

TREASURER'S INSTRUCTION
FINANCIAL MANAGEMENT ACT 2016
ENGAGEMENT OF LEGAL PRACTITIONERS

EFFECTIVE DATE

1 July 2019

SCOPE

This Treasurer's Instruction applies to all agencies listed in Column I of Schedule I, Part I in the *Financial Management Act 2016* unless otherwise exempted or provided for under the provisions of the Act.

APPLICATION

At all times.

OBJECTIVE

To provide direction in relation to the engagement of legal practitioners.

INSTRUCTION**Engagement of legal practitioners**

- 17.1 A reference to the "Crown" includes all of its agencies and instrumentalities.
- 17.2 This Treasurer's Instruction reflects the following constitutional principles:
- 17.2.1 the Crown must ascertain and obey the law; and
 - 17.2.2 unless otherwise lawfully permitted, the Crown must obtain its legal advice from Law Officers of the Crown.
- 17.3 The Crown must follow legal advice provided by Law Officers of the Crown in relation to:
- the legal functions, powers or responsibilities of the Crown; or
 - the lawfulness of any action, or proposed course of action, by the Crown.
- 17.4 In addition to those principles, the Crown should follow the legal advice of Law Officers of the Crown in relation to the legal enforceability or legal effectiveness of a transaction.
- 17.5 These requirements do not extend to advice given by the Law Officers about the proposed allocation of transactional and business risks, unless the Crown's proposed allocation would be unlawful.

- 17.6 The Accountable Authority must refer all requests for legal advice, civil litigation services and commercial and conveyancing legal services to Crown Law.
- 17.7 All legal instructions must be provided by, or through, Crown Law unless otherwise agreed in advance in writing by Crown Law.
- 17.8 The Accountable Authority must not directly engage external counsel or commercial legal services without the written agreement of Crown Law.
- 17.9 The Accountable Authority must comply with the requirements of *Guidelines for Seeking Advice from the Solicitor-General's Office* issued by the Attorney-General.
- 17.10 The Accountable Authority must comply with the *Guidelines for the Disclosure of Communications Protected by Client Legal Privilege* issued by the Attorney-General.
- 17.11 The Accountable Authority must comply with the *Model Litigant Guidelines* issued by the Solicitor-General.

ADDITIONAL GUIDANCE

Further information in support of this Treasurer's Instruction can be found in the *Financial Management - Better Practice Guidelines*.