding: Preparation and risk assessment

132. Before responding to a statutory information request, it is recommended that practitioners:

- **Engage early with the regulator**: Seek clarification if the scope is ambiguous, and confirm whether **voluntary protocols** apply (e.g. ATO's *LPP Protocol*[121]).
- **Clarify the nature of the request**: Identify the legal basis (e.g. section 353-10 of Schedule 1 of the *Taxation Administration Act 1953* (Cth), section 155 of the *Competition and Consumer Act 2010* (Cth)), scope, deadlines, and penalties for non-compliance.
- **Conduct a privilege audit**: Review requested documents for potential CLP and other protections (e.g. confidentiality, public interest immunity).
- **Advise clients promptly**: Provide written advice on obligations, risks, and privilege considerations; ensure they understand their rights and responsibilities; and obtain client instructions with regards to any privilege claims (unless restricted by law).

Managing privilege claims

133. To manage privilege claims, practitioners are encouraged to:

- **Use date ranges:** If a retainer exists, the dates of engagement of the retainer may be a useful starting point to inform the date(s) for substantiating a privilege claim.
- **Provide sufficient information to substantiate a privilege claim**: Use a structured format to detail withheld documents, including date, author, recipient, type of communication, and legal basis for privilege. Avoid excessive generalisation.
- **Use document management tools, if possible and appropriate**: Employ secure, searchable platforms to categorise documents by privilege status (privileged, potentially privileged, not privileged).
- **Avoid waiver risks**: Do not selectively disclose privileged material unless the client waives privilege knowingly and voluntarily, and with clear documentation. The client should be advised that waiving privilege over one communication may result in waiver of privilege over all other communications dealing with the same subject matter[122] and will almost certainly do so if the first communication cannot properly be understood without recourse to the other communications.[123]

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[121] ATO, *Legal Professional Privilege Protocol* (June 2022).
[122] *AWB Ltd v Cole (No 5) 12* [2006] 155 FCR 30,[167] (Young J).
[123] *British American Tobacco Australia Services Ltd v Cowell* [2002] VSCA 197; [2002] 7 VR 524, [121] (Victorian Court of Appeal).

Engagement with regulator protocols

134. When engaging with regulator protocols, practitioners are encouraged to:

- **Follow applicable protocols within the limits of professional duties and the law**: For example, the ATO's *LPP Protocol*[124] outlines expectations around substantiation and reasonable searches. While voluntary, failure to follow a protocol may increase scrutiny or create pressure to comply. Engage with the regulator to the extent that departure from the protocol is sought or envisaged, if necessary.
- **Balance cooperation and legal limits**: Constructive engagement is encouraged, but practitioners should not feel compelled to surrender legal rights or participate in a protocol that conflicts with their duty to the client.

Where a dispute arises

135. If a dispute over a privilege claim arises, practitioners should:

- **Document all interactions**: Maintain a written record of regulator communications, internal reviews, and privilege decisions.
- **Escalate where necessary**: Consider judicial review or independent expert resolution where privilege is genuinely contested.
- **Refer to senior counsel**: For complex or high-risk matters, consult experienced counsel early.

136. For further details of steps to be taken see 'Disputed Privilege Claims' below.

General professional conduct

137. Practitioners must always take care to:

- **Act diligently and honestly**: Ensure compliance with the LPUL and ASCRs, particularly Rule 9 on CLP, Rule 5 on honesty and integrity and Rule 7 on communications with the client.[125]
- **Stay updated on regulator practice**: Monitor changes to regulator guidance, court decisions, and law reform developments (e.g. following the PwC matter).

138. See **Appendix A** for a **Practitioner Checklist** that may be helpful for responding to regulator information requests.

Disputed privilege claims

139. Disputes about CLP claims may arise where federal regulators such as the ATO, ASIC, or ACCC are not satisfied that a claim has been validly made. While regulators recognise the legitimacy of CLP, they are entitled to request further information to assess whether a privilege claim is properly grounded. Legal practitioners should be prepared to respond constructively, consistent with their ethical duties and the client's rights.

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[124] Ibid.
[125] See Law Council of Australia, Australian Solicitors Conduct Rules (24 August 2015).

140. To mitigate the risk of disputes and to respond effectively where they arise, legal practitioners should:

- ensure all privilege claims are specific, legally grounded, and properly documented;
- engage constructively and transparently with regulators, having regard to relevant protocols (e.g. ATO's *LPP Protocol*);
- avoid asserting privilege too broadly or reflexively, as such claims may undermine credibility and, if later withdrawn or inconsistently maintained, may give rise to an inadvertent waiver of privilege;
- maintain clear records of the rationale for each claim, including the legal advice or context; and
- inform clients of the risks of escalation, including potential litigation or court review.

141. Where a privilege claim is challenged, the following steps commonly occur:

Request for further information

142. The regulator may ask the practitioner to substantiate the claim by providing sufficient information to substantiate a privilege claim or a description of the documents withheld, including details such as the author, recipient, date, and the legal basis for privilege.[126]

Engagement and clarification

143. Practitioners may engage with the regulator to:

- clarify the basis of the claim;
- provide redacted versions or metadata;
- reconsider or amend the claim where appropriate (with the client's instructions) without fear of reprisal or the belief that a correction will result in criticism; or
- explore alternative dispute resolution options, such as appointing an independent reviewer.

Escalation to formal dispute

144. If the dispute cannot be resolved informally, the regulator may:

- retain the disputed documents under seal or in a secure location;
- seek judicial determination on whether privilege applies, through proceedings in the Federal Court; or[127]
- refer the matter to internal legal teams.

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[126] See *CUB Australia Holding Pty Ltd v Commissioner of Taxation* [2021] FCA 43; *CUB Australia Holding Pty Ltd v Commissioner of Taxation* [2021] FCAFC 171, [10].

[127] See, e.g, *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, where the Federal Court was asked to determine whether privilege was validly claimed over documents produced under a statutory notice.

Judicial or independent review

145. In contested matters, a party may:

- apply to the Federal Court for declaratory relief or judicial review; or
- agree to the use of an independent legal expert to assess the documents and provide a recommendation. However, consideration of the best approach in relation to disputes with AUSTRAC will be the subject of further guidance in due course.

Appendix A—Practitioner checklist: Responding to regulator information requests

This checklist supports legal practitioners in effectively responding to statutory or voluntary information requests from Commonwealth regulators (e.g. ATO, ASIC, ACCC), while preserving legal rights such as client legal privilege (CLP). This checklist should be used as a guide only and not be considered definitive or exhaustive.

1. Initial Review and Scope Assessment

- ☐ Identify the **legal basis** for the request (e.g. notice issued under *TAA*, *ASIC Act*, *CCA*).
- ☐ Confirm the **issuing agency**, relevant statutory powers, and applicable response deadlines.
- ☐ Review the **scope of the request** to determine whether it is precise, ambiguous, or overly broad.
- ☐ Assess for any **potential privilege or confidentiality issues**.
- ☐ Advise the client promptly on obligations, potential exposure, and privilege considerations; and obtain client instructions with regards to any privilege claims (unless restricted by law).

2. Document Collection and Management

- ☐ Conduct a **reasonable and systematic search** for responsive documents (in line with regulator expectations).
- ☐ Categorise documents:
  - ☐ Likely privileged
  - ☐ Possibly privileged
  - ☐ Not privileged
- ☐ If possible, use a **secure document management system or electronic database** to organise and label materials, as appropriate.
- ☐ Retain detailed records of how searches were conducted and decisions made.

3. Asserting CLP

- ☐ Identify communications that:
  - ☐ Were made between client and legal adviser
  - ☐ Were for the dominant purpose of legal advice or anticipated litigation
- ☐ Provide sufficient information to substantiate a privilege claim, including:
  - ☐ Document type, date, author, recipient

- ☐ Legal basis for privilege
- ☐ General subject matter (without disclosing privileged content)

☐ Check for risks of **express or implied waiver**.
☐ Ensure privilege claims are **specifically and properly framed**.
☐ Ensure privilege claims are **specifically and properly framed**.

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4. Responding Under Regulator Protocols

☐ Determine if a **voluntary protocol** applies (e.g. ATO's *LPP Protocol*).
☐ Consider whether to engage with the protocol, balancing cooperation with professional obligations.
☐ If engaging:
- ☐ Follow the protocol's format and timelines
- ☐ Provide supporting materials (e.g. schedules, search descriptions)

☐ Clearly note in correspondence where **engagement with a protocol is voluntary** and **not a waiver** of legal rights.
☐ Avoid undue pressure or assumptions that failure to participate equates to non-compliance.

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5. Managing Disputes or Regulator Pushback

☐ If privilege is disputed:
- ☐ Maintain the position if legally supportable
- ☐ Consider offering further explanation or refinement (without waiving privilege)

☐ Be prepared to:
- ☐ Refer the issue to senior or external counsel
- ☐ Engage a third-party reviewer (by agreement or court order)
- ☐ Escalate to **judicial review or declaratory relief** where appropriate

☐ Keep all correspondence and privilege decisions clearly documented.

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6. Conduct and Risk Management

☐ Comply with **professional conduct obligations**, including:
- ☐ Duty to court and administration of justice
- ☐ Duty to act honestly and diligently
- ☐ Obligation to maintain client confidence and privilege

☐ Ensure **clients are properly advised** on both legal rights and strategic risks.
☐ Monitor relevant regulator guidance, law reform, and case law updates.
☐ Maintain a file note of all decisions and steps taken in responding to the request.