

LEGISLATIVE COUNCIL

Leader of the House

Subject: *Guidelines relevant to Ministers and Officers
involved in legal proceedings*

POLICY

1. In the majority of cases in which Ministers and officers are involved in civil legal proceedings because of their official responsibilities the Crown Solicitor will act for the Minister or officer at the expense of the State and the State will meet any liabilities incurred in the proceedings.

2. There is a range of cases, especially where

- . personal impropriety (including defamation) is alleged against a Minister or officer,
- . proceedings are instituted by a Minister or officer for personal benefit, and
- . charges of offences are brought against a Minister or officer,

in which it is necessary to determine whether assistance with legal costs and other liabilities is justified in the public interest. The following policies apply to these cases.

3. In these cases it will not normally be appropriate for the Crown Solicitor to act for the Minister or officer but the Minister or officer will usually be assisted to locate appropriate legal representation.

4. An important, and at times, overriding consideration is whether the interests of the State require a civil proceeding to be brought or defended or even require a charge of an offence to be defended.

CIVIL PROCEEDINGS

a) Proceedings against Ministers and officers.

Where the conduct of the Minister or officer was in good faith and reasonable, and in the discharge of official responsibilities, the State will meet legal costs incurred in defending the action and any other liabilities incurred (eg costs of other parties, damages, etc).

The requirement that the conduct of the Minister or officer be reasonable is not applied harshly but as a protection to the State against incurring expense because of quite unreasonable conduct by a Minister or officer.

The evaluation of these requirements requires knowledge of the circumstances of a case. For this reason it is usually necessary for the decision to be made after the proceedings have concluded. In those circumstances the Minister or officer will take their own legal advice in the knowledge that a decision will be made whether they will be indemnified for costs and other liabilities according to this policy depending on the circumstances revealed in the proceedings.

In cases where the circumstances of a matter are sufficiently clear at the commencement of the proceedings, or at any time during them, a decision will be made. The nature of the allegation against the Minister or officer and the public interest in defending the action may justify decisions to indemnify at the commencement of proceedings or during them even though some circumstances are unclear.

In some circumstances it will be appropriate to grant an indemnity in respect of the costs of the Minister or officer, at the commencement of or during the proceedings, leaving the question of indemnity for damages and other liabilities until the proceedings have concluded.

b) Proceedings instituted by Ministers and officers.

The Crown does not become directly involved in the institution and conduct of proceedings for the personal benefit of a Minister or officer claiming damages for torts (especially defamation) and other civil remedies. These are personal actions, and it would be expected that a successful action would result in an order for payment of damages to the individual concerned. All legal costs associated with such proceedings (whether successful or otherwise) will be borne by that litigant himself. However, in special circumstances the Cabinet might authorise the commencement of an action and provide an indemnity as to legal costs, for example, where the prime motive for taking the proceedings is to make clear the truth concerning particular Government decisions.

ROYAL COMMISSIONS, INQUIRIES, SPECIAL INVESTIGATIONS, INQUESTS
ETC

There will often be Crown representation in Royal Commissions etc provided through the Crown Solicitor's office.

In those cases where the interests of the State and of a Minister or officer require separate representation the policy for civil proceedings against Ministers and officers ((a) above) will be applied.

As Royal Commissions etc are conducted for a public purpose, that purpose may justify indemnifying some or all parties for their legal costs or assisting them with their costs as a matter of fairness or to ensure that the Royal Commission etc is effective. This decision may need to be taken before the proceedings commence.

CRIMINAL PROCEEDINGS (INCLUDING COMMITTALS AND SUMMARY PROCEEDINGS)

Normally Ministers and officers under charge will take their own legal advice and provide for their own representation. At the conclusion of the proceedings they may seek re-imbusement of their legal costs. This will be determined by an assessment of their conduct as indicated in the proceedings and surrounding circumstances to determine whether it was in good faith and reasonable, and in the discharge of official responsibilities.

There may be cases where the circumstances are sufficiently clear for a decision to be made at the commencement of the proceedings or during them.

These will be rare, but would include instances when the proceedings were frivolous and vexatious.

It would be unlikely that a situation would arise which would warrant consideration of re-imbusement of fines ordered, or of orders for restitution.

GENERAL

- (a) Applications by Ministers and officers for indemnities for legal costs and damages shall be decided by Cabinet. They will be accompanied by an assessment prepared by the Attorney General with the assistance of the Solicitor General or Crown Solicitor.

(b) In every case, a decision to re-imburse legal costs will be in respect of "reasonable costs". In some cases this may amount to a contribution towards legal costs.

Any amount recovered by a Minister or officer in proceedings, whether for costs or damages, will usually be set off against an indemnity.

(c) Normally a Minister or officer involved in litigation because of the discharge of his official responsibilities will have all relevant files, documents, papers etc made available to him and to his legal advisers to assist in the conduct of those legal proceedings.

(d) This policy is not exhaustive as it is not practical to anticipate all circumstances and our present evaluation of what is best in the public interest is still evolving. Individual cases may therefore justify modifying or departing from this policy.

* Officers wishing to apply for assistance should address their application to;

Hon. Premier
Capita Centre
197 St George's Terrace
Perth W.A. 6000