

## Appendix C

# Cabinet Directions for the Conduct of Crown Legal Business 1993

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- 1 These Directions may be cited as the Cabinet Directions for the Conduct of Crown Legal Business 1993.
- 2 In these Directions, “department” means a department as defined in s2 of the State Sector Act 1988, the New Zealand Police, and any agency of the government subject to Ministerial direction or control, but does not include the Parliamentary Counsel Office or the Public Trust Office.
- 3 These Directions shall apply to all Ministers and departments. In cases of doubt, the Attorney-General shall decide whether these Directions apply to any particular agency.
- 4 All requests by Ministers for legal advice or representation in matters in relation to their portfolios should in the first instance be addressed to the Attorney-General or to the Solicitor-General.
- 5 Where any department requires legal services from outside of its own legal staff it shall first establish in which of the following categories the requirement for services falls:

### **Category 1**

- (a) Representation or advice in relation to actual or imminent litigation to which the government or agency is or may become a party
- (b) Legal services involving questions of the lawfulness of the exercise of government power
- (c) Constitutional questions including Treaty of Waitangi issues
- (d) Issues relating to the enforcement of the criminal law
- (e) Legal issues relating to the protection of the revenue

### **Category 2**

All requirements for legal services not included in Category 1

- 6 (a) It shall be the duty of the chief executive of every department whenever the interests of the Crown so require, to ensure that the department obtains legal advice from its own legal staff or otherwise in accordance with these Directions.
- (b) All requirements by any department for legal services within Category 1 to be provided other than by its own staff shall be referred to the Solicitor-General and will be dealt with either within or outside of the Crown Law Office as the Solicitor-General directs. Requests for such advice should be made to the Solicitor-General or other Crown Counsel designated by the Solicitor-General.

- (c) No Crown Solicitor or other lawyer in private practice is to be instructed by any department in respect of requirements for legal services of a kind covered in Category 1, other than pursuant to a general or specific approval from the Solicitor-General, provided that any department may instruct a Crown Solicitor without further authority than these Directions in respect of a summary prosecution or the taking of depositions for an indictable prosecution. All requirements by any department or government agency for legal services to be provided other than by its own staff falling into Category 2 may be referred to Crown Solicitors or other lawyers in private practice without further authority than these Directions provided that the Solicitor-General may intervene at any stage in a particular case to require that the legal services concerned be provided as the Solicitor-General directs. Where any question or dispute arises as to the category into which a particular requirement for legal services falls, it shall be resolved by the Solicitor-General.
  - (d) Where the department seeks legal services in accordance with these Directions from lawyers in private practice it will be the duty of the chief executive to ensure that those lawyers engaged are free of conflicts of interest, have an appropriate level of expertise for the work they are asked to undertake, and are adequately supervised by the department in the work they are engaged to do.
- 7 Where an opinion is sought from the Crown Law Office, on an issue over which there is a difference between departments, both or all of those departments should advise the Crown Law Office of their views. An opinion will be given to all of them jointly.
  - 8 Where an opinion relates to the responsibilities of more than one department the department which seeks the opinion shall be responsible for meeting the costs of it. Departments may however agree among themselves to share the cost of any opinion. The department having responsibility in the relevant area shall meet the costs of legal services provided:
    - (a) at the direction of Cabinet or a Cabinet committee; and
    - (b) as a result of the intervention of the Solicitor-General pursuant to these Directions.
  - 9 A lawyer who is employed in a department or agency may appear on summary prosecutions in the District Court. Appearances by departmental legal staff in any other jurisdiction will require a general or specific approval from the Solicitor-General.
  - 10 No appeal from the decision of any court or tribunal, or application for judicial review, is to be instituted by any Crown party without the specific approval of the Solicitor-General.
  - 11 If an employee of a department is charged with a criminal offence arising out of the course of his or her employment, any claim for the reimbursement of the employee's legal costs shall be decided by the chief executive of the department concerned.
  - 12 If an employee of a department is made a defendant in a civil action arising out of the course of his or her employment, the Crown shall bear the expenses of that defence, and the Attorney-General may take over the conduct of the case. For the purposes of this Direction "employee" includes a chief executive and a member of the Senior Executive Service.
  - 13 Opinions provided by the Solicitor-General or the Crown Law Office are intended for the assistance of Ministers, and departments only. They are not to be sought for private bodies or individuals.

- 14 An opinion given by the Crown Law Office is the property of the Crown and in the charge of the person to whom it is addressed. Subject to the rights of the Attorney-General to be fully informed on all government legal business, the Solicitor-General and Crown Law Office will not disclose the contents of an opinion to any third party without the specific authority of the addressee. Requests to the Crown Law Office for copies of such opinions, whether under the Official Information Act 1982 or otherwise, will be transferred to the addressee who must decide whether to claim or waive any solicitor and client privilege attaching to the opinion. The Crown Law Office will, on request, give advice as to whether privilege should or may be claimed but the ultimate decision must be made by the addressee.
- 15 The Cabinet Rules for the Conduct of Crown Legal Business 1958 are hereby revoked.