



ATTORNEY-GENERAL

Guidelines for seeking Advice from the Solicitor-General's Office

Introduction

1. The Crown must obey the law and if it is in doubt about what the law is, it must seek to ascertain it.
2. It is of vital concern that government administration is carried out lawfully. For that purpose all government entities must have appropriate access to legal advice.
3. The Solicitor-General's Office ('SGO') provides legal advice to Ministers and Agencies within the meaning of the *State Service Act 2000* and all statutory officers, instrumentalities and bodies, whether incorporated or not, who or which enjoy the privileges and immunities of the Crown (in these guidelines, referred to as an "Agency").
4. The purpose of these guidelines is to promote and facilitate:
 - (a) requests for advice from the SGO;
 - (b) the provision of sound and timely advice from the SGO; and
 - (c) a corporate memory within Agencies in relation to advice requested and given by the SGO.

Treasurers Instruction FC-17 – Engagement of Legal Practitioners (TI FC-17)

5. TI FC-17 makes it plain that unless otherwise lawfully permitted, the Crown must obtain its legal advice from the Law Officers¹ of the Crown.²
6. Agencies are not to obtain external legal advice, except in accordance with TI FC-17.³

¹ 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; the State Litigator; and the Crown Solicitor.

² Treasurer's Instruction FC-17, cl 17.2.2

³ Treasurer's Instruction FC-17, cls 17.6 to 17.8.

7. Legally qualified employees and officers in Agencies are not Law Officers and, while they may form a view about the law for the purposes of carrying out their duties, they are not to offer it as legal advice.

Binding nature of Solicitor-General's advice

8. Government *must* accept legal advice provided by the SGO as accurately stating the law.⁴ All advice of the SGO, whether oral, or written, formal, or informal is binding.

When should advice be sought?

9. Advice from the SGO should be sought in relation to:
 - (a) the legal powers, functions and responsibilities of the Crown; or
 - (b) the lawfulness of any action, or proposed course of action, of the Crown

when an Agency is uncertain about:

- (c) which laws apply; or
- (d) how to interpret or apply relevant laws.

Designated person(s)

10. Each Agency should appoint one, or a small number of designated officers through whom:
 - (a) formal requests for advice are directed to the SGO; and
 - (b) SGO advice is received.
11. Legally qualified employees and officers who perform quasi-legal work are also encouraged to discuss legal issues with the SGO as and when they arise, and will be treated as designated officers by the SGO.
12. However, *any* officer or employee (whether or not a designated officer) may contact the SGO directly if he or she has a strong reason to be concerned about the legality of an administrative action.

Agency data bases

13. Each agency should maintain an organised collection, or database of the advice requested from and given by the SGO.

Requests for advice

14. Except in unusual circumstances, a request for advice should be made in writing.
15. The request must address the following matters:

⁴ Treasurer's Instruction FC 17, cl 17.3.

- (a) the agency and the officer requesting the advice;
- (b) the question(s) or issue(s) about which advice is sought;
- (c) the circumstance or factual background in which the question(s) arises.

Where available the request may also include:

- (a) copies of any relevant documents forming part of the background;
- (b) any previous legal advice potentially relevant to the issues raised, whether given by the SGO, Crown Law, within the Agency or an external source;
- (c) any other legal analysis or research.

Requests by email, including relevant attachments are encouraged. Short requests or simple points may be dealt with by telephone.

16. Preliminary meetings, or discussions are encouraged, where the issues or material relevant to the request require refinement or discussion.

Urgent requests

17. Requests for urgent advice (whether or not by a designated officer) will sometimes be necessary. However, the person making the request should give real and genuine consideration to whether urgency is warranted. An urgent request will divert the SGO's resources otherwise available to other Agencies.
18. The SGO will form its own opinion and set its own priorities about urgency and will deal with competing requests for advice from Agencies accordingly.

Hypothetical advice

19. Requests for advice should relate to identifiable circumstances. Conjectural or hypothetical advice will not be given.

Queries

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

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HOBART

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