



ATTORNEY-GENERAL
THE HON GUY BARNETT 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, as a prescribed officer under the *State Service Regulations 2021*;³
 - d. the State Litigator, as a prescribed officer under the *State Service Regulations 2021*;⁴
 - e. the Chief Parliamentary Counsel, as a prescribed officer under the *State Service Regulations 2021*;⁵
 - f. officers appointed to Specialist equivalent positions under the *Premier's Determination – Remuneration and Conditions for appointment of Equivalent Specialists (Senior Lawyers)* dated 4 May 2022 (or a similar determination, as made from time to time); and
 - g. employees employed under the *Legal Practitioners Award* to provide legal services.

**(collectively, 'the Government's legal practitioners')*
3. The Solicitor-General acts as counsel for the Crown in the right of Tasmania.⁶ In practice, this function predominantly involves the provision of written legal advice to the State and representing the State in constitutional matters. Since October 2023, responsibility for the conduct of the State's civil litigation, including in relation to claims relating to child sexual abuse, has rested with the State Litigator.
4. Consistently with accepted practice, reflecting underlying constitutional considerations, Treasurer's Instruction FC-17 (made pursuant to s 51 of the *Financial Management Act 2016*) also provides that the Crown must follow legal advice provided by the Law Officers of the Crown⁷ in relation to:

¹ *Solicitor-General Act 1983*.

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

³ Reg, 5 & Sch 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Solicitor-General Act 1983*, s 7(a).

⁷ 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 Crown Solicitor and the State Litigator.

- the legal functions, powers or responsibilities of the Crown;⁸
- the lawfulness of any action, or proposed course of action, by the Crown;⁹ and

should also follow legal advice of Law Officers of the Crown in relation to:

- the legal enforceability or legal effectiveness of a transaction entered into by the Crown.¹⁰
5. Subject to those considerations, the State Litigator acts on instructions from Heads of Agency, their delegates or persons authorised by them, with respect to the conduct of civil litigation including in matters of child sexual abuse. Any such instructions should be given with appropriate regard to any legal advice as to matters of liability and quantum of settlement, prospects of success and strategic risks associated with the litigious process. Whilst advice of that nature is not considered to be binding, it should nevertheless be taken into account in the formulation of instructions.
 6. An Accountable Authority (within the meaning of the *Financial Management Act*) must refer all requests for legal advice, civil litigation services and commercial and conveyancing legal services to Crown Law¹¹ unless Crown Law otherwise agrees to the direct engagement of external legal services¹².
 7. Subject to approval to engage or to brief external lawyers, 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.
 8. 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.¹³

Queries

9. Any queries about the scope, or effect of these guidelines, should be referred to Crown Law.

⁸ TI FC-17, cl 17.3.

⁹ Ibid.

¹⁰ TI FC-17, cl 17.4.

¹¹ TI FC-17, cl 17.6.

¹² TI FC-17, cl 17.8.

¹³ The limited exceptions provided for in ss 13(2)(b) and 13(3) of the *Legal Profession Act 2007* do not apply to these officers and employees.