

## WHAT IS LEGAL PROFESSIONAL PRIVILEGE?

### 1. What is legal professional privilege?

Legal professional privilege (also known as client legal privilege) is a rule of law which protects the disclosure of certain communications between a client and their lawyer. For a communication to be privileged, it must be:

- confidential;
- created for the dominant purpose of seeking or providing legal advice (the ‘dominant purpose’ test); *or*
- created for use in existing or reasonably anticipated legal proceedings.

The privilege belongs to the University as client, not to a member of University staff or the lawyer.

In most cases, legal professional privilege is claimed over documents. However, it can also apply to verbal (oral) and electronic communications (eg. emails).

### 2. What is its purpose?

The purpose of legal professional privilege is to encourage a client to fully disclose information to their lawyer without fear that the information will be used against them. The lawyer is then able to give the client comprehensive advice, knowing all the facts relating to their matter.

### 3. Examples of legal professional privilege

Some examples of potentially privileged documents are:

- a memo prepared by a member of University staff seeking advice from an ACU lawyer;
- a memo of legal advice from an ACU lawyer to a member of University staff;
- a letter of instruction from the University to an external law firm;
- a letter of advice from an external lawyer to the University;
- drafts, notes and other material prepared by a member of University staff for the purpose of communicating with an ACU lawyer or an external lawyer (whether or not they are actually communicated to the lawyer);
- a lawyer’s revisions of a member of University staff’s correspondence;
- internal investigation reports prepared by the University for the purpose of obtaining legal advice;
- reports prepared by third parties (eg. a consultant’s report provided it is created for the dominant purpose of obtaining legal advice or for use in anticipated legal proceedings).

**4. Can legal professional privilege be lost?**

Legal professional privilege is not guaranteed and can be lost (“waived”) by a client by mistake if proper care is not taken. If a client discloses a communication (or the substance of it) to a third party or to the public at large, it will no longer be confidential and will lose its privileged status. For example, privilege will be waived by sending legal advice (or parts of it) to someone outside the University or making a public statement such as “we have legal advice that X is the case”.

**5. What should I do if I’m not sure whether something is privileged or not?**

Please contact us for advice before taking any action if your matter is sensitive or could be the subject of dispute and you are unsure whether you should disclose a related communication or not.