



Australian Government

Media Release

Australian Law Reform Commission

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Legal privilege controversies prompt ALRC review

Recent controversies highlight the need to examine the balance between the protections afforded by client legal privilege and the ability of federal investigatory bodies to search out the truth, Australia's top law reform body said today.

Australian Law Reform Commission (ALRC) President Prof David Weisbrot said "client legal privilege has been described by the High Court as 'an important common law right', and some commentators go as far as to call it a 'fundamental human right'.

"However, there are concerns—most recently raised by the AWB and HIH Royal Commissions—that claims of privilege can be used cynically to frustrate investigations."

The ALRC is reviewing the use of client legal privilege (sometimes referred to as 'legal professional privilege') in the context of Commonwealth investigations, by such bodies as the AFP, ASIC, the ACCC, the Australian Taxation Office and federal Royal Commissions of inquiry.

The ALRC today released an Issues Paper—*Client Legal Privilege and Federal Investigatory Bodies* (IP 33)—which seeks feedback on 31 questions that are central to the review.

Prof Weisbrot said the issue of client legal privilege is a sensitive one. "Clients must be able to be completely candid with their lawyers in order to get proper legal advice—so there's a strong public interest argument in favour of maintaining client legal privilege.

"On the other hand, there is evidence that claims of privilege are sometimes abused, as a tactic to stymie investigations and prolong litigation," he said.

Commissioner-in-charge of the Inquiry, Prof Rosalind Croucher, said the ALRC has identified about 40 federal investigatory bodies with coercive information gathering powers.

"One of the problems is that there's a whole raft of federal investigatory bodies—each with its own legislation. Sometimes this legislation modifies or abrogates privilege, sometimes it expressly preserves it, and often it is silent on the issue—which makes this area complex and confusing. Then add to that the interaction between this legislation and the common law.

"We are also exploring whether the rules might be different for Royal Commissions as opposed to investigatory bodies—and we note that NSW and Victoria have abolished privilege in the case of their state Royal Commissions," she said.

Prof Croucher said another question being raised by the ALRC was whether client legal privilege should extend to other professional advisers—for example, where advice about tax law is provided by accountants or financial advisers.

IP 33 raises questions for discussion and feedback. The ALRC will now begin an intensive round of consultations, with a view to releasing a more comprehensive Discussion Paper in late August. The final report is due in December.

IP 33 is available free online at www.alrc.gov.au, and will be available in hardcopy shortly.

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The Issues Paper is currently available only in electronic format—on CD-Rom and via the ALRC's website. Hardcopies will be available shortly. The Issues Paper is free.