



ATTORNEY-GENERAL
THE HON. VANESSA GOODWIN MLC

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

Introduction

1. It is of vital concern that the administration of government is carried out lawfully and for that purpose that all government entities have appropriate access to legal advice.
2. 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").
3. Advice from the SGO should be sought when those involved in the administration of government or in taking any administrative action:
 - (a) are uncertain of laws which apply;
 - (b) are uncertain about how to interpret or apply relevant laws; or
 - (c) are concerned about the legality of an administrative action (whether that action is proposed or has already been taken).
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 of advice requested and given by the SGO.

Binding nature of Solicitor-General's advice

5. Government *must* accept legal advice provided by the SGO as accurately stating the law.¹

Designated person(s)

6. 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.

¹ Treasury Instruction 1118

The name, position and contact details of each designated officer should be provided by the agency to the SGO.

7. Legally qualified persons who perform quasi-legal Government work are also encouraged to discuss legal issues with the SGO as and when they arise, and are taken to be designated officers.
8. 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

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

Requests for advice

10. In usual circumstances, a request for advice should be made in writing.
11. The request must address the following matters:
 - (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.

12. In some cases, where the issues or material relevant to the request require refining or discussion, a preliminary meeting with the SGO is encouraged. Unless agreed, however, this will not be taken as a substitute for formal advice.

Urgent requests

13. 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. Where (in the SGO's opinion) the circumstances do not warrant an urgent response, the SGO will determine the appropriate priority to be given to the request.

Hypothetical advice

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

Queries

15. 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