

Our Ref: D/001693

Circular Memorandum No 5/00

THE PROVISION OF LEGAL SERVICES

TO ALL DEPARTMENTS AND AGENCIES

Purposes

The purposes of this memorandum are:

- (a) to remind agencies of the Government policy relating to utilisation of the services of Crown Law;
- (b) to remind agencies of the procedure to be followed for obtaining all legal advice and legal services following the combining of the administration of the offices of the Solicitor-General, the Director of Public Prosecutions and the Crown-Solicitor into Crown Law;
- (c) to remind agencies of the charging arrangements for:
 - (i) the civil litigation services of the Director of Public Prosecutions; and
 - (ii) the commercial and conveyancing services of the Crown-Solicitor;
- (d) to replace Treasury Circular Memoranda Nos 13/97 and 7/99; and
- (e) to explain the advice, directions and procedures in clause 2.5 (para. 7) of the Department of Treasury and Finance *Handbook for Government Procurement* so far as they relate to legal services.

Background

Establishment of the Legal Practice (now known as Crown Law) by combining the administration of the Crown-Solicitor's Office with that of the Offices of the Solicitor-General and the Director of Public Prosecutions, followed decisions by the then Government to adopt a policy requiring a more commercial focus for the civil litigation, commercial and conveyancing functions of the Offices of the Director of Public Prosecutions and the Crown-Solicitor.

Treasury Circular Memoranda Nos 13/97 and 7/99 and the Department of Treasury and Finance *Handbook for Government Procurement* clause 2.5 (para. 7) each separately addressed charging and engagement issues relating to the work undertaken by the Offices of the Director of Public Prosecutions and the Crown-Solicitor.

Treasury Circular Memorandum No 5/00 replaces Treasury Circular Memoranda Nos 13/97 and 7/99.

Obtaining Legal Advice

It is the function of the Solicitor-General to provide legal advice, including defense of actions, to agencies and instrumentalities of the Crown (hereafter referred to as agencies) and, accordingly, agencies must refer all requests for legal advice to the Solicitor-General.

The advice, when obtained from the Solicitor-General, represents the Government's view of the subject matter of the advice and is to be followed unless Cabinet directs otherwise or it is held to be incorrect by a court of competent jurisdiction.

The timely use of this service enables agencies to avoid legal problems rather than dealing with them after they have occurred.

The Solicitor-General will continue to provide this service to agencies free of charge.

Obtaining Civil Litigation Services

Agencies must obtain all civil litigation services from, or through, the Director of Public Prosecutions.

The Director of Public Prosecutions will:

- (a) where possible and appropriate, handle the matter within his office;
- (b) decide, after consultation with the instructing agency, whether or not a matter should be briefed out;
- (c) prepare any necessary brief; and
- (d) engage and instruct counsel as the Director thinks appropriate in the circumstances.

Director of Public Prosecution's Charging Rates to Agencies

Agencies will only be charged for professional work at the hourly rates listed below. These hourly rates include items normally charged separately in private practice, such as clerical time, correspondence and attendances. Para Legal Work is professional work carried out by an experienced clerk under a practitioner's supervision, which would otherwise be performed by the practitioner at practitioner's charging rates. The hourly rates are based on cost recovery principles and include GST.

DPP	Up to \$330 per hour
Senior Counsel	\$198 - \$220 per hour (Depending on Seniority)
Counsel	\$110 - \$165 per hour (Depending on Seniority)
Para Legal Work	\$44 per hour

All disbursements (such as lodgment fees, travel and accommodation expenses and expert witness' expenses) will be charged at the rate charged by the supplier (including GST).

Director of Public Prosecution's Billing Basis

Agencies will generally be billed on a quarterly basis per matter. Depending on the activity, the matter and agency requirements, bills may be rendered at other intervals.

In matters in which Crown Law was involved prior to 1 July 1999 which remain current, charges will apply for all work performed since 1 July 1999.

It is at the discretion of the Director of Public Prosecutions whether charges will be waived or reduced in any matter.

Overdue Accounts - Director of Public Prosecutions

Any overdue account will be dealt with in accordance with Treasury Circular Memorandum No 3/00, which outlines the Protocol for Inter-Agency Debt Collection.

Obtaining Commercial and Conveyancing Services

Agencies must obtain all commercial or conveyancing legal services from, or through, the Crown-Solicitor. The Crown-Solicitor will determine whether or not the required services can be provided by officers within Crown Law.

If the Crown-Solicitor determines that external services are required, then the Crown-Solicitor will brief the matter out after consultation with the instructing agency. Consultants selected to provide legal services will be engaged and instructed by the Crown-Solicitor.

Crown-Solicitor's Charging Rates to Agencies

The following hourly rates are applicable to work carried out by legal practitioners in the Crown-Solicitor's office and include GST:

Crown-Solicitor	Up to \$330 per hour
Assistant Crown-Solicitor	Up to \$220 per hour
Principal Crown Counsel	Up to \$220 per hour
Principal Solicitor	Up to \$198 per hour
Senior Solicitor	Up to \$165 per hour
Junior Solicitor	Up to \$132 per hour

No charge is made for clerical or other ancillary services related to work done by a legal practitioner.

Work carried out by conveyancers in the Crown-Solicitor's office will be charged at \$82.50 per hour, all inclusive (including GST).

No charge will be made for local, STD or ISD phone calls, or for photocopies or documents printed on behalf of an instructing agency, unless the demand for these services is unusually high.

All disbursements (such as stamp duty, travel expenses, experts' and consultants' fees and search fees), will be charged at the rate charged by the supplier (including GST).

Crown-Solicitor's Billing Basis

Agencies will be interim billed monthly per matter if accrued fees have reached \$1 000 - otherwise they will be billed every 3 months.

It is at the discretion of the Crown-Solicitor whether charges will be waived or reduced in any matter.

Overdue Accounts - Crown-Solicitor

Any overdue account will be dealt with in accordance with Treasury Circular Memorandum No 3/00, which outlines the Protocol for Inter-Agency Debt Collection.

Minimising Costs

In order to minimise costs, agencies should take note of the following:

- if the Crown is subjected to legal action, costs can be considerable. This is particularly important to agencies as costs incurred arising from legal proceedings against the Crown are now the responsibility of the managing agency (see Treasury Circular Memorandum No 4/97). The relative cost of avoiding error by obtaining legal assistance in the first place is very small;
- where a service is required, agencies should provide instructions in a timely manner and not at the last minute. It is often impossible for Crown Law to respond to short deadlines, and this increases the risk of error, which increases exposure to liability. Urgent work may involve a surcharge on the hourly rates listed above; and
- checking documents prepared within agencies is time consuming and it is often found that the best course of action is to start afresh. In other words, in-house drafting by agencies may in fact add to legal costs. The best way of minimising costs is to provide clear, timely instructions as to exactly what is required.

Central Agencies

The agreement detailing the charging principles for central agencies continues to apply.

Contact

Any questions in relation to services provided by Crown Law should be directed to the Solicitor-General, Mr W C R Bale QC (in relation to legal advice), the Director of Public Prosecutions, Mr T J Ellis (in relation to civil litigation) or the Crown-Solicitor, Mr C R Leslie (in relation to commercial or conveyancing services).

If you have any queries relating to this memorandum, please contact your Treasury Budget Analyst.

D W Challen
SECRETARY

December 2000