

LEVEL

TWENTY
SEVEN

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Trouble in Paradise: Protecting privilege after Glencore

What power do regulators have to compel disclosure of
privileged material?

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>> Regulatory activity

- Regulators cannot compel the production of privileged communications: *Daniels Corporation v ACCC* (2002) 213 CLR 543
- Sometimes advantageous to disclose privileged documents, for example as a condition of cooperative arrangements or deferred prosecution agreements
- Whether limited disclosure of LPP documents to a regulator will amount to a waiver will turn on the facts and circumstances of a case: *Cantour v Audi* [2016] FCA 3191
- Processes used by regulators to obtain data
 - > Anton Pillar orders
 - > Warrants