

1958/105



THE CABINET RULES FOR THE CONDUCT OF CROWN LEGAL BUSINESS 1958

ON the 3rd day of June 1958 the following rules were approved by Cabinet for the conduct of business between Departments of the Government and the Law Officers of the Crown and the Crown Law Office.

3462 1. These rules may be cited as the Cabinet Rules for the Conduct of Crown Legal Business 1958.

2. Every reference for a legal opinion or upon business necessitating action by the Law Officers of the Crown or the Crown Law Office shall be made in the first instance by a Minister to the Attorney-General or the Solicitor-General, or by the Permanent Head of a Department or the Solicitor-General, who will exercise his discretion in dealing with the matter himself or in delegating it to a Crown Law officer.

34189 3. Every reference shall contain a sufficient statement of the facts and a brief of any relevant evidence, references to enactments or regulations or previous opinions affecting the matter, and a statement of the points upon which an opinion or action is desired. A Department having its own legal officer will also submit a memorandum of its legal officer's views on the matter. Relevant papers in files submitted will be marked.

4. A reference involving consideration of an enactment or regulation the administration of which is confided to a particular Department shall be made by that Department or with its concurrence.

5. When a matter has been referred to a Crown Law officer as aforesaid, no fresh authority will be required in respect of further action in the same matter; but the Crown Law officer may continue to deal therewith as requested by any officer of the Department.

6. Subject to rule 7 hereof all official instruments (other than those dealt with in the Law Drafting Office) are to be referred in draft form by a Minister or Permanent Head to the Solicitor-General for consideration before being brought before a Minister for signature, or for approval before signature by the Governor-General or any other person. (The instruments dealt with in the Law Drafting Office are those generally or particularly assigned to that Office by the Prime Minister or the Attorney-General, and include all regulations and other instruments intended for publication in the statutory regulations series and all other instruments of a legislative character, including those intended for publication in the *Gazette*.)

7. When the form of an instrument has once been so settled it will not be necessary to submit similar instruments for revision unless there is reason to believe that there has been a change in the law or circumstances affecting the form of the instrument, or unless the instrument is an exceptional one in the practice of the Department concerned.

8. No Crown Solicitor or solicitor in private practice is to be instructed or employed by any Government Department without reference to the Solicitor-General, and all matters so referred are to be dealt with as he may direct.

9. No solicitor who is an officer of the Public Service shall act in any Court proceedings on behalf of the Crown, unless under a general or special authority of the Solicitor-General.

10. No appeal from any Court is to be instituted or defended until the matter has been referred to the Solicitor-General, and any proposal to appeal is to be so referred promptly.

11. The foregoing rules apply to legal opinions, to conveyancing matters, and to litigation both civil and criminal. They do not, however, apply to the following:

- (a) Ordinary criminal prosecutions in the Supreme Court;
- (b) Preliminary investigations before Justices and the conduct of inquests in which the Police Department wishes to obtain legal assistance from a district Crown Solicitor;
- (c) The normal conveyancing work of the State Advances Corporation, the Department of Lands and Survey, the Mines Department, the Government Life Insurance Department, the Ministry of Works, and the Maori Affairs Department;
- (d) The legal work of the Public Trustee and the Maori Trustee; the legal work of the Railways Department (except common law damages claims) and insurance claims against the State Fire and Accident Insurance Office (other than those in which that Office is acting as agent for a Department);
- (e) Instructions in connection with the penal provisions of the Bankruptcy Act 1908 given to a district Crown Solicitor by an Official Assignee under the authority of the Department of Justice.

12. Subject to Treasury Regulations applying to drivers of Government vehicles, where a member of the Public Service is charged with a criminal offence, or the breach of any enactment or regulation, no Crown Solicitor or other solicitor employed in the Public Service is to appear in his defence, nor, except in special circumstances where a Crown Law officer recommends, will the Crown bear any expense of his defence, even though the charge may arise out of the conduct of his duties as a public servant.

13. The same rule will apply to an officer of the Public Service who is made a defendant in a civil action, except that, in special cases in which a liability on the same cause of action might be imposed by law on the Crown, the Crown may in its discretion arrange to bear the expenses of the action on condition that the defendant leaves to the Crown the selection of solicitor and counsel to be instructed and the whole conduct of the case.

14. Rule 13 hereof will not apply where the Attorney-General directs that an officer should be represented in proceedings arising out of his performance of his public duties, such as an action for injunction or mandamus, or similar proceedings.

15. Legal opinions given by the Crown Law Office are intended for the information and assistance of Ministers and Government Departments. They are not to be sought for the benefit of local bodies or private individuals, who should in all cases be informed that they must consult their own legal advisers. An exception is made in the case of Domain Boards, of which the funds are Crown property, and which have no means of obtaining legal guidance except through the Department of Lands and Survey. Where it is necessary to express a departmental view, a Department may use as its own the words of a Crown Law Office opinion, or state that it is "advised" as to the legal position of any matter; but should not state the source of the advice, nor communicate outside the Government a copy of any opinion so given, except in special cases and with the consent of the writer of the opinion. Counsel conducting prosecutions may adopt an opinion as part of their argument, but should not indicate its source. If a copy of an extract from an opinion is, with the Court's permission, handed to the bench, the source should not be stated or indicated, the document being regarded merely as a statement in writing of the officer's argument.

16. The Cabinet Rules for the Conduct of Business referred to the Law Officers of the Crown dated 21 June 1932 are hereby revoked.

H. G. R. MASON, Attorney-General.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 17 July 1958.

These regulations are administered in the Crown Law Office.