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Client Legal Privilege Response

In these circumstances, it is possible that [Name of Client] may be able to object to adducing [specify the evidence...] on the basis of client legal privilege. [Name of client] is clearly a 'client' under s 117 of the EA, as they are a person employing a lawyer (s 117(a)). Pursuant to s 117, [name of lawyer] will be considered a 'lawyer' as they are an Australian lawyer (s 117(a)).

Choose between 1 or 2

The [evidence] can be considered a confidential document/confidential communication under s 117, as.....

1. [the facts] demonstrate that it was made in circumstances where [Person] was under an express or implied obligation not to disclose its contents...or
2. it was prepared in circumstances where [person who prepared it] was under an express or implied obligation not to disclose its contents, whether or not this obligation arises under law.

Choose between Advice or Litigation

If it is Advice

Under s 118, evidence is not to be adduced if on objection by [Name of Client], the court finds that adducing it would result in disclosure of a confidential communication made between [Name of Client] and [Lawyer] (s 118(a)), for the dominant purpose of providing legal advice to [Name of Client].

Dominant purpose

Dominant purpose is best defined as 'the ruling, prevailing or most influential purpose' for which a document is brought into existence (Spotless Services (1996) Case)). In these circumstances... it is clear on the facts that the most influential purpose for [evidence] being brought into existence was for [the lawyer] to provide legal advice to [client] (Spotless Services). [State what happened] was for [lawyer/law firm] to provide legal advice to [Name of client].

If it is Litigation

Under s 119, evidence is not to be adduced if, on objection by [client], the court finds that adducing it would result in disclosure of a confidential communication that was made between [Name of Client] and [Another person/3rd party] (s 119(a)) for the dominant purpose of [Name of Client] being provided with Professional Legal services relating to an Australian or overseas proceeding, including this proceeding, or an anticipated or pending Australian or overseas proceeding, in which [name of client] is, or may be, or was, or might have been a party.

Commented [JK1]: Could choose another subsection

- (a) a person or body who engages a lawyer to provide legal services or who employs a lawyer (including under a contract of service);
- (b) an employee or agent of a client;
- (c) an employer of a lawyer if the employer is:
 - (i) the Commonwealth or a State or Territory; (ii) a body established by a law of the Commonwealth or a State or Territory;
- (d) if, under a law of a State or Territory relating to persons of unsound mind, a manager, committee or person (however described) is for the time being acting in respect of the person, estate or property of a client--a manager, committee or person so acting;
- (e) if a client has died--a personal representative of the client;
- (f) as a successortotherightsandobligations of a client, being rights and obligations in respect of which a confidential communication was made.

Commented [JK2]: choosing a subsection. Either (a) An Australian lawyer/ (b) An Australian registered foreign lawyer/ (c) An overseas registered foreign lawyer or natural person permitted to engage in legal practice in that country/ (d) An employee or agent of a lawyer referred to in (a), (b), or (c).

Commented [JK3]: Could choose; a b, or c

A confidential communication made between 2 or more lawyers including [lawyer] acting for [client] (s 118(b)); The contents of a confidential document (whether delivered or not) prepared by the [client], [lawyer], or (s 118(c)).

Commented [JK4]: Or s 119(b) Contents of a confidential document

- • the contents of a confidential document (whether delivered or not) that was prepared (s 119(b));

In these circumstances, it is clear on the facts that the ruling, prevailing or most influential purpose for [evidence] being brought into existence was for the [client] to be provided with professional legal services for use in, or in relation to litigation (**Spotless Services**). [Apply further facts].

Documents Response

[State the Document] meets the definition of a document (**Dictionary EA**) as it includes: (a) anything on which there is writing. |

Pursuant to **s48(1)**, [The party tendering evidence] may adduce evidence of the contents of the [document] by:

- Tendering a copy of a document (**s48(1)(b)**);
- Adducing evidence as to the contents of a document (**s48(1)(d)**);
- Tendering a transcript of a document (**s48(1)(c)**). (e.g. audio and video recordings).

/ Voluminous Documents

Pursuant to **s48(1)(e)(ii)**, for voluminous documents, it is also possible, to tender a summary of a document. For voluminous documents, leave must be granted (**s50**).

/ Unavailable

Pursuant to **s 5 of the Dictionary EA**, the facts show that the contents of [document] are unavailable, as, the document: **choose one, either a, b, c, d, or e.**

(a) it cannot be found after reasonable inquiry and search by the party/ (b) it was destroyed by the party, or by a person on behalf of the party, otherwise than in bad faith, or was destroyed by another person/ (c) it would be impractical to produce the document or thing during the course of the proceeding/ (d) production of the document or thing during the course of the proceeding could render a person liable to conviction for an offence/ (e) it is not in the possession or under the control of the party and—

- (i) it cannot be obtained by any judicial procedure of the court, or
- (ii) it is in the possession or under the control of another party to the proceeding concerned who knows or might reasonably be expected to know that evidence of the contents of the document, or evidence of the thing, is likely to be relevant in the proceeding, or
- (iii) it was in the possession or under the control of such a party at a time when that party knew or might reasonably be expected to have known that such evidence was likely to be relevant in the proceeding.

Commented [JK5]: Choose either;

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them/
(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else/
(d) a map, plan, drawing or photograph.