

Lawyer-client relationships put under the microscope

The Australian Law Reform Commission (ALRC) says its new review of legal professional privilege could have a major impact on the way clients and lawyers will interact in future.

The ALRC inquiry will concentrate on the application of legal professional privilege to the coercive information gathering powers of Commonwealth bodies - such as the Australian Federal Police, the Australian Crime Commission, the Australian Securities and Investments Commission, the Australian Taxation Office and federal royal commissions.

ALRC President Professor David Weisbrot said the ALRC had looked at legal professional privilege generally in its recent report Uniform Evidence Law (ALRC 102), released earlier this year, and in somewhat greater detail in its 2002 report, Principled Regulation (ALRC 95).

“In both of those reports, the ALRC highlighted the need for a ‘root and branch’ review of legal professional privilege in the context of the coercive investigatory powers of federal regulatory agencies and royal commissions,” Professor Weisbrot said.

“This also was squarely raised as an issue in the recent report of the Cole inquiry into the Australian Wheat Board and, before that, in the report of the HIH Royal Commission.

“Commissioner Cole noted that a conflict sometimes arises between the public interest in discovery of the truth - which is the prime function of a royal commission - and the right of persons to communicate with their lawyers and obtain legal advice under conditions of confidentiality.

“We are pleased to have been asked to conduct this inquiry, the essence of which will be to determine if there are circumstances in which maintaining client legal privilege must bend to the broader public interest.

“Common law courts have held consistently that legal privilege is a fundamental right and not merely a procedural safeguard.

“The ALRC will identify experts and key stakeholders in this area. We’ll be seeking their input - as well as views from the wider community - about both perceived problems and potential solutions.



“This obviously involves some very complicated technical issues and we anticipate that the legal profession, judges, former royal commissioners and counsel assisting, and Commonwealth investigatory bodies will have considerable input into the ALRC’s inquiry.”

The terms of reference are available on the ALRC website (www.alrc.gov.au) and the Commission has started work on an Issues Paper.

The ALRC is due to report by December 2007.

The inherent danger of salary sacrifice cont...

no recognition of the total remuneration due to the employee.

NOT-FOR-PROFIT ORGANISATIONS

My experience has shown me that not-for-profit organisations are a large category of offenders. Complexities aside, because such organisations often receive significant FBT concessions, some of these employers encourage salary packaging more so for the benefit of the organisation, rather than as increased benefits for the employee. In other words, by packaging, the employee does receive increased net pay, but not as much as he or she should have received had the employer not kept (perhaps unknowingly) some of that increased benefit for the organisation.

I think the only reason that we do not see more legal actions taken against employers is that there are so few professionals who have a sufficient understanding of the interaction of employment and taxation law.