

Policy and Guidelines for the Grant of Indemnities and Legal Assistance to Public Officers of the State of Tasmania



TABLE OF CONTENTS

MEANING OF TERMS.....	i
1. INTRODUCTION.....	1
2. POLICY.....	3
3. GUIDELINES FOR THE APPLICATION OF THE POLICY	5
3.1 Notification of Legal Proceedings by Public Officer.....	5
3.2 Notice Requirements - Full Disclosure.....	6
3.3 Process following Notice	6
3.4 Composition of the Panel	6
3.5 Conflict of interest and incapacity.....	7
3.6 Role of Indemnity and Legal Assistance Panel	8
3.7 Terms and conditions of indemnity and/or legal assistance	8
3.8 Matters for the Panel to consider	9
3.9 Exclusions to grant of indemnity or legal assistance in civil proceedings	10
3.10 Grant of legal assistance in relation to criminal proceedings	10
3.11 Grant of legal assistance for inquiries or investigations.....	11
3.12 Exceptional or extenuating circumstances.....	11
3.13 Record of Determination by Panel	12
3.14 Initiation of Legal Actions by a Public Officer	12
3.15 Legal appeals and rights of review – fresh application for indemnity or legal assistance	12
3.16 Legal representation.....	13
3.17 Costs relating to private legal assistance.....	13
3.18 Indemnity and Legal Assistance not to extend to punitive damages or penalties.....	13
3.19 Payment of costs	13
3.20 Liability of Public Officer to pay legal costs	14
3.21 Withdrawal of indemnity or legal assistance	14
3.22 Indemnity or Legal Assistance from Date of Application	15
3.23 Rights of Public Officer	15

MEANING OF TERMS

In the Policy and the Guidelines for the Application of the Policy -

“**civil proceedings**” includes, but is not limited to, any reasonably apprehended or existing claim for damages, action, suit or other proceeding against a public officer in the Supreme Court or any court, tribunal or other forum constituted pursuant to a law of any State, Territory or the Commonwealth;

“**criminal proceedings**” includes, but is not limited to, any reasonably apprehended or existing legal proceeding against a public officer in any criminal court in respect of an alleged offence including an investigation by any law enforcement body;

“**Crown**” means the Crown in right of the State of Tasmania;

“**Eligible Conjoint Officer**” includes a person employed by the University of Tasmania who undertakes work for and on behalf of the Crown pursuant to a conjoint appointment instrument or agreement between the University of Tasmania and the Crown, while undertaking work for or on behalf of the Crown;

“**Eligible Medical Practitioner**” means a registered medical practitioner who is employed by the Crown as a medical practitioner, but only in relation to any activity being undertaken for which he or she is not entitled to bill and retain in full any fee charged for the activity;

“**good faith**” when used in relation to the actions or omissions of a public officer means actions and omissions that are honest, sincere and reasonable, done or omitted to be done without any intention to harm the interests of the Crown. Further, without limitation, the following acts or omissions as referred to in section 49B of the *Civil Liability Act 2002* are, for the purposes of this policy, taken not to be acts or omissions in good faith –

- a) actions or omissions that constitute serious and wilful misconduct or a serious breach of a code of conduct applicable to the Public Officer;
- b) dishonest, fraudulent, or malicious actions or omissions of a Public Officer;

“**Guidelines**” means the *Guidelines for the Application of the Policy* which are set out in Part 3 of this document;

“**Head of Agency**” means a person who, for the time being, holds any of the offices specified in Column 2, of Schedule 1 to the *State Service Act 2000*;

“**indemnify**” means to grant or otherwise provide an indemnity to a Public Officer;

“**indemnity**” means an agreement, undertaking or obligation pursuant to which the Crown indemnifies a Public Officer in respect of a legal liability which that Public Officer incurs to a third party and includes the provision of Legal Assistance;

“**Indemnity and Legal Assistance Panel**” means a panel of persons established under the Policy to consider an application from a Public Officer for an indemnity and/or legal assistance;

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

- a) a Commission of Inquiry established under the *Commissions of Inquiry Act 1995*;

- b) the Integrity Commission of Tasmania;
- c) a coroner of any State or Territory, including an inquest;
- d) the Anti-Discrimination Commissioner of Tasmania and Anti-Discrimination Tribunal;
- e) a Police Service (or law enforcement agency) of any State, Territory or the Commonwealth prior to any criminal proceeding being initiated;
- f) any other State, Commonwealth or Territory body with investigatory or inquisitorial powers under a State, Commonwealth or Territory Act; or
- g) a Professional Registration Authority

“legal assistance” means the provision, at the cost of the Crown of legal advice and/or representation, by Crown Law or another approved legal practitioner;

“legal proceedings” means any actual, threatened or reasonably apprehended civil proceeding, criminal proceeding or inquiry or investigation;

“member of Government” means a parliamentary member of the governing party or parties;

“Professional Registration Authority” means a body established by statute that is constituted to regulate a trade, occupation or profession by registering individuals to undertake a trade, occupation or profession, establishing standards of practice, investigating and disciplining practitioners in that trade, occupation or profession;

“Public Officer” means current or former –

- a) Ministers;
- b) members of Government, lawfully directed to act on behalf of a Minister;
- c) statutory officers who hold office under a law of Tasmania;
- d) persons employed or engaged under the Crown Prerogative or under a secondment in the office of a Minister, or office of another member of Government;
- e) state service officers and employees;
- f) eligible medical practitioners; and
- g) eligible conjoint officers;

but does not include -

- a) a person engaged as a contractor or a consultant under contract for service or other like arrangements, other than a conjoint officer;

- b) a Police Officer as defined in the *Police Service Act 2003*;¹ and
- c) volunteers².

“**offence**” means an offence as defined by section 46 of the *Acts Interpretation Act 1931* namely any contravention of, or failure to comply with, a law for which a person is liable to be punished, whether summarily or otherwise and includes any such contravention of the law of another State, Territory or of the Commonwealth;

“**relevant responsible officer**” means the person to whom a public officer is, in accordance with the Guidelines, to apply for an indemnity and/or legal assistance;

“**Secretariat of the Indemnity and Legal Assistance Panel**” is the Office of the Secretary, Department of Justice;

“**State Service employee**” means an officer or employee appointed under the *State Service Act 2000* and a person who is not an officer or employee but who has been seconded in accordance with section 46 of the *State Service Act 2000* to undertake duties in a State Service Agency, but only in relation to those duties;

“**Tasmanian Risk Management Fund**” means the Tasmanian Government’s whole-of-government self-insurance arrangement for funding and managing specific identified insurable liabilities of participants, including the provision of personal liability cover for a Public officer granted an indemnity and/or legal assistance by the Indemnity and Legal Assistance Panel³.

¹ Tasmania Police have alternative indemnity arrangements in place under agreement with the Police Association of Tasmania.

² Volunteers are provided with personal liability cover by the Tasmanian Risk Management Fund when acting under the lawful direction of the Crown.

³ The Tasmanian Risk Management Fund is administered by the Department of Treasury and Finance.

I. INTRODUCTION

Public Officers are involved in all types of work across a range of public services such as government administration, law, health, education, justice and the environment.

From time to time Public Officers may be the subject of legal proceedings or of inquiries or investigations because of incidents and/or actions that arise in relation to their work.

Providing legal assistance and indemnity to Public Officers is essential to the protection of the Crown's interest, the fair treatment of its employees, and the effective management of an organisation.

Public Officers may be subject to legal claims/actions despite the fact that they are acting in good faith, within the scope of their duties or in the course of their employment. It is therefore necessary that they receive appropriate legal representation and be protected from personal liability as long as they are not acting against the interests of the Crown.

This document sets out the policy and processes that apply to Public Officers who may be the subject of or otherwise involved in legal proceedings or inquiries or investigations and who seek an indemnity or legal assistance in respect of those legal proceedings, inquiries or investigations.

I.1 Purpose

The purpose of this Policy and the Guidelines is to -

- a) clarify the circumstances in which the Crown will agree to indemnify Public Officers;
- b) protect Public Officers from personal financial losses or expenses incurred while or as a result of acting in good faith in the course of their public employment;
- c) establish processes and procedures for grants of indemnity to Public Officers; and
- d) establish processes and procedures for grants of legal assistance to Public Officers.

This Policy provides for the grant of indemnity with respect to civil proceedings in accordance with the *Civil Liability Act 2002* and more broadly; for example it also provides for the grant of legal assistance with respect to inquiries and investigations. The Policy sets out when a Public Officer is covered and how to give notice of legal proceedings and obtain an indemnity or legal assistance.

The Policy also establishes an Indemnity and Legal Assistance Panel (the Panel) that is responsible for administering and making decisions in respect of the Policy.

The Policy and the Guidelines for the Application of the Policy replace Ministerial Direction No 8 - *Indemnity against Legal Process* (dated 1 July 2008), that was issued under the *State Service Act 2000*.

1.2 Application of Policy and Guidelines

The Policy and the Guidelines have been endorsed by the Government and provide for a Panel to approve an indemnity and/or the provision of legal assistance to a Public Officer in relation to civil proceedings, criminal proceedings and inquiries and investigations where certain criteria are met.

The Policy and the Guidelines apply to -

- a) all claims by Public Officers for indemnity and legal assistance or both made on or after the date of its commencement; and
- b) which arise from their acts or omissions made in good faith occurring in the course of their employment, or in the carrying out of their duties, or in the holding of a public office whether those acts or omissions occurred before or after commencement of this Policy.

Nothing in the Policy or the Guidelines prevents Cabinet^{4 5} agreeing to provide an indemnity or legal assistance to a Public Officer nor affects an order made by a court that requires the Crown to indemnify a Public Officer.

1.3 Supplementary Guidelines for medical practitioners

The Minister for Health has responsibility to issue *Supplementary Guidelines for Medical Practitioners*. These *Supplementary Guidelines* provide additional detail to deal with the sometimes complex nature of employment arrangements relating to medical practitioners.

The *Supplementary Guidelines* contain additional detail relating solely to medical practitioners. They should be read in conjunction with the *Policy and the Guidelines*, and if there is any inconsistency, the *Policy and the Guidelines* are to take precedence.

⁴ In such instances, personal liability cover by the TRMF will not be automatic and will be considered on a case by case basis.

⁵ It is noted that, while only a Minister is able to bring a matter to Cabinet, this does not imply Ministerial support for any such matter.

2. POLICY

The endorsed Policy for the grant of indemnities and legal assistance to Public Officers of the State of Tasmania is that:

- (i) Public Officers are eligible for an indemnity and/or legal assistance in respect of civil proceedings, arising out of their acts or omissions done in good faith in the course of their public office unless one or more exclusions apply. The exclusions are set out in the Guidelines at section 3.9.
- (ii) Public Officers may request legal assistance in respect of criminal proceedings arising out of their acts or omissions done in good faith in the course of their public office and may be granted legal assistance where certain conditions, as set out in the Guidelines, have been met.
- (iii) Public Officers may request legal assistance in respect of inquiries and investigations arising out of their acts or omissions done in good faith in the course of their public office and may be granted legal assistance where certain conditions, as set out in the associated Guidelines, have been met.
- (iv) An Indemnity and Legal Assistance Panel (the Panel) is authorised to approve an indemnity and/or the provision of legal assistance to a Public Officer in relation to civil proceedings, criminal proceedings and inquiries and investigations where certain criteria are met.
- (v) The Panel may, after taking into account all the circumstances of the matter or incident, approve an indemnity and/or legal assistance in applications where the Public Officer may have otherwise been excluded under the Guidelines from an indemnity or legal assistance.
- (vi) Public Officers who do not comply with the terms and obligations set out under this Policy may not be eligible for an indemnity and/or legal assistance.

Effective Date

This Policy and Guidelines for the Application of the Policy take effect from 1 January 2014.



3. GUIDELINES FOR THE APPLICATION OF THE POLICY

3.1 Notification of Legal Proceedings by Public Officer

The Public Officer must provide notice to the Relevant Responsible Officer of any legal proceedings, inquiry or investigation that may involve the Public Officer as soon as reasonably practicable after the Public Officer becomes aware that he or she is or is likely to be the subject of legal proceedings, an inquiry or an investigation.

The following table sets out the Relevant Responsible Officer to whom the Public Officer should provide notice -

Public Officer	Relevant Responsible Officer
Minister of the Crown or other member of the Government acting lawfully at the direction of the Crown.	Premier.
Statutory officer who holds office under a law of Tasmania.	Head of Agency responsible for the administration of the Act that establishes the statutory office.
Person employed or engaged under the Crown Prerogative or under a secondment in the office of a Minister, or office of another member of Government.	Chief of Staff, Premier's Office.
Chief of Staff, Premier's Office.	Premier.
Secretary, Department of Premier and Cabinet.	Premier.
Head of Agency.	Head of the State Service (if the case is a matter involving the Secretary, Department of Justice or the head of the State Service then the Secretary, Department of Treasury and Finance, as long as they are not the Head of the State Service).
State Service officers and employees.	Head of Agency in which the public officer is employed.
Eligible medical practitioner.	Secretary, Department of Health and Human Services or Chief Executive Officer (CEO), Tasmanian Health Organisation, or other Head of Agency as relevant.
Eligible conjoint staff.	Secretary or CEO of their employing State Service Agency i.e. Department of Health and Human Services, Tasmanian Health Organisation or other State Service agency.

3.2 Notice Requirements - Full Disclosure

Notice must include -

- a) the name and position of the Public Officer giving the notice, including contact details;
- b) the Public Officer's employment or appointment status;
- c) the names of other parties involved, including any witnesses;
- d) a description of the facts leading up to or relevant to the event giving rise to the legal proceedings, investigation or inquiry;

Notice may also include -

- a) any other facts or information known to the Public Officer which may be relevant to the Panel's consideration;
- b) copies of all relevant documents such as letters of demand, writs, summonses or complaints.

The Public Officer must -

- a) make full disclosure of the circumstances giving rise to a legal proceeding, inquiry or investigation;
- b) supply any additional information reasonably requested by the Relevant Responsible Person or the Panel.

If the Public Officer fails to give reasonable notice after becoming aware of legal proceedings, inquiry or investigation the Public Officer may be refused indemnity or legal assistance.

If, in the course of any legal proceedings, inquiry or investigation, the Public Officer acts unreasonably, or intentionally or recklessly fails to make full and frank disclosure of relevant matters, an indemnity or legal assistance may be refused or withdrawn.

3.3 Process following Notice

On receiving notice from a Public Officer, the Relevant Responsible Person is to forward the notice and any relevant information to the Secretariat of the Panel as soon as practicable.

The Secretariat will then convene the Panel in accordance with the composition requirements set out below to process the notice.

3.4 Composition of the Panel

Except for Ministers⁶ and members of the Government, the Panel is to comprise –

- a) the Secretary, Department of Justice (Chair);
- b) the Solicitor-General; and
- c) an Agency Member as set out below.

⁶ Ministers are automatically indemnified.

Public Officer	Agency Member
Statutory officer who holds office under a law of Tasmania.	Head of Agency responsible for the administration of the Act that establishes the statutory office (if this is the Secretary, Department of Justice then the Secretary, Department of Premier and Cabinet or nominee).
Head of Agency.	Head of the State Service (if the case is a matter involving the Secretary, Department of Justice or the head of the State Service then the Secretary, Department of Treasury and Finance, as long as they are not the Head of the State Service).
Chief of Staff.	Secretary, Department of Premier and Cabinet.
Person employed or engaged under the Crown Prerogative or under a secondment in the office of a Minister, or office of another member of Government.	Chief of Staff, Premier's Office.
State Service officers and employees.	Head of Agency in which the Public Officer is employed or seconded (if this is the Secretary, Department of Justice then the Secretary, Department of Premier and Cabinet or nominee).
Eligible medical practitioner	Secretary, Department of Health and Human Services or other State Service agency or Chief Executive Officer (CEO), Tasmanian Health Organisation, or other Head of Agency as relevant.
Eligible conjoint staff.	Secretary or CEO of their employing State Service Agency i.e. Department of Health and Human Services, Tasmanian Health Organisation or other State Service agency.

For a member of the Government, who is not a Minister, but who was lawfully directed to act on behalf of the Crown (such as a Parliamentary Secretary or backbencher authorised as a Government spokesperson), the Panel is to comprise the Solicitor-General and two other members chosen from among the Premier, Deputy Premier and Attorney-General.

3.5 Conflict of interest and incapacity

In the event that a member of the Panel has a conflict of interest in respect to an application or is absent or otherwise unable to act as a member of the Panel, the Panel Chair may authorise another Public Officer to act in that member's place.

The authorised or substituted Public Officer should hold office or a position of similar seniority as the Panel member who is unable to attend or should possess relevant skills and experience to be able to undertake the absent Panel Member's duties.

3.6 Role of Indemnity and Legal Assistance Panel

The Panel may make the following determinations -

- a) confirm that where a Public Officer has acted in good faith in the course of his or her employment, carrying out of his or duties or the holding of his or her office, that Public Officer is entitled to an indemnity and/or legal assistance and any conditions upon which or limitations subject to which that indemnity and/or legal assistance is to be provided;
- b) in exceptional circumstances, authorise an indemnity or legal assistance on any conditions and subject to any limitations it considers necessary or desirable where the Public Officer has acted in good faith in the course of his or her employment, office or official duties but is nevertheless not entitled to an indemnity or legal assistance in accordance with the Policy or the Guidelines;
- c) determine that the Public Officer is not to be provided with an indemnity under this Policy;⁷
- d) determine that the Public Officer is not to be provided with legal assistance under this Policy;
- e) defer the making of a decision to provide an indemnity or legal assistance.

Before making a determination the Panel may make enquiries and seek additional or expert information from any person or entity about matters which it considers are relevant to the making of that determination.

3.7 Terms and conditions of indemnity and/or legal assistance⁸

The Public Officer must give such information and assistance as the Panel may reasonably request in order to make a determination in accordance with this policy.

In addition the Public Officer must give such information and assistance to Crown law or any other legal advisors authorised by the Panel to provide legal assistance to the Public Officer.

Furthermore, an indemnity or legal assistance may be subject to such conditions relating to-

- a) parameters and scope of cover, including that the conduct of any defence will be determined by the Crown and that the Public Officer must provide all necessary assistance to and cooperation with any legal practitioner authorised by the Panel;

⁷ If a court subsequently held the Crown liable for the actions of the Public Officer then the court decision would override any decision under the policy and the Crown would be obliged to indemnify the Public Officer. Nothing in the Policy and the Guidelines for the Application of the Policy prevents Cabinet agreeing to provide an indemnity or legal assistance to a Public Officer or restricts an order from a court that the Crown is to indemnify a Public Officer.

⁸ Note that the Crown may seek reimbursement from a Public Officer of sums paid to that Officer by way of legal assistance as provided for in paragraph 3.20.

- b) whether legal advice and/or representation is to be provided by Crown Law or by a Crown-approved external legal practitioner;
- c) limits in respect of any amount to be paid for legal assistance and the specification of the scales of costs, if any, by reference to which such amounts are to be paid;
- d) reporting arrangements including, where necessary, the waiver as between the Public Officer and the Crown of the Public Officer's client legal privilege;
- e) in the event of representation by a private legal practitioner in accordance with paragraph 3.16 [Legal representation] authorisation by the Public Officer for the private legal practitioner to report to Crown law when required by it on any matter(s);
- f) the consequences of a finding or determination in any proceeding, inquiry or investigation that the Public Officer did not act in good faith;
- g) the terms upon which legal proceedings may be settled or compromised, e.g. that any settlement must be agreed to by the Panel or by a Senior Crown Law Officer; and
- h) any other matter that the Panel considers necessary or desirable.

In relation to matters which the Panel cannot reasonably be expected to anticipate, such as whether the Public Officer will be found not to have acted in good faith, then a conditional indemnity and/or legal assistance may be provided.

The cost of providing legal assistance may not be met by the Crown if, concerning the matter for which legal assistance is sought, a Public Officer is -

- a) found guilty of an offence or crime, or
- b) subject to a finding by a Professional Registration Authority of professional misconduct or unprofessional conduct.

3.8 Matters for the Panel to consider

The Panel is to assess -

- a) whether the legal proceedings arise from or relate to the Public Officer's official or employment duties or functions or whether the Public Officer was acting in a private or unauthorised capacity;
- b) whether the Public Officer acted in good faith in carrying out his or her official or employment functions or duties;
- c) whether the Public Officer knew or ought to have known that he or she was acting against the interests of the Crown;
- d) the exclusions set out in this policy;
- e) whether there are any exceptional or extenuating circumstances; and
- f) any other relevant matters.

In doing so, the Panel will consider the general duty of the Crown to support its Public Officers who have acted in good faith in carrying out their official and employment duties or functions.

The Panel may seek expert advice where it considers it necessary or desirable to do so.

3.9 Exclusions to grant of indemnity or legal assistance in civil proceedings

General Exclusions

Indemnity may not be provided in relation to civil proceedings if: –

- a) appropriate notice has not been given;
- b) the proceedings do not arise from, or relate to, the Public Officer's employment, office or official duties and functions;
- c) the Public Officer has acted outside the scope of his or her employment, office or official duties and functions or contrary to a lawful and reasonable direction;
- d) the Public Officer has not acted in good faith;
- e) the legal proceedings relate to matters arising while the Public Officer was engaged under a contract for services and not as an employee or eligible conjoint officer;
- f) the proceedings have been initiated or are being personally prosecuted by the Public Officer who is seeking indemnity, unless those proceedings form part of a necessary and legitimate defence to other legal proceedings in relation to which an indemnity or legal assistance has been provided by the Crown.

Special Exclusions for medical practitioners

- g) *The Supplementary Guidelines for medical practitioners* contain any special exclusions applying to relevant Public Officers.

3.10 Grant of legal assistance in relation to criminal proceedings

The Panel may grant legal assistance in respect of criminal proceedings, where

- a) the criminal proceedings arise out of the Public Officer's employment, office or official duties and not private behaviour; and
- b) it appears that the Public Officer has acted in good faith; and
- c) the interests of the Crown in relation to the administration of justice would not be harmed; and
- d) the Panel considers that it is in the public interest that the Public Officer be legally assisted.

Further, the Panel may grant legal assistance to a Public Officer in relation to the officer's participation in an inquiry or investigation by a law enforcement agency where –

- a) the inquiry or investigation arises from or relates to the Public Officer's employment, office or official duties and not private behaviour; and

- b) it appears to the Panel that the Public Officer has acted in good faith; and
- c) the Panel considers that it is in the interests of the Crown that the Public Officer be legally assisted.

3.11 Grant of legal assistance for inquiries or investigations

The Panel may grant legal assistance to a Public officer in relation to the officer's participation in an inquiry or investigation by a body other than a law enforcement agency where the Panel is satisfied that -

- a) the investigation or inquiry relates to the employment, office or official duties or functions of the Public Officer;
- b) it appears to the Panel that the Public Officer has acted in good faith;
- c) the matter giving rise to the inquiry or investigation for which the legal assistance is sought does not relate to a complaint by a Public Officer against another Public officer; and
- d) it is in the interest of the Crown that the Public Officer be assisted.

No indemnity or legal assistance is to be provided to a Public Officer in respect to an investigation or inquiry that constitutes an internal employer investigation or internal administrative review mechanism, including such matters as complaints against the Public Officer e.g. staff grievances, performance management or disciplinary proceedings, Tasmanian Industrial Commission matters, or a review under the *State Service Act 2000*⁹.

3.12 Exceptional or extenuating circumstances

The Panel may grant an indemnity and/or legal assistance to a Public Officer where there are exceptional or extenuating circumstances and the Panel considers that it is in the public interest to provide the indemnity or legal assistance.

Exceptional or extenuating circumstances include -

- a) significant hardship to the Public Officer;
- b) that the Public Officer may be unfairly disadvantaged¹⁰;

Matters relevant to the public interest may include, but are not limited to -

- a) how best to protect the Crown's interests;
- b) ensuring that Public Officers can undertake their functions with the support of the Crown and without unreasonable exposure to the risk of personal liability;
- c) the appropriate expenditure of public funds to support individual Public Officers.

⁹ This only applies to complaints made about a Public officer by another Public officer.

¹⁰ This applies both to unfair financial disadvantage and unfair disadvantage in the defence of the legal proceedings.

3.13 Record of Determination by Panel

A determination in regard to an application for indemnity or legal assistance is to be recorded in writing and include the following information -

- a) the reasons for the determination;
- b) the terms and conditions (if any) of the indemnity or legal assistance provided; and
- c) the identity of the department, agency, office, unit or entity of the Crown which will be responsible for the payment of any costs arising from the grant of indemnity and/or legal assistance.

A copy of the determination is to be provided to the Public Officer, the TRMF and the department, agency, office, unit or entity of the Crown which will be responsible for the payment of costs.

The reasons for the determination may not be provided to the Public Officer where or to the extent to which they contain material that may be the subject of the legal professional privilege of the Crown or to public interest immunity.

3.14 Initiation of Legal Actions by a Public Officer

Legal assistance will not be provided in relation to legal proceedings initiated by a Public Officer other than in respect to -

- a) an appeal or right of review where it is in the interests of the Crown to provide further indemnity or assistance (see paragraph 3.15 which requires a fresh application for an indemnity to institute an appeal or right of review);
- b) proceedings under section 106B of the *Justices Act 1959* where the Panel is satisfied that
 - i. the order is sought in connection with circumstances arising out of the Public Officer's employment, office or official duties or functions; and
 - ii. prima facie there are grounds for making such an application; and
 - iii. such an order for protection is reasonably necessary.
- c) proceedings in relation to a matter for which an indemnity or legal assistance has been approved of the kind referred to in paragraph 3.9(f) of this Policy.

3.15 Legal appeals and rights of review – fresh application for indemnity or legal assistance

Provision of an indemnity and/or legal assistance may include representation for all civil proceedings of an interlocutory nature and any appeal or right of review taken by the opposing party against a final judgment in civil proceedings.

However, if after a final judgment the Public Officer wishes to institute an appeal against that judgment, a fresh application for indemnity and/or legal assistance will be required.

3.16 Legal representation

In general, where an indemnity or legal assistance is provided, Crown Law will be authorised by the Panel to represent the Public Officer, unless one or more of the following applies -

- a) a conflict of interest would arise if Crown Law were to act for the Public Officer;
- b) Crown Law does not have the necessary resources or expertise in relation to the particular proceedings; or
- c) it would otherwise be appropriate for the Public Officer to be represented by a private legal practitioner (as approved by the Panel).

A Public Officer may seek to be represented by a private legal practitioner and this may be authorised by the Panel. In such a case, the Panel will determine the amount and/or the rates which the Crown will pay on behalf of the Public Officer.

In the event of representation by a private legal practitioner for any of the reasons set out above, the Public Officer must authorise the private legal practitioner to report to Crown law when required by it on any matter(s).

3.17 Costs relating to private legal assistance

Where private legal assistance is provided, the costs of legal representation by a legal practitioner will be paid in accordance with any conditions set by the Panel about the rates that will be paid for representation.

Generally the Supreme Court scale will apply, unless it is determined that a higher rate may apply given the nature of the proceedings, the complexity of the case and the seniority of the practitioner required to represent the Public Officer.

Only reasonable costs will be paid. In the event of a dispute or disagreement the Solicitor-General will determine what is reasonable.

3.18 Indemnity and Legal Assistance not to extend to punitive damages or penalties

An indemnity will extend to damages in any civil proceedings, except to the extent to which damages of a punitive, aggravated or exemplary nature are awarded in consequence of any conduct of the Public Officer which was engaged in otherwise than in the course of carrying out a lawful direction given by a superior. Indemnity and legal assistance under this policy does not extend to the payment of any personal fine, penalty, or criminal compensation awarded as a result of any criminal proceedings.

3.19 Payment of costs

An indemnity or legal assistance may cover legal representation and related costs, including damages and other costs payable to another party (i.e. party/party costs).

Solicitor/Client costs may be assessed by the Solicitor-General to determine what is reasonable. Party/party costs may be subject to taxation by the relevant court.

Any legal costs that exceed the Panel's approved scale of rates payable to counsel by Crown Law will not be met by the Crown, unless the Panel has given written consent prior to counsel being retained or has authorised the additional cost.

Any payment made to a Public Officer not found to be in accordance with this policy may be recovered from the Public Officer by the Crown.

3.20 Liability of Public Officer to pay legal costs

It may be a condition of a grant of indemnity or legal assistance that a Public Officer pay or reimburse his or her legal costs associated with an indemnity or grant of legal assistance.

The Crown may seek such a reimbursement from a Public Officer where it is found that the conduct of the Public Officer in relation to which an indemnity or legal assistance was granted was not in good faith or the conduct did not arise in the course of public office.

The cost of providing legal assistance may not be met by the Crown if the Public Officer is found guilty of an offence or crime constituted by or including the conduct in relation to which an indemnity or legal assistance has been approved, or of misconduct of a kind that would warrant the Public Officer's dismissal or the revocation by a Professional Registration Authority of the professional practice rights or the registration of the Public Officer. This may be a condition of the grant of legal assistance.

If costs have been met prior to the finding of guilt or misconduct the Public Officer is liable to reimburse those costs to the Crown. Action may be taken to recover those costs.

Before seeking reimbursement of legal costs the following consideration applies:

- a) In the case of an offence, the Crown – on advice from the Panel - may take into account the nature of the offence, any mitigating circumstances and the severity of the sentence imposed.

In the case of revocation of professional practice rights the Crown may take into account whether the Public Officer's practice rights have been revoked or fully or partially suspended and the length of period of any suspension and the impact that may have on the Public Officer's ability to continue his or her public sector employment. In some cases a partial revocation of practice rights, such as a requirement to practise supervised, may not warrant a total reimbursement of legal assistance costs.

3.21 Withdrawal of indemnity or legal assistance

An indemnity or grant of legal assistance may be withdrawn or revoked if the Panel considers that -

- a) the Public Officer is not cooperating fully with the legal representatives appointed by the Crown to represent the Public Officer;
- b) the information provided by the Public Officer to support the indemnity and/or grant of legal assistance is found to be intentionally or recklessly incorrect or misleading;
- c) new information emerges which, if known to the Panel at the time of granting the application for indemnity or legal assistance would probably have led to the Panel to decide not to grant the indemnity legal assistance; or
- d) the Public Officer does not comply with the conditions of the grant of assistance.

If legal assistance is withdrawn the Crown may seek to recover any costs paid by the Crown to that time from the Public Officer.

3.22 Indemnity or Legal Assistance from Date of Application

The provision of an indemnity or legal assistance is effective from the date on which the notice was provided by the Public Officer to the Relevant Responsible Person or such other date as may be specified by the Panel.

3.23 Rights of Public Officer

Nothing in this policy affects the right of a Public Officer to apply to the Cabinet for legal assistance or an indemnity or to seek a declaration or other relief from a court of competent jurisdiction in the event an indemnity or legal assistance is refused or withdrawn.

Paragraph 3.12 [Exceptional and extenuating circumstances] also provides that the Public Officer may present fresh and compelling evidence or information to the Panel at any time.

