

## Protecting Legal Professional Privilege In-House - Practical Steps

The following are some practical steps that may aid in maintaining a claim for LPP In-House. For a more extensive discussion on recent cases please see our article 'Legal Professional Privilege In-House'.

22 December 2005

The following are some practical steps that may aid in maintaining a claim for LPP.

### 1. IN-HOUSE LAWYERS

- Wear only one hat – for example either a commercial or legal hat. If two hats must be worn make sure it is clear which one you have on at any particular time
- Consider using different signatures for different roles and retaining different files for each role
- Identify disclosure risks at the time the communication is made and consider the dominant purpose test
- Hold a practising certificate
- Attend continuing legal education sessions regularly
- Maintain Law Society or Law Institute memberships and other professional memberships
- Stay alert to new decisions on LPP

### 2. COMMUNICATIONS

- Mark advice 'Privileged and Confidential' where appropriate
- Ensure key legal documents are provided on a confidential basis
- Send privileged and non-privileged material separately
- Beware of allowing privileged material to be passed outside the organisation or widely circulated internally (be especially careful in relation to who is cc'd on e-mails containing such material)
- Avoid using bcc on e-mails containing privileged material as it can be difficult to keep track of all recipients
- In-House lawyers should control the distribution of legal advice In-House

- Make communications with third parties relating to legal advice or litigation through external lawyers

### 3. THE ORGANISATION

- Educate staff – be aware of waiver when negotiating or making submissions or announcements - don't declare that you have legal advice and what that advice may be (even where you may be under a continuous disclosure obligation to inform the market of the matter)
- Ensure that the roles of those in the legal group are clearly stated and that lawyers report to legal managers for their legal roles
- Ensure that lawyers are permitted to carry out their legal roles independently and without commercial interference
- Establish protocols for the distribution of legal advice internally – who may see it, keep it confidential, do not distribute it widely and do not send it outside the organisation
- Ensure that legal staff are remunerated on a salary basis for their legal work – avoid remuneration linked to the commercial targets or the performance of the organisation

**AUTHOR:** Emma Cashen, Solicitor

### MORE INFORMATION

If you would like to learn more about intellectual property law, or any other area of intellectual property, Davies Collison Cave can customise a presentation to suit your intellectual property requirements.

For further information or advice on intellectual property law matters please contact:

Chris Jordan, Partner  
+ 61 3 9254 2888 or [cjordan@davies.com.au](mailto:cjordan@davies.com.au)



If you would like to be removed from our mailing list, please send an email to [mail@davies.com.au](mailto:mail@davies.com.au) or telephone Melissa McLennan on + 61 3 9254 2777.

The contents of this information sheet are not intended to be, nor are they, a complete statement of the law on the particular subject matter and are for information purposes only. This update is not a substitute for legal advice.