

(There was a successful appeal against parts of Finkelstein J's judgment (see *Health Insurance Commission and Anor v Freeman* (1998) 158 ALR 26), but no issue was taken with the above statement of principle.)

4.24 In this case, I am not persuaded that the improper purpose exception to legal professional privilege is made out. The applicant has provided material which demonstrates that his brother-in-law, Mr McVean, had made known to the Council his interest in obtaining a demolition order for the property on which the applicant lives, and his concerns about the applicant's occupation of the property. I cannot however infer from this that the Council intended to act improperly or illegally.

4.25 Having reviewed Mr Tolton's advice I am satisfied that it does not, on its face, indicate that it was made in preparation for, or furtherance of, an illegal or improper purpose. Nothing in the documents which the applicant has provided with his various submissions indicates that the Council considered that its entry onto the applicant's property or its clean up of his yard were unlawful, but that it nonetheless proceeded to enter and perform the clean up. Material provided by the applicant indicates that:

- the Council intended to enter the property and clean up the yard, owing to its concerns about the public health issues arising from the state of the yard;
- at one point, the Council considered that it required a court order to enter the applicant's property, and gave the applicant written notice of its intention to obtain a court order pursuant to s.160 of the *Health Regulation*, authorising it to enter the property; and

FALSE

- the Council was in fact entitled to enter the applicant's property under s.200 of the *Health Regulation*.

Does NOT DISPLACE DUE PROCESS of Sec 160 Health Act 1937

4.26 Moreover, there is nothing before me to suggest that the Council's entry or clean up were unlawful. The applicant relied upon cases dealing with powers of entry onto land without warrant (*Halliday v Nevill* (1984) 155 CLR 1; and *Plenty v Dillon* (1991) 171 CLR 635). In the present case, however, no question arises as to whether the common law authorised the Council's entry onto the land, as a statutory right to enter was conferred by s.200 of the *Health Regulation*.

4.27 I find that the improper purpose exception to legal professional privilege is not made out.

(d) Conclusion

4.28 I am satisfied that the matter in issue comprises a confidential communication between lawyer and client, made for the dominant purpose of giving legal advice or professional legal assistance. I am satisfied that the matter in issue attracts legal professional privilege and I find that it comprises exempt matter under s.43(1) of the FOI Act.

DECISION

5.1 I affirm the decision under review (being the decision made on 9 May 2005 on behalf of the Council by Mr David Askern) that the matter in issue, identified in paragraph 3.1 above, is exempt from disclosure under s.43(1) of the FOI Act.