



Corporate Lawyers Core Expectations

Victorian Legal Services
BOARD + COMMISSIONER

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Key points

- You are bound by the same Conduct Rules as any other lawyer. As an officer of the court, you must be mindful of your paramount duty to the court and the administration of justice, as well as the need for professional independence and integrity. These duties take precedence over the duty to act in your employer's best interests.
- You must carefully navigate the tension between being a lawyer and being an employee, so that any improper pressure from your employer does not compromise your professional integrity.
- You must provide your client employer with legal advice that is accurate, competent and independent. You must never provide advice or assistance that supports any unlawful scheme or activity. You must tell your employer if their position is illegal or non-compliant.
- If your employer's position is unethical or subverts the clear intention of the law, it would be inconsistent with your paramount duty to the court and the administration of justice not to say so.
- Be clear about the steps you should take to resolve any potential conflicts between your employer's wishes and your professional duties. There should be a process to escalate and resolve any conflicts, and you should understand your options if a conflict can't be resolved.
- If you take on non-legal roles and tasks, take care to keep your legal work separate. You should have a strong understanding of client legal privilege (also referred to as legal professional privilege) and its proper application.
- As a corporate lawyer with a corporate legal practitioner practising certificate, you can only give legal advice to the organisation and its related entities. You cannot undertake work for individual directors, senior executives or employees in a personal capacity.
- If you are a general counsel or the most senior lawyer for an organisation, you should have direct access to the CEO and the board.
- You should develop your professional skills and ethical awareness as well as your knowledge of your employer's operations and priorities. You should also have access to external, confidential sources of advice, guidance and support.

Introduction

Corporate in-house lawyers (**corporate lawyers**) undertake work that is rewarding, interesting and challenging. They work closely with an organisation and take on different responsibilities, while also playing a critical role in helping their employer comply with the law and contributing to the maintenance of the rule of law. Corporate lawyers are bound by the same conduct rules as any other lawyer but must navigate the tension between being both a lawyer to and an employee of their client.

This statement sets out the Victorian Legal Services Board and Commissioner's (VLSB+C's) expectations of Victorian lawyers who work in corporate in-house roles and hold corporate legal practitioner practising certificates, including those who work in the not-for-profit sector. It aims to provide practical support and guidance to all corporate lawyers, but especially solo practitioners and those practising in small teams.

This statement is part of the VLSB+C's commitment to ensuring high ethical standards throughout the profession. This statement also reflects our commitments to improving lawyer wellbeing, and supporting lawyers, including early career lawyers, to improve their skills and capabilities through reflective practice and continuing professional development.

As part of the statement's development, the VLSB+C consulted with the [Law Institute of Victoria \(LIV\)](#), the [Association of Corporate Counsel \(Australia\) \(ACCA\)](#), individual in-house lawyers, and academic experts. The statement also draws on guidance for corporate lawyers provided in other jurisdictions, including resources published by the Solicitors Regulation Authority in England and Wales.

The VLSB+C also has information for employers of corporate lawyers and information for prospective corporate lawyers. These resources can be accessed at lsbc.vic.gov.au/corporate-lawyers.

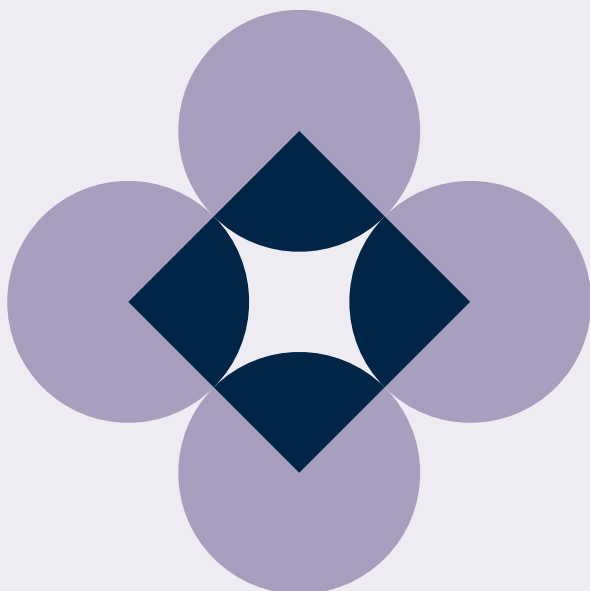
Legal framework for in-house practice

The VLSB+C regulates Victorian lawyers in accordance with the [Legal Profession Uniform Law Application Act 2014](#) (the **Uniform Law**). One of the VLSB+C's objectives is to improve legal practice and ethics amongst all Victorian lawyers.

This statement is a general statement of corporate lawyers' core duties under the Uniform Law, its associated instruments, in particular the [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#) (the **Conduct Rules**), and at common law. Its content should already be familiar to corporate lawyers.

Corporate lawyers may also have duties under other regulatory schemes, such as the [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#). General counsel and other senior lawyers may have additional responsibilities under the [Corporations Act 2001](#) (**Corporations Act**) if their role qualifies them as an 'officer' of the corporation they work for. Some of the duties might overlap with their professional duties as a lawyer. A breach of other duties might be relevant to consideration of a lawyer's suitability to practise if the breach also amounts to a breach of a lawyer's Uniform Law obligations.

Although it is not binding, this statement is a relevant piece of guidance that the VLSB+C would consider in assessing any reported misconduct.



Core expectations



1

Understand and comply with your fundamental ethical duties

Corporate lawyers are bound by the same conduct rules as lawyers in private practice. You should understand your ethical obligations, especially those prescribed in the Uniform Law and the Conduct Rules.

Not all lawyers have a good understanding of their ethical obligations, or the source of those obligations. They might rely on experience, common practice and 'gut instinct'. While this can be useful, it's insufficient and risky, especially for early career lawyers.

It's critical that you understand how the key provisions of the Conduct Rules apply to in-house practice:

The paramount duty to the court and the administration of justice (Rule 3)

This duty has priority in the event of a conflict with other duties, such as your duties to your client. It arises from your position as an officer of the court, and the essential role that you and other lawyers play in maintaining confidence in the rule of law. It applies to litigious and non-litigious work.

The other fundamental duties (Rule 4) which are (in summary):

- to act in the best interests of your client
- to be honest and courteous in all dealings in the course of legal practice
- to be competent, diligent and prompt
- to avoid compromising your integrity and professional independence, and
- to comply with the law and the Conduct Rules.

The obligation not to engage in dishonest or disreputable conduct (Rule 5)

This includes not engaging in conduct that demonstrates that you are not a fit and proper person to practise law or conduct that is likely to prejudice or diminish public confidence in the administration of justice or bring the profession into disrepute.

2

Maintain your professional independence

The most common ethical challenge for corporate lawyers is the potential for conflict between their ethical and professional obligations and their loyalty and duty to their employer.

While lawyers in private practice might be pressured not to lose or damage a relationship with an important client by giving unfavourable legal advice, a corporate lawyer can be vulnerable to pressure from their employer to compromise their legal advice.

Professional independence in practice

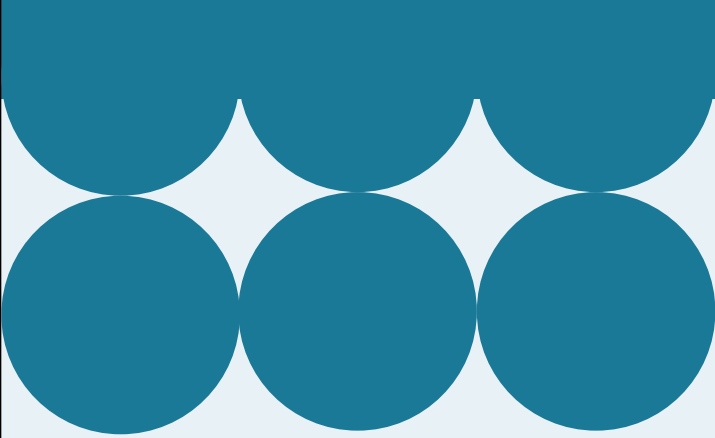
You play a critical role in ensuring your employer understands the legal landscape in which they operate and what is required to be legally compliant. Never assist, facilitate or otherwise support your employer in any scheme or activity that is unlawful.

You must provide your employer with legal advice that is accurate, competent and independent. The Conduct Rules also require advice to be clear and timely. Alternative options, where relevant, should be explained clearly.

You must tell your employer if their position or course of action is illegal or non-compliant. If their position or proposed course of action is unethical or subverts the clear intention of the law, it would be inconsistent with your paramount duty to the court and the administration of justice not to say so. As a matter of good practice, you should make a record of any advice you give, including verbal advice, and any concerns you might have about a proposed course of conduct.

You're more likely to have your advice accepted - even if it challenges the preferences and priorities of your employer - if you've built up a deep understanding of the organisation and formed collaborative relationships with colleagues while maintaining professional independence.





Positioning yourself for professional independence

A clear way in which the independent nature of your role can be articulated is in your employment contract. You can also work to ensure that there are procedures in place (or a plan to develop them) by which facts, expectations and issues can be clarified, discussed, escalated and resolved, while recognising that a resolution cannot compromise your professional obligations.

You should not be hesitant about giving a firm 'no' or providing clear advice if required. The occurrence of situations in which you might need to say 'no' to your employer can be minimised by:

- developing trusting relationships and alliances with colleagues across the business
- understanding the organisation's business, including its strategies and approach to risk
- clarifying roles and expectations
- agreeing a process for escalating issues.

Corporate lawyers are often asked to take on non-legal roles (such as company secretary) or to participate in non-legal organisational projects (such as a major procurement). If you are asked to do this, take care to keep your legal tasks identifiably separate from your non-legal activities. If you are providing non-legal input (for example, about a commercial issue), you should clearly separate it from any legal advice you provide.

You should have a strong understanding of client legal privilege, its limits and how it applies to the work of corporate lawyers. External lawyers should be carefully briefed. Time consuming and expensive claims of privilege are commonly the source of litigation in the courts and complaints by judicial officers.

Detailed guidance on how to ensure a proper basis for claims of privilege by corporate lawyers is widely available. Basic measures include limiting the circulation of privileged communications to those who need to know and avoiding widespread circulation of advice that might constitute waiver of privilege. You should also take steps to educate your organisational colleagues about the limits of client legal privilege and when it may be claimed.

What to do if your independent advice isn't accepted

If your employer ignores or rejects your advice, a range of pathways are available, depending on the circumstances and nature of the advice. The two main pathways are to take further steps to internally resolve the conflict or to take other actions in response to potential illegality or the unethical nature of the course being adopted by your employer.

1. Internal resolution

- a. Accepting that as the client, your employer is entitled to make the final decision.
- b. Using the escalation process, such as seeking the view of the CEO or board (or the chair/independent directors), if it has not already been activated.
- c. Agreeing to seek an external legal opinion.

2. Responding to possible illegality or unethical conduct

- a. Seeking external guidance or support in relation to your professional obligations and reputation.
- b. Reporting misconduct using any complaint or whistleblowing channels your company has.
- c. In exceptionally serious situations, deciding that you should resign from your employment with the company.

You should make a record of any actions you take if your advice is not accepted.

3

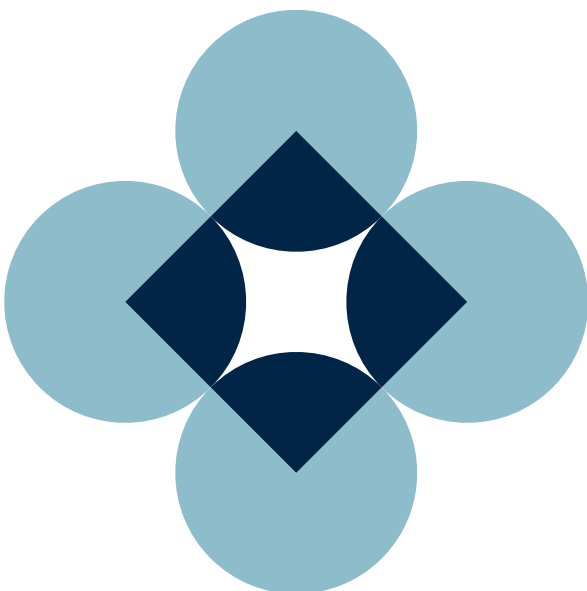
Understand who your client is

Subject to the paramount duty to the court and the administration of justice, one of a corporate lawyer's fundamental obligations is to their client employer.

The employer might be part of a more complex structure of related companies and other entities. A corporate practising certificate allows a corporate lawyer to also act for related entities without needing to obtain a principal practising certificate and register as a sole practitioner. In these situations, seek clarity about which related entities you are expected to service (e.g. if a subsidiary is only partly owned by the client).

The best interests of your organisation will usually be reflected in the decisions of the board and senior management. If you believe there is a conflict between the interests of the organisation and the wishes of the board, a director or an employee, you are bound to serve the interests of the organisation. There should be a process for discussing, escalating and resolving such conflicts.

It would breach the terms of your practising certificate if you provided personal legal services to an individual employee or director of the organisation (e.g. preparing a will or providing advice about a family law proceeding). If requested, you must state that you cannot give personal legal advice and recommend that the individual seeks their own independent legal advice.



4

General counsel and senior lawyers

If you are general counsel, or the most senior lawyer for an organisation, you should be able to directly advise the CEO and board about the legal consequences of actions and decisions. Many organisations allow their general counsel direct access to the chair and independent directors.

If you report to another senior executive, there should be an understanding that you need access to the CEO and board when necessary. A senior executive who is not a practising lawyer should not approve the actual legal advice delivered to the CEO or board.

General counsel and senior lawyers who have the power to influence company decisions have obligations under the Corporations Act to ensure that directors are properly informed of significant legal or regulatory risks of which they are aware or reasonably should have been aware. Silence or delay is not an option. The duty is not discharged by only advising the CEO about the risks. Contemporaneous notes, communications and advice should be documented and preserved for later reference.

If you attend board meetings, be careful about giving legal advice on the spot. Make sure directors and senior executives understand the circumstances in which client legal privilege over legal advice might be lost - including the need to maintain confidentiality - and when and how the privilege applies to legal advice that is tabled and recorded at board meetings.



5

Seek supervision, peer support and mentoring

Skill development

Learning from senior practitioners and peers is an essential part of professional life. It can occur on the job, through formal learning activities, and via informal networks. It's not just about legal knowledge, but also about learning how to:

- communicate more clearly
- understand the wider business context of practice
- sharpen your ethical awareness.

You are expected to actively maintain and develop your professional skills. We encourage you to [undertake reflective practice](#), tailor your learning to address your capability gaps and supplement your annual continuing professional development obligations with courses relevant to your in-house role.

Support networks

It's important that all corporate lawyers, but especially those who work solo or in small in-house teams, as well as early career corporate lawyers, have the necessary support to be able to learn and thrive in their careers. We strongly recommend that you seek out support networks and mentors.

ACCA and LIV are the main professional bodies for corporate lawyers. They support a range of special interest committees and can provide advice and individual support on specific issues. The VLSB+C supports [LIV's ethics and practice support lines](#), which are available to all practising lawyers (whether or not they are LIV members).

Beyond these groups, there are smaller, content-specific groups and associations that meet around particular interests and industries.

Case studies

Tax minimisation scheme

Your employer proposes a tax structure that appears technically compliant with the letter of the law but clearly subverts the policy intention of the legislation and might be at risk of contravening general anti-avoidance provisions. Even if there is no legal barrier, the scheme could attract significant reputational damage and regulatory scrutiny. You should advise on both the legal position and the ethical and reputational risks, making clear your professional view that the approach raises significant concerns.

Disclosure obligations

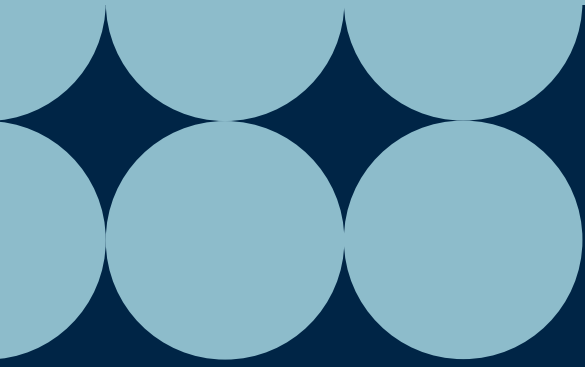
You become aware that your organisation is interpreting disclosure obligations narrowly in a way that is technically compliant but withholds information that stakeholders would reasonably expect to receive. You should highlight the ethical dimension and potential for regulatory scrutiny or public backlash.

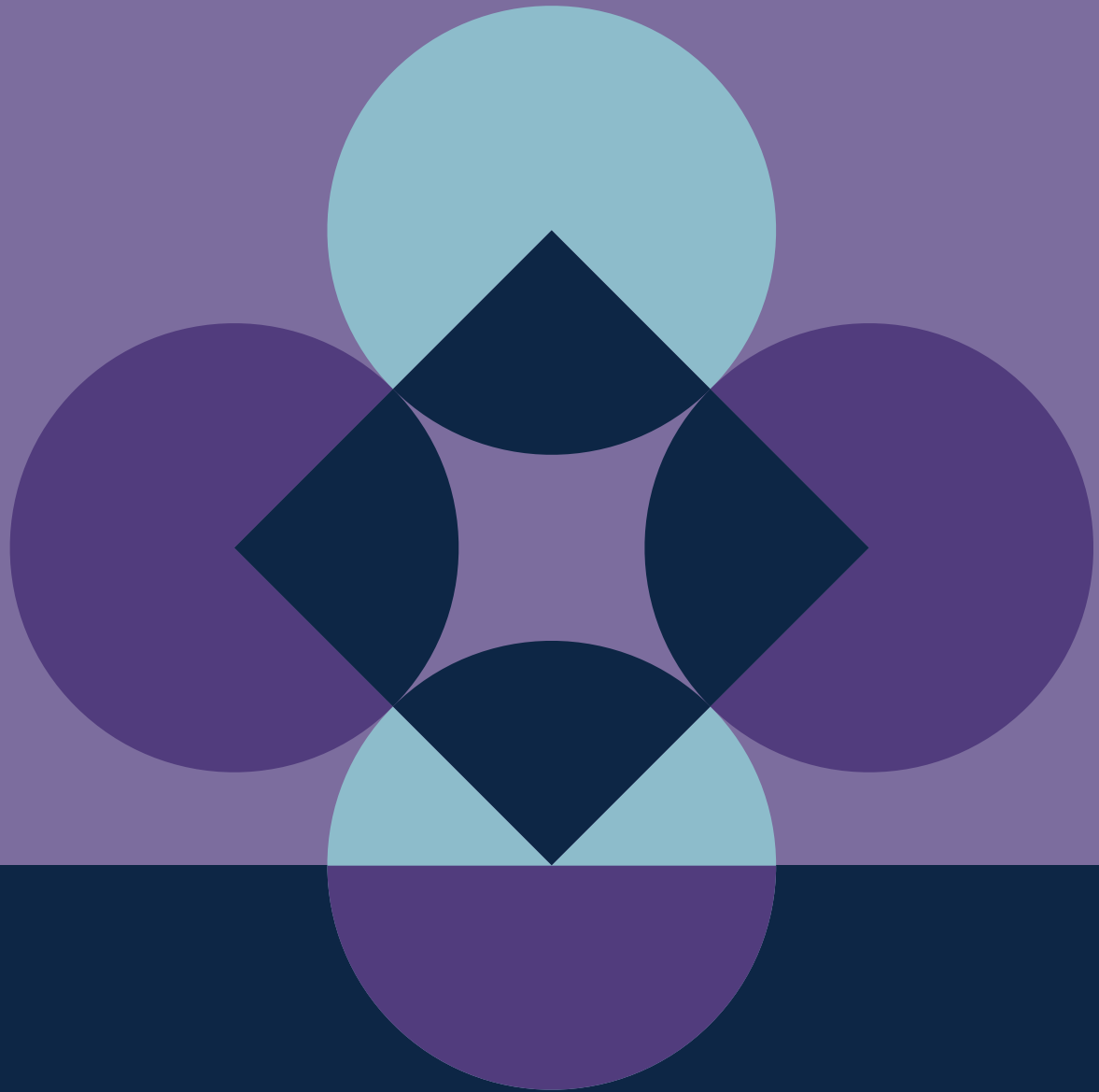
Regulatory 'greyballing'

Your organisation wants to alter its systems to make it difficult for regulators to test compliance with the law. Whilst there may be no express legal prohibition, such conduct could amount to perverting the course of justice or obstructing regulatory functions. You should clearly advise that whilst the legal position is uncertain, the ethical risks are substantial, and the conduct could undermine the administration of justice.

Exploiting vulnerable customers

Your employer proposes a sales strategy that targets vulnerable customers with products that are not in their best interests, but which comply with consumer protection laws. You should advise that whilst the strategy may appear legally compliant, it raises serious ethical concerns and could damage public trust, and that the organisation should consider whether this aligns with its values and long-term reputation.





Level 27, 500 Bourke St
Melbourne 3000

GPO Box 492
Melbourne 3001

1300 796 344

lsbc.vic.gov.au

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