



PRACTICE GUIDELINE 4 Legal Professional Privilege

INTRODUCTION

1. This Practice Guideline sets out the way the Commission will receive and consider claims of legal professional privilege with respect to documents and other communications which a person has been summoned by the Commission to produce.
2. For the purposes of this Practice Guideline, “document” includes any book, register or other record of information, however compiled, recorded or stored: see s. 1B of the *Royal Commissions Act 1902* (Cth).

PROCEDURE FOR CLAIMING LEGAL PROFESSIONAL PRIVILEGE

3. A person may claim legal professional privilege in relation to the whole of a document or one or more parts of a document. The procedure for claiming the privilege before the Commission will vary depending on whether or not a court has already found the document in question to be privileged.
4. If a court has already found the relevant document to be subject to legal professional privilege, and the person to whom the summons was issued seeks to claim the privilege before the Commission, the person or a legal practitioner acting on his or her behalf must, as soon as is reasonably practicable and in any event before the production of the document to the Commission, inform the General Counsel to the Commission of the person’s intention to claim the privilege. At the same time, the person or his or her legal practitioner must provide the General Counsel to the Commission with a copy of the judgment or order recording the court’s classification of the document as privileged.
5. Where the document has not previously been found by a court to be subject to legal professional privilege, the person to whom the summons has been issued may claim the privilege in relation to that document by informing the General Counsel to the Commission, as soon as is reasonably practicable and in any event before the production of the document to the Commission, of the person’s intention to claim the privilege. At the same time, the person or his or her legal practitioner must provide the General Counsel to the Commission with a short submission in support of the claim.
6. Upon receipt of a submission and claim for legal professional privilege, the Commission may, by written notice served on a person, require the person to produce a document

over which client legal privilege is claimed for the sole purpose of deciding whether to accept the claim: see sub-s. 6AA(3) of the *Royal Commissions Act 1902* (Cth) s 6AA(3).

7. Where the Commission accepts a claim of legal professional privilege in relation to an inspected document, either in whole or in part, the document will be returned to the person. Such parts of an inspected document as the Commission accepts to be subject to legal professional privilege will not be taken into account by the Commission, nor will they form the basis of any finding or recommendation by the Commission: see sub-s. 6AA(4)(b) of the *Royal Commissions Act 1902* (Cth).
8. If the Commission rejects a claim for legal professional privilege in relation to a document which has been produced for inspection, the Commission may retain the document and use it for the purposes of the inquiry: see sub-s. 6AA(5) of the *Royal Commissions Act 1902* (Cth).
9. It is an offence for a person to refuse or fail to produce a document, or a part of a document, which the Commission has summoned that person to produce and in respect of which the Commission has rejected a claim of legal professional privilege: see s. 6AB of the *Royal Commissions Act 1902* (Cth).
10. Nothing in this practice guideline should be taken as limiting the Commissioner's powers, whether at the request for any person or on the Commissioner's own initiative, to treat any material or information as confidential and to take any steps in respect of the preservation of such confidentiality.

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