

GUIDELINE FOR THE GRANT OF INDEMNITIES AND LEGAL ASSISTANCE TO MINISTERS AND ASSISTANT MINISTERS

Introduction

1. This Guideline states the principles and practices for determining the provision of legal assistance and/or indemnities to Ministers in relation to investigations, inquiries, civil proceedings and criminal proceedings.

Meaning of terms

2. In this Guideline-

“Civil Proceeding” includes, but is not limited to, any claim, action or legal proceedings taken against a Minister in any court or tribunal or other forum of any State, Territory or the Commonwealth, including proceedings for administrative matters (for example complaints under the *Anti- Discrimination Act 1991*) and proceedings before professional regulatory bodies.

“Indemnity” means –

- (a) the payment of any damages and costs awarded against the Minister or agreed to as part of a negotiated settlement; and
- (b) the payment of reasonable expenses incurred by a Minister before the application for legal assistance and/or an indemnity is made.

“Inquiry or Investigation” includes, but is not limited to, an inquiry or investigation by -

- (a) the Crime and Corruption Commission;
- (b) a commission under the Commission of Inquiry Act 1950;
- (c) the Anti-Discrimination Commission Queensland;
- (d) the Ombudsman;
- (e) the Commission for Children and Young People and Child Guardian;
- (f) the Auditor General and the Queensland Audit Office;
- (g) a parliamentary committee of any State, Territory or Commonwealth Parliament;
- (h) the Parliamentary Commissioner under the Crime and Misconduct Act 2001;
- (i) an investigation by a coroner of any State or Territory, including an inquest; and
- (j) any other State, Commonwealth or Territory body with investigatory or inquiry powers under a State, Commonwealth or Territory Act.

“Legal Assistance” means the costs of legal representation and advice provided by the Crown Solicitor or another legal representative.

“Minister” includes a Minister of the Crown, a former Minister of the Crown, a former Parliamentary Secretary, an Assistant Minister and a former Assistant Minister.

“Minister’s Duties” include the Minister’s official duties, the Minister’s role as a member of the Cabinet including speaking about matters considered by Cabinet or the actions of Government and the Minister’s role in advising another Minister about that Minister’s duties.

“Relevant Department” see paragraph 20.

General principles

3. The State will provide Legal Assistance and/or an Indemnity to a Minister if the Civil Proceeding, Inquiry or Investigation relates to the Minister’s duties.
4. The Crown Solicitor will normally provide Legal Assistance, but if it is reasonable in the circumstances private legal representation may be provided. For example, separate legal representation should be provided if there is a potential conflict in the State and the Minister both having the same legal representative.
5. The State will not provide Legal Assistance to a Minister in relation to an Inquiry or Investigation by a police service or other entity with responsibility for investigating offences in relation to the commission of an offence, unless approval in writing has first been obtained from the Premier. In deciding whether to grant approval the Premier must:
 - (a) be satisfied that the Inquiry or Investigation arises from or relates to the proper discharge of the Ministers’ duties;
 - (b) consider the advice from the Crown Solicitor on the prospects of the Inquiry or Investigation resulting in a conviction; and
 - (c) obtain an undertaking from the Minister that the Minister will reimburse the State if the Minister is found guilty of an offence (pursuant to paragraphs 25 and 26).
6. The State will not provide Legal Assistance to a Minister to defend a charge of a criminal offence, including a charge made pursuant to a private complaint or a private prosecution, unless approval in writing has first been obtained from the Premier. In deciding whether to grant approval the Premier must:
 - (a) be satisfied that the charge arises from or relates to the proper discharge of the Ministers’ duties;
 - (b) consider the advice from the Crown Solicitor on the prospects of a conviction; and
 - (c) obtain an undertaking from the Minister that the Minister will reimburse the State if the Minister is found guilty of an offence (pursuant to paragraphs 25 and 26).
7. A Minister is not entitled to Legal Assistance under paragraphs 5 and 6 and the Legal Assistance granted may be withdrawn if the Premier considers that:
 - (a) the Minister is not cooperating fully with the legal representatives appointed by the State to represent the employee; or
 - (b) the information provided by the Minister to support the grant of Legal Assistance is found to be incorrect or misleading.
8. The State will not provide Legal Assistance to a Minister to commence Civil Proceedings, including judicial review (which do not relate to the Minister’s duties) and defamation

actions, unless approval has first been obtained from the Attorney-General. If the Minister making the application is the Attorney-General, approval must be obtained from the Premier.

Civil Proceedings

9. As a general principle in Civil Proceedings, including proceedings for defamation, the State will normally meet the costs of the Minister's defence and of any damages and costs awarded against the Minister, or agreed to as part of a reasonable negotiated settlement, if the claim arose-
 - (a) in circumstances in which the State is vicariously liable for the acts of the Minister; or
 - (b) in circumstances in which the State would not be vicariously liable but the Minister was –
 - i. exercising an independent discretion conferred upon the Minister; and
 - ii. acting within the scope of the Minister's duties.
10. The State will not meet costs or damages where the claim arose in circumstances where the Minister acted-
 - (a) maliciously or in disregard of the State's interest; or
 - (b) in a way that would make it proper for the State to seek contribution or Indemnity in respect of damages for which the State might be liable.

Inquiries and investigations

11. The State will provide Legal Assistance to a Minister in relation to appearances before, or making submissions to, or participating in an Inquiry or Investigation if-
 - (a) the Inquiry or Investigation relates to the Minister's duties; and
 - (b) the Minister has been required, or it is reasonable for the Minister, to appear before, make submissions or otherwise participate in the matter.
12. The State will not provide Legal Assistance to a Minister for the purpose of initiating or continuing separate legal proceedings by or on behalf of the Minister in relation to an Inquiry or Investigation, unless special approval in writing has first been obtained from the Attorney-General.

Application

13. A Minister may seek Legal Assistance and/or an Indemnity by applying in writing to the Attorney-General, or if the Minister is the Attorney-General, the Premier.
14. If the application relates to Legal Assistance for an Inquiry or Investigation in relation to the commission of an offence, or to defend a criminal charge, the Minister may apply in writing to the Premier.
15. The Minister must apply as soon as reasonably practicable after the Minister becomes aware of the matter.

16. The application must include the following information-

- (a) the matter for which Legal Assistance and/or an Indemnity is being sought;
- (b) the type of assistance sought; and
- (c) any other material relevant to assessing the application.

Decision

17. The decision to grant Legal Assistance and/or an Indemnity is made by the Attorney-General and the Premier. If the application relates to Legal Assistance for an Inquiry or Investigation in relation to the commission of an offence, or to defend a criminal charge, the decision is made by the Premier.

18. However, if the Minister is the Premier or the Attorney-General, the matter must be referred to Cabinet by a Minister who is not seeking Legal Assistance and/or an Indemnity.

19. The advice of the Crown Solicitor must be sought before a decision is made. If the Crown Solicitor is not available to advise on the matter, a Senior Deputy Crown Solicitor's advice may be sought instead. If a conflict of interest arises to prevent the Crown Solicitor or a Senior Deputy Crown Solicitor from advising in relation to a decision, the matter may be referred to the Solicitor-General for advice.

20. A decision to grant Legal Assistance and/or an Indemnity must state –

- (a) the matters for which Legal Assistance and/or an Indemnity is provided;
- (b) the form of Legal Assistance to be provided;
- (c) the department or agency ("**the Relevant Department**") liable for the costs of providing the Legal Assistance and/or an Indemnity, and, where relevant, for instructing the Crown Solicitor or other legal representative; and
- (d) any conditions on which the Legal Assistance and/or an Indemnity is granted.

21. Legal Assistance may be provided for a stage or stages of a matter only, and may be reviewed at the conclusion of the stage for which Legal Assistance has been provided.

22. Where a Minister is granted Legal Assistance or Indemnity for a civil proceeding involving a claim in defamation, the decision-makers may make it a condition of the grant that the Minister obtain appropriate legal advice about any necessary steps, including to mitigate any damages the State may be liable for if the statement is ultimately found to be defamatory. If a Minister does not take appropriate steps, the decision-makers may take that factor into account in considering whether to amend or withdraw the grant or the conditions of the grant under this Guideline.

23. It is a condition of any Legal Assistance and/or an Indemnity that the Minister will:

- (a) keep the Attorney-General, or the Premier if the matter relates to the commission of an offence, informed in relation to the progress of the matter at the intervals set out in the decision to grant Legal Assistance; and

- (b) provide itemised monthly invoices to the Crown Solicitor on a monthly basis, who will certify to the Attorney-General that they are reasonable and may be paid. It is then for the Attorney-General to determine whether the invoice is to be paid.

24. Where the Minister is the Attorney-General, the Attorney-General is to comply with the conditions in paragraph 23 (a) and (b) by reporting to the Premier.

Costs: Payment

- 25. Where the Minister is not represented by the Crown Solicitor, any costs of counsel that exceed the scale rates payable to counsel by Crown Law will not be met by the State, unless the Attorney-General and the Premier have given written consent prior to counsel being retained. Where the Minister is the Attorney-General, the Premier's consent is required. Where the Minister is the Premier, the Attorney-General's consent is required.
- 26. If Legal Assistance is provided, the costs of Legal Assistance may, subject to this Guideline, be met by the Relevant Department before the Investigation, Inquiry or proceedings are completed.
- 27. The cost of providing Legal Assistance will not be met by the State if the Minister is found guilty of an offence in criminal proceedings or of official misconduct as a result of an Inquiry or Investigation.
- 28. However, the cost of providing Legal Assistance incurred in the course of an Inquiry or Investigation may be met by the Relevant Department before the Inquiry or Investigation is finalised if the Minister has given an undertaking to reimburse the State for any costs that would not be met in accordance with paragraph 27. The undertaking must be in a form approved by the Crown Solicitor.
- 29. The Minister may not enter any settlement agreement in Civil Proceedings except with the approval of the Attorney-General and Premier (or if one of those is the Minister, the Cabinet) after obtaining the advice of the Crown Solicitor (or a Senior Deputy Crown Solicitor or the Solicitor-General if applicable).