

# State Service Act 2000



**Ministerial Direction No. 8: 2003**

**Title: INDEMNITY AGAINST LEGAL PROCESS**

**Issue Date: 1 JULY 2003**

**Operation Date: 1 JULY 2003**

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## Purpose

This Direction specifies the process and circumstances in which indemnity will be provided for State Service officers and employees who are threatened with, or subject to, legal proceedings arising from the performance of their duties.

## Application

This Direction applies to all State Service Agencies.

## Legislative Basis and Related Documents

- *State Service Act 2000*
- *Statutory Authorities (Protection from Liability of Members) Act 1993*

## Directive

Pursuant to Section 14 of the *State Service Act 2000*, I hereby direct that the following administrative arrangements, as outlined in Attachments 1 and 2, shall have effect.

## Date of period of operation

Issued by authority of the Minister administering the *State Service Act 2000* pursuant to Section 14(1).

1/07/2003

signed

Jim Bacon MHA  
*Premier*

## **Attachment 1**

### **GUIDELINES FOR THE GRANTING OF INDEMNITY AGAINST LEGAL PROCESS**

- 1 The Government will indemnify, subject to the provisions below, officers and servants of the State of Tasmania threatened with or subject to legal proceedings arising out of advice given or acts or omissions in good faith in the performance of their duties.
- 2 For the purposes of this indemnity, “legal proceedings” means a process threatened or instituted in a Court, Tribunal, Commission or other like body in which the conduct of the officer or servant is in issue.
- 3 The scope and terms of any indemnity will be at the discretion of the Inter-Agency Committee referred to below and indemnity will apply only to awards made and costs incurred after application for indemnity is received by the relevant Agency.
- 4 The process for obtaining indemnity is as follows:
  - 4.1 The Inter-Agency Committee, for the purpose of each claim for indemnity, is comprised of:
    - the Secretary of the Department of Justice and Industrial Relations (chair);
    - the Solicitor-General; and
    - the Head of the Agency or State Government Instrumentality in which the applicant is engaged.
  - 4.2 An officer or servant seeking indemnity must apply for it in writing to the Head of the Agency or Instrumentality, or delegate of the Head, in which they are engaged.
  - 4.3 Forthwith upon receipt by the Agency or Instrumentality of an application for indemnity, it is to be forwarded to the Inter-Agency Committee and accompanied by as full an account as possible of the circumstances leading to the proceedings or threatened proceedings and any recommendation of the Agency or Instrumentality in relation to it.
  - 4.4 The Inter-Agency Committee will determine each application on the material presented to it and will report its decision to the relevant Head of Agency/ Instrumentality and to the Tasmanian Risk Management Fund Administration Agent.

5. The Inter-Agency Committee may attach conditions to the grant of indemnity. Those conditions would usually include conditions that the applicant be represented by the Office of the Director of Public Prosecutions; that the applicant must provide full cooperation in defending the proceedings; and that any dispute as to costs is to be determined by the Solicitor-General.
6. Indemnity on the above terms will extend to:
  - a) conjoint staff employed by the University of Tasmania, whilst undertaking work for or on behalf of the State which is specified in the conjoint appointment agreement;
  - b) employees of the University of Tasmania who have been assigned public duties or functions by the State, whilst undertaking these duties or functions; and
  - c) staff employed under a pre 1998 incorporated practice contract, where that contract does not specify a requirement for professional indemnity cover, whilst undertaking work for or on behalf of the State which is specified in that contract.
  - d) individuals providing on a voluntary basis services which have been requested or expressly accepted by the State.

## **Attachment 2**

### **GUIDELINES FOR THE GRANTING OF INDEMNITY AGAINST LEGAL PROCESS FOR MEDICAL PRACTITIONERS**

- 1 The Government will indemnify, subject to the provisions below, Medical Practitioners employed with the Department of Health and Human Services threatened with or subject to legal proceedings arising out of advice given or acts or omissions in good faith in the performance of their duties.
- 2 For the purposes of this indemnity, “legal proceedings” means a process threatened or instituted in a Court, Tribunal, Commission or other like body in which the conduct of the officer or servant is in issue.
- 3 The scope and terms of any indemnity will be at the discretion of the Inter-Agency Committee referred to below and indemnity will apply only to awards made and costs incurred after application for indemnity is received by the Department of Health and Human Services.
- 4 The process for obtaining indemnity is as follows:
  - 4.1 The Inter-Agency Committee, for the purpose of each claim for indemnity, is comprised of:
    - the Secretary of the Department of Justice and Industrial Relations (chair);
    - the Solicitor-General; and
    - the Secretary of the Department of Health and Human Services.
  - 4.2 A medical practitioner seeking indemnity must apply for it in writing to the Secretary of the Department of Health and Human Services.
  - 4.3 Forthwith upon receipt by the Secretary of the Department of Health and Human Services of an application for indemnity, it is to be forwarded to the Chair of the Inter-Agency Committee and accompanied by as full an account as possible of the circumstances leading to the proceedings or threatened proceedings and any recommendation of the Department of Health and Human Services in relation to it.
  - 4.4 The Inter-Agency Committee will determine each application on the material presented to it and will report its decision to the Tasmanian Risk Management Fund Administration Agent.

5. The Inter-Agency Committee may attach conditions to the grant of indemnity. Those conditions would usually include conditions that the applicant be represented by the Office of the Director of Public Prosecutions; that the applicant must provide full cooperation in defending the proceedings; and that any dispute as to costs is to be determined by the Solicitor-General.
  
6. Indemnity on the above terms will extend to any medical services provided by the practitioner in a public hospital or other health facility operated by the State, except for medical services which are provided in the course of private practice in premises which the practitioner or another person occupies pursuant to a lease or other right of exclusive occupation granted by the State.