# REQUESTS FOR LEGAL ADVICE STANDARD OPERATING PROCEDURE

## Standard Operating Procedure Purpose

The Legal Services and Integrity team can provide legal *policy* advice, on issues such as interpretation of and compliance with legislation and contracts. While members of the Legal Services team generally have legal qualifications, they are not practising solicitors and so are unable to provide *legal advice*.

Under the *Law Officers (General) Legal Services Directions 2012,* legal advice for Territory matters can only be provided by the ACT Government Solicitor (ACTGS), unless approval is obtained from the Solicitor-General for agencies to seek external legal advice. Any external legal advice or engagement of private law firms is arranged by ACTGS as and when appropriate. All legal advice provided by the ACTGS and external legal providers is covered by legal professional privilege. This means that the advice must not be disclosed to third parties unless permission is expressly granted by the solicitor.

This Standard Operating Procedure (SOP) outlines the procedures to be followed by staff within the EPSDD portfolio when seeking legal advice from ACTGS. This procedure will ensure that legal advice from the ACTGS is only sought when necessary, and that advice provided to the Directorate is readily accessible to all sections.

The ACTGS will not action requests for legal advice unless a request has been:

* + Approved by the Director-General (DG), Deputy Director-General (DDG) or CEO; and
  + Emailed by Legal Services to ACTGS or expressly waived from this requirement by the DG, DDG or CEO.

## Scope

This SOP applies to all requests for legal advice to ACTGS from staff within the EPSDD portfolio.

| Business Area | Responsibility |
| --- | --- |
| **ACTGS** | * Provide legal advice and representation on a range of issues as requested by the Directorate, City Renewal Authority or Suburban Land Agency |
| **Legal Services and Integrity** | * Assist in determining if advice is required from ACTGS * Assist with structuring request for advice * Liaise with ACTGS on progress of advice * Assist the policy area to review and implement legal advice |
| **Policy Areas** | * Identify potential legal issue, including actions brought against the directorate, City Renewal Authority or the Suburban Land Agency * Draft Request for Legal Advice Form * Liaise with ACTGS on the provision of any further information or clarity in relation to the request for advice * Review and implement advice received from ACTGS |

## Procedure – Description of activities

1. *CONTACT LEGAL SERVICES AND INTEGRITY*

Call or e-mail Legal Services and Integrity if think you may need legal advice from the ACTGS. You should also undertake the following preliminary steps:

* Identify the scope of the issue and collate relevant background material.
* Consult with any areas with operational or policy responsibility for the relevant issue.
* Consider any relevant previous advices. This should involve a review of [the Legal Advice register](https://objective.act.gov.au/id:fA8532050) on Objective. The Legal Advice register is accessible by all EPSDD Portfolio staff, however Legal Services and Integrity can assist with identifying relevant advices and considering whether they apply to the issue.
* Consider whether ACTGS advice is the only way to answer the particular query, keeping in mind that any advice will have to be taken into account in your decisions and operations after it is received.
* Understand the timeframes for sending and receipt of advice.

1. *COMPLETE THE REQUEST FOR LEGAL ADVICE FORM*

* Following confirmation from Legal Services that ACTGS advice is required, complete the Request for Legal Advice form found on the EPSDD intranet. Be as concise as possible in the form, and present clear questions/issues on which you are seeking advice. Include only relevant information necessary for ACTGS to understand the issue.
* Create an Objective folder in your relevant area and include the form and all relevant background material.

1. *APPROVAL-POLICY AREA*

The completed Request for Legal Advice Form must be approved by your Senior Director, Director, or policy area equivalent.

1. *REVIEW- LEGAL SERVICES*

The head of the policy area e-mails the Objective reference to [Legal Services](mailto:EPSDlegalservices@act.gov.au) and Integrity for review. Legal Services and Integrity will liaise with the policy area on finalising the request for legal advice. Legal Services and Integrity will update the Legal Advice register.

1. *APPROVAL- DG/DDG/CEO*

After review, Legal Services and Integrity will forward the request to the DG, DDG or CEO (as appropriate) for approval and forward to ACTGS once approved.

1. ***ACTGS PROVISION OF ADVICE AND IMPLEMENTATION***

* ACTGS will liaise with the nominated contact officer if further information is required.
* Let Legal Services and Integrity and ACTGS know promptly if circumstances have changed that may impact on the advice or if the advice is no longer required.

The ACTGS will email advice to the relevant contact officer and Legal Services and Integrity. Legal Services and Integrity will:

* Save the advice into the relevant Legal Advice folder and update the Legal Advice register.
* Liaise with the nominated contact officer to assist with the review and implementation of the advice, and establish if the advice identifies any issues that may have a whole-of-Directorate significance. In this case, the Executive will need to be advised.

## Records Management

Policy areas must maintain an Objective folder in their relevant area with all background material, not just that send to ACTGS.

All requests for legal advice are subject to legal professional privilege. Ensure e-mails are marked as ‘Sensitive: Legal.’ Legal advice cannot be provided to a third party including to Cabinet or Ministers without the express permission of the Solicitor-General.

The Legal Services and Integrity team maintains an Objective folder related to the advice, and maintains the Legal Advice register.

## Evaluation

| Outcome MeasuresWhat will be measured to determine achievement – has the procedure purpose occurred? | MethodHow will this be done? | ResponsibilityWho is responsible for evaluation? |
| --- | --- | --- |
| Legal Services and Integrity receive and action request within specified timeframe | Management of the Legal Services and Integrity email address  Liaison with policy areas  Maintaining Legal Advice register | Legal Services and Integrity |
| All requests and legal advices recorded in Objective | Review of the Legal Advice Register | Legal Services and Integrity, Policy areas |

## Related Documents

* *[Territory Records Act 2002](https://legislation.act.gov.au/View/a/2002-18/current/PDF/2002-18.PDF)*
* [*Information Privacy Act 2014*](https://legislation.act.gov.au/a/2014-24/)
* [*Law Officers Act 2011*](https://legislation.act.gov.au/a/2011-30/)*/*[*Law Officers (General) Legal Services Directions 2012*](https://legislation.act.gov.au/ni/2012-292/)
* [Legal Services](mailto:EPSDlegalservices@act.gov.au) and Integrity e-mail

## Version history

The following table details the published date and amendment details for this document

| Version | Date | Amendment details |
| --- | --- | --- |
| 1.0.1 | 2016 | Revised |
| 1.0.2 | 2017 | Revised |
| 1.1 | 2018 | Revision to reflect current procedure |
| 1.2 | 24/07/2019 | Revision to reflect current procedure and updated template |