



GUIDANCE NOTE 11

Briefing the Solicitor-General

1. This Guidance Note sets out the manner in which the Solicitor-General is to be briefed in order to perform the functions of that office.
2. This Guidance Note applies to proposals that the Solicitor-General be briefed by:
 - Non-corporate Commonwealth entities; and
 - Corporate Commonwealth entities (that are not a Government Business Enterprise).

Functions of the Solicitor-General

3. The Solicitor-General's functions, as Second Law Officer, are found in section 12 of the *Law Officers Act 1964* (Cth).
4. These functions include acting as Counsel for the Commonwealth (sub-s. 12(a)) and furnishing opinions on questions of law (sub-s. 12(b)).

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5. The Solicitor-General's advocacy services, and the provision of his advice, are generally reserved for very important and legally difficult matters that are of particular significance to the Australian Government.
6. A matter will be "significant" in this respect if it:
 - raises novel, difficult and important points of legal principle;
 - relates to the implementation of Government policy or decisions of the highest importance;
 - raises issues of the highest political sensitivity;
 - raises legal issues resulting in conflict between agencies; and/or
 - has significant financial implications or other very important whole-of-Government implications.

Requests to brief the Solicitor-General in court matters: sub-s. 12(a)

Significant legal proceedings

7. The Solicitor-General should receive a request to be briefed to appear in every civil matter that is "significant", as outlined above.

High Court proceedings

8. In addition, the Solicitor-General should receive a request to be briefed to appear in every civil matter where the entity:
 - is a party to an appeal before the High Court;
 - is a party to a proceeding within the original jurisdiction of the High Court, other than proceedings of a kind that are routinely remitted.

Applications for Special Leave

9. The Solicitor-General should receive a request to be briefed to advise in every case in which an entity is contemplating seeking special leave to appeal to the High Court, and be provided with the option of appearing in the hearing of the special leave application.
10. In each case, the Solicitor-General should be provided with a copy of the judgment under appeal and the advice of junior or senior counsel briefed in the matter on the prospects of special leave being granted and the prospects on appeal.
11. The Solicitor-General will form an independent view in relation to whether the application should be made (or should proceed in circumstances where an application has already been filed) and will advise orally or in writing as appropriate.
12. In cases in which an entity is the respondent to a special leave application, it will be sufficient to notify the Solicitor-General of any grant of special leave, save for cases that are otherwise "significant" as noted above and which should be brought to the Solicitor-General's attention in advance of the application being heard.

Requests to brief the Solicitor-General for opinions on questions of law: sub-s. 12(b)

13. In addition to cases where the Solicitor-General will appear as counsel, there will also be circumstances in which the Solicitor-General will advise on a question of law and furnish his opinion to the Attorney-General. Requests for such advice should be reserved for the most significant questions of law, falling within the category outlined above. Acceptance of such requests to advise will be confirmed by the Attorney-General, following consideration by the Solicitor-General. The opinion will also be provided to the Attorney-General.

Process for briefing the Solicitor-General

14. Any request to brief the Solicitor-General to appear as counsel or to provide an opinion should be made as early as possible.
15. An entity should make the request by contacting Counsel Assisting the Solicitor-General on 02 6141 4139 or by email to SG_Briefing@ag.gov.au. The Solicitor-General may agree to the request on condition that he is briefed with one or more other counsel.
16. If the Solicitor-General accepts a request to be briefed, the Solicitor-General must be briefed to the standard that would be required by any senior counsel. Unless the Solicitor-General has otherwise agreed, briefs to the Solicitor General must be prepared by the Australian Government Solicitor (AGS) or an external legal services provider.
17. Every brief must:
 - outline and provide an analysis of the main issues;
 - describe the facts and the background to the matter;
 - set out clearly the issue in dispute or the legal questions that need to be answered;
 - summarise and include copies of any previous legal advice;
 - include copies of relevant legislation, cases or journal articles; and
 - provide any other relevant information.

18. Two copies of the brief should be provided: one to the Solicitor-General in his Sydney chambers, and one to Counsel-Assisting the Solicitor-General in the Solicitor-General's Canberra chambers.

Sydney	Canberra
Solicitor-General's Chambers Level 17, Law Courts Building, Queens Square Sydney NSW 2000	Solicitor-General's Chambers Robert Garran Offices 3-5 National Circuit Barton ACT 2600

Fee on brief

19. The Solicitor-General's services are budget-funded. Entities are not billed for the Solicitor-General's work. Should counsel from the private bar or the Australian Government Solicitor be briefed jointly with the Solicitor-General, the engagement will be subject to the usual arrangements for engagement of counsel as set out in Appendix D of the Legal Services Directions.
20. For the purpose of calculating costs in favour of the Australian Government, the daily rate for the Solicitor-General is \$5,000.00. The hourly rate is to be calculated at one-sixth of the daily rate.

Confidentiality of Solicitor-General Opinions

21. Communications between the Solicitor-General and entities are confidential legal communications. OLSC must be consulted before providing any opinion of the Solicitor-General to a person outside the Australian Government.

Significant Issues Reports

22. The requirement in paragraph 3 of the Legal Services Directions to report on significant issues is not satisfied by a request to brief the Solicitor-General. In all matters in which the Solicitor-General has been briefed, the briefing agency must report to the Office of Legal Services Coordination if the matters raise a significant issue for the purpose of paragraph 3. Guidance on significant issues is contained in Guidance Note 7—Reporting on Significant Issues.

Office of Legal Services Coordination
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