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**Policy**

Proceedings must not be issued on behalf of any Crown Law client without the approval of the Solicitor-General or a Deputy Solicitor-General.

Unless by reasons of urgency it is impossible to do so, a request to a Deputy Solicitor-General for permission to issue proceedings must be set out in a memorandum, endorsed by a Team Manager, and accompanied by:

- written authorisation from the Crown Law client from whom the instructions have been received; and
- a draft statement of claim.

The memorandum should include analysis of the legal and broader issues involved together with counsel's recommendation in relation to the proposed proceedings, and any relevant Crown Law advice should be attached.

Where prior authority has not been obtained, the proceedings issued must be immediately copied to the Solicitor-General or a Deputy Solicitor-General together with an explanation why prior approval was not sought.

The Solicitor General is ultimately responsible for the appointment of counsel, whether internal or external, to conduct any proceeding on behalf of a Crown Law client but authority to appoint counsel to any case in the Court of Appeal, High Court or District Court is delegated to Team Managers.

The solicitor on the record of any proceedings filed in any court must be a Deputy Solicitor-General, Senior Crown Counsel, or a Crown Counsel, and that person must have personally approved the statement of claim before it is filed.

The issue of civil proceedings should also be guided by the Cabinet Direction for the Conduct of Crown Legal Business 2016.

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**Applies to**

This policy applies to all Crown Law counsel including:

- full time staff;
  - part time staff;
  - casual staff; and
  - contractors.
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**Rationale**

Authority to approve the filing of proceedings is restricted to Deputy Solicitors-General because the commencement of proceedings is a significant step. Where proceedings are issued:

- The plaintiff immediately assumes a financial responsibility for any costs award the court or tribunal may make and, if injunctive relief is sought, there may also be an obligation to pay damages.
- The lawyer who files the claim assumes responsibility to the court for the proper conduct of the proceedings; warrants to the court that he or she is authorised to bring them; and assumes an ethical duty to, among other things, avoid conflicts of interest.
- A process is commenced by which findings may be made that may affect the legal environment in which the Crown operates.
- The High Court and District Court Rules allow any lawyer with a current practising certificate to be the solicitor on the record. For internal management reasons that function is restricted to Crown Counsel and above. As the Solicitor-General is usually a Queen's Counsel, it is not generally appropriate for him or her to be the solicitor on the record, even where he or she has personal conduct of the proceedings.

**Forms**

Use the following form to complete a draft statement of claim:

- Precedent – [Statement of Claim – High Court](#).

**Other References**

Refer also to:

- [Cabinet Direction for the Conduct of Crown Legal Business 2016](#);
- Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 generally and in particular [rule 6.1](#) (relating to conflicting duties) and [rule 13.6](#) (relating to independence in litigation);

[High Court Rules: rule 5.37](#) (solicitor's warranty as to authorisation to file documents).

**Key Personnel**

The following key personnel have responsibilities under this policy.

Position	Role
Solicitor-General and Deputy Solicitors-General	Approving filing of proceedings.

**Policy Information**

**Policy Owner** – Convenor, Professional Standards Committee

Approved – Management Board – 30 April 2008.

Updated 17 November 2014, 13 December 2016.

Next review date 13 December 2019.