



ATTORNEY-GENERAL
THE HON. ELISE ARCHER MP

**Guidelines in relation to the provision of
legal services to the Government**

1. As a matter of constitutional principle only the Attorney-General, as first law officer, is entitled to provide legal services to the State.
2. In Tasmania, the responsibility for the delivery of those services devolves to:
 - a. the Solicitor-General, as second law officer;¹
 - b. the Director of Public Prosecutions, as the independent legal officer required to conduct the prosecution of criminal offences;²
 - c. the Crown Solicitor and Chief Parliamentary Counsel, as prescribed officers under the *State Service Regulations 2021*;³
 - d. officers appointed to Specialist equivalent positions under the *Premier's Determination – Remuneration and Conditions for appointment of Equivalent Specialists (Senior Lawyers)* dated 21 October 2017 (or a similar determination, as made from time to time); and
 - e. employees employed under the *Legal Practitioners Award* to provide legal services.

*(collectively, 'the Government's legal practitioners')
3. The Solicitor-General is required to act as counsel for the Crown in the right of Tasmania.⁴ The Attorney-General has also directed the Solicitor-General to undertake the State's civil litigation.⁵
4. Consistently with the constitutional position, Treasurer's Instruction FC-17 also provides that the Crown must follow legal advice provided by the Law Officers of the Crown⁶ in relation to:
 - the legal functions powers or responsibilities of the Crown;⁷
 - the lawfulness of any action, or proposed course of action, by the Crown;⁸ and

¹ *Solicitor-General Act 1983*.

² *Director of Public Prosecutions Act 1973*, s 12.

³ Reg. 5 & Sch 1.

⁴ *Solicitor-General Act 1983* ('SGA'), s 7(a).

⁵ SGA, s 7(b).

⁶ The first Law Officer of the Crown is the Attorney-General. However, for the purposes of TI FC-17 the Law Officers of the Crown can be taken to be the Crown Law Principals, viz., the Solicitor-General; the Director of Public Prosecutions and the Crown Solicitor.

⁷ TI FC-17, cl 17.3.

⁸ *Ibid*.

- the legal enforceability or legal effectiveness of a transaction entered into by the Crown.⁹
5. An Accountable Authority must refer all requests for legal advice, civil litigation services and commercial and conveyancing legal services to Crown Law.¹⁰
 6. The only officers or employees who are entitled to engage in legal practice for the government are the Government's legal practitioners. It follows that State Service officers and employees who are not the Government's legal practitioners, whether or not holding legal qualifications, do not provide legal services to the Crown. It follows that advice (including as to the legal enforceability or effectiveness of a transaction), provided by State Service officers and employees who hold legal qualifications, but are not the Government's legal practitioners, should not be regarded as legal advice provided by a legal practitioner.
 7. It also follows that Agencies should not, and should not permit officers and employees to, engage in legal practice, or to hold themselves out as being able to engage in legal practice.¹¹

Queries

8. Any queries about the scope, or effect of these guidelines, should be referred to the SGO:

Solicitor-General's Office
Level 8, 15 Murray Street
HOBART

Phone: 6165 3614
Email:
Solicitor.General@justice.tas.gov.au

⁹ TI FC-17, cl 17.4.

¹⁰ TI FC-17 cl 17.6.

¹¹ The limited exceptions provided for in ss 13(2)(b) and 14(2) of the *Legal Profession Act 2007* do not apply to these officers and employees.