



THE LAW SOCIETY
OF SOUTH AUSTRALIA
THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

Legal Professional Privilege

As a statutory body with regulatory responsibilities to the legal profession in South Australia, the Society is responsible for ethical guidance to legal practitioners, which includes upholding principles of the Rule of Law. Legal professional privilege is one such principle, fundamental to the proper functioning of Australia's legal system.

Legal professional privilege is a protection afforded to an individual who has engaged the services of a legal practitioner. In practice, it ensures the ongoing confidentiality of communications and documents which came into existence for the dominant purpose of the provision of legal advice to an individual, or in the context of litigation which is either current or anticipated. This protection encourages the full and frank disclosure of information by an individual to their legal representative, without fear of inadvertently providing information that may be used against them, all in the context of navigating confusing and unfamiliar circumstances.

In this regard, we note the protection and sacrosanct nature of legal professional privilege has been affirmed and reaffirmed by the High Court of Australia on numerous occasions. We reiterate the recent consideration of legal professional privilege by the High Court in *Glencore International AG v Commissioner of Taxation* (2019) 265 CLR 646 at 659:

"Legal professional privilege has been described as a right which is fundamental to persons and to our legal system. It has also been described as "a practical guarantee of fundamental, constitutional or human rights". Such descriptions point up the importance of the privilege. They serve to show that it is not merely an aspect of curial procedure or a mere rule of evidence but a substantive right founded upon a matter of public interest."

The Society considers any encroachment on legal professional privilege by legislation, regulation or otherwise must be accompanied by a significant justification, with careful consideration being given to the practical implications of doing so. The Society has been vocal in its advocacy on several occasions where it suspects privilege has been encroached upon, especially in the context of vulnerable people who engage the services of a legal practitioner.

The Society unequivocally supports and upholds the proper maintenance of legal professional privilege by all legal practitioners in South Australia. The maintenance of the full and frank communication between solicitor and client, protected by legal professional privilege, is conditional to facilitating the proper administration of justice.

It goes without saying that the Society believes this fundamental right is to be preserved at all costs.

Rebecca Sandford
PRESIDENT

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