



Coronavirus (COVID-19)

The Commission is carefully monitoring the Commonwealth and State Government's announcements and health advice relating to coronavirus (COVID-19) to ensure that arrangements are in place for the Commission and parties participating in the Commission's work to mitigate any adverse impacts on people and operations.

The below guidelines will be reviewed regularly to ensure that they are consistent with any changes that may be recommended by Commonwealth and State agencies in relation to COVID-19. If any party or person has any concerns in relation to the operation of a practice guideline and the impact of COVID-19 please contact the Commission at RCNDA.Notices@royalcommission.gov.au or 1800 909 826.

PRACTICE GUIDELINE 3

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 sought under a summons or a notice to produce.
2. However, nothing in this practice guideline should be taken as limiting the Commissioners' powers, whether at the request for any person or on the Commissioners' own initiative, to treat any material or information as confidential and to take any steps in respect of the preservation of such confidentiality.

Legal Professional Privilege and the Royal Commission

3. Where a person¹ is required to produce a document under s 2 of the *Royal Commissions Act 1902* (Cth) (**the Royal Commissions Act**), the procedure for making a claim of legal professional privilege in respect of any such document is contained in s 6AA(1) of the Royal Commissions Act.
4. The effect of s 6AA(1) of the Royal Commissions Act is that an assertion that a document is subject to legal professional privilege will not be a "reasonable excuse" for refusing or failing to produce the document for the purposes of ss 3(1B), (2B), (5) or (6B) of the Royal Commissions Act, unless:
 - a. a court has found the document (or the relevant part of the document) to be subject to legal professional privilege; or

¹ A reference to a "person" in this Guideline includes a body politic or corporate as well as an individual.

- b. a claim that the document (or the relevant part of the document) is subject to legal professional privilege has been made to the Commissioners within the following timeframes as applicable:
 - i. within the time that the Commissioners, in requiring production of the document, allowed for its production; or
 - ii. within such further time as the Commissioners allowed for production of the document.
5. 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 required 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).

Procedure for Claiming Legal Professional Privilege

6. 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.
7. 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 their behalf must, as soon as is reasonably practicable and in any event before the production of the document to the Commission, inform the Solicitor Assisting the Commission of the person's intention to claim the privilege. At the same time, the person or their legal practitioner must provide the Solicitor Assisting the Commission with a copy of the judgment or order recording the court's classification of the document as privileged.
8. 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 Solicitor Assisting 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 Solicitor Assisting the Commission with a short submission in support of the claim.

Considering and Determining Claims for Legal Professional Privilege

9. Upon receipt of a submission and claim for legal professional privilege, the Commission may, may decide whether to accept or reject the claim (see s 6AA(2) of the Royal Commissions Act).
10. The Commission may, by written notice served on a person, require the person to produce a document over which legal professional privilege is claimed for the sole purpose of deciding whether to accept the claim (see s 6AA(3) of the Royal Commissions Act).
11. 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 s 6AA(4)(b) of the Royal Commissions Act).

12. 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 s 6AA(5) of the Royal Commissions Act).