

# Strategic Communications & the Role of In-house Counsel

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ACC Australia – In-house Counsel Day

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# A crisis can come in any form...



## The stages of a crisis

1. *Pre-crisis:*            *The planning stage*
2. *The Incident:*        *How good was our planning?*
3. *Post crisis:*            *What can we learn?*  
                                  *Are we getting sued?*  
                                  *How bad do we look?*

## Planning for a Crisis

- If you take away nothing else from today, the most important thing to remember is: You must have a crisis management plan and team.
- Build your Emergency Response Team (**ERT**): structure, delegates and roles. Ensure everyone knows each other and the relationships are strong. Legal should be part of the ERT.
- Does anyone need training to fulfil their crisis management roles?
- Develop your escalation process. Who should be involved and when?

## Planning for a Crisis

- Identify your incident classification guideline and plan for specific incidents (you can't have a one-size fits all crisis plan).
- Draft your post-incident analysis and reporting templates.
- What are your post-incident legal and communication strategies? Do they align?
- Make sure you have candles and a lighter. This is not a joke - how will the incident affect your crisis plan?

## Planning for crisis – the role of Counsel

- Immediately consult with the ERT. Be part of the conversation.
- Brief ERT and staff on LPP. Invoke it if you need.
- What investigations are required/may come your way?
- What external stakeholders require notification?
- What are your contractual arrangements? Do you need to send notices?
- Record retention and creation. Keep a log.
- What is your media team doing?
- Reputational impacts.
- Consider insurance notifications to brokers/insurers.

## The Incident

- Your planning should identify all likely potential incidents
- No incident will ever be exactly how you planned for it
- Don't confuse the legal crisis or reputational crisis for the actual incident that needs to be managed
- Enact the plan but be adaptable.
- When managing the crisis do consider, but don't be overwhelmed by, legal or reputational issues
- Be careful about admitting liability or compromising privilege.

## The Incident – the role of Counsel

- It will depend on what your crisis plan says – stick to that
- Determine the importance and use of privilege, including if it is better or not to hire third-party experts through external legal counsel
- Ensure every action taken is documented.
- Don't breach the confidentiality of contracts with suppliers and clients
- Anticipate what will happen next
- Take a complete role



## After the Incident

- The incident is resolved. ERT are taking a well-earned break. Your job is just starting...
- Have a post-crisis plan in place to deal with the aftermath
- Review the plan – did it work? What needs to change?
- Where does the issue go from here? Legal? Reputational?
- Are your legal and reputational strategies aligned?

## After the Incident – the role of Counsel

- Consider if litigation could occur, can it be avoided?
- Ensure records are kept appropriately
- Ensure insurer has all that it needs