

# **The State Solicitor's Office**

**The Office, Briefing and  
Engagement  
2018**

# Getting started



**The following sets out a description of why the State Solicitor's Office (SSO) exists, what the SSO does, and how SSO operates.**

**This Guide also seeks to describe the relationship we aspire to have with other Departments and agencies, to which we provide assistance on behalf of the Attorney General.**

**This Guide to the SSO is divided into the following principal topics:**

1. The role of the Attorney General
2. Legal services to Government: core and non-core services
3. Organisation and people
4. Working with SSO
5. Working with external lawyers through SSO

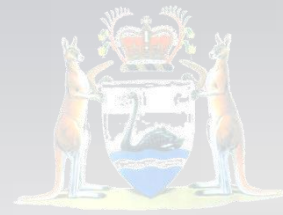
## **Getting started – a little bit about us**

While the State Solicitor's Office is to some extent structured like a private professional services organisation: drawing on the strengths of the professional services model, referring to the agencies with whom we work as clients; and having the gamut of professional obligations, we are also public servants in an Office which is an important part of the Department of the Attorney General, a policy and operational agency of Government, generally responsible for functions within the Attorney General's portfolio.

That does mean that in some important ways SSO does not behave like a private sector law firm, and some of the issues that arise from its unique role are discussed in the pages that follow.

**That becomes important in 3 areas:**

1. **Our responsibility to the Attorney General as first law officer of the State;**
2. **Our obligation to maintain, at all times, a “whole of Government” view regardless of the Department or agency briefing us; and**
3. **Our involvement, on behalf of the Attorney General and Government, generally, in seeking to advance best practice in legal matters across Government.**



# **The Attorney-General**

**Legal services to Government**

# The State Solicitor's Office and the Attorney General



## To understand the SSO you need to understand the role of the Attorney General.

The Attorney General is the State's first law officer and is responsible for ensuring the delivery of high quality, cost effective, legal services to the State. The role of first law officer has several aspects including: providing or obtaining advice to Cabinet, ensuring a whole of Government approach to legal advice, conducting or overseeing litigation by and against Government and the supervision of legal services to Government in the broadest sense. Those responsibilities are long standing and well defined by constitutional and political convention.

The responsibility for litigation, in particular, reflects the Attorney General's historical position as the Sovereign's legal representative, a role in earlier times often discharged through the appearance of the Attorney as the advocate for the Crown in important civil and criminal matters. As the complexity of Government affairs grew, the Attorney General over time acquired departmental officers to support the performance of these duties. In Western Australia, in the early 21st century, that support is provided by this Office in relation to civil and regulatory legal matters, and the Policy Directorate of the Department of the Attorney General, often working with our Office, in relation to policy issues.

The Attorney General is also responsible for the Parliamentary Counsel's Office and a number of other portfolio functions traditionally associated with the role, including trusteeship through the Public Trustee and guardianship through the Office of the Public Advocate.

The SSO answers directly to the Attorney General in relation to the provision of its legal services to Government.

## The Attorney General has many roles in relation to the State's legal affairs that are supported by the SSO:

1. advice to Government, in particular in Cabinet, on legal issues confronting Government;
2. the conduct of litigation on behalf of the State;
3. maintaining expected standards of conduct for those providing legal services to the State;
4. ensuring the provision of continuing professional education to State lawyers.

## The role of the Attorney General has a particular importance where significant "whole of Government" interests are affected, for instance:

1. where litigation raises sensitive political or policy issues for Government;
2. where the outcome of litigation is likely to have implications for other Government activities such as where litigation may set a precedent binding on the activities of a range of departments and agencies or have significant financial implications;
3. where the legal position taken by the State in a legal transaction, whether litigious, arbitral, administrative or purely commercial, may have ramifications for legal risks in more than one Department or Agency.

# Legal services to Government



**Since 1996 legal work for Government undertaken outside Departments and agencies has been divided into 2 categories: “core” and “non-core”:**

1. “core” legal work for Government, is reserved to the SSO and provided free of charge to Departments and agencies; and
2. “non-core” or contestable work, is not reserved to the SSO, which competes against private sector law firms to provide services for a fee.

Approximately 80% of the SSO’s work is “core” work.

The distinction between core and non-core work is important: SSO is not fully funded for the costs of its operations and depends upon:

- Fees for non-core work; and
- Legal costs awarded in favour of the State in litigation;

to bridge the gap between its appropriation and operating costs.

**A single matter may comprise both “core” and “non-core” elements.**

Where that happens SSO will take a view as to whether the matter:

- is predominantly a core service, which is not chargeable;
- divisible into distinct core and non-core services, where SSO will charge for part of the matter; or
- predominantly non-core for which SSO will charge in full.

There is no exact science in the distinction between core and non-core work in many cases. At all times, however, SSO’s charges are calculated on a simple cost recovery basis without any profit element.

In any matter SSO will charge as disbursements for extraordinary costs that it incurs. Those costs may include:

1. Outsourced document production, including:
  - a) Unusual quantities of printing or photocopying;
  - b) Document scanning and coding;
2. Expert and other witness expenses;
3. Court fees; and
4. Counsel fees for external counsel

# Core and non-core services - overview



## Core services can be summarised as:

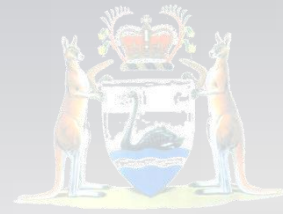
1. Work in relation to the operation of executive Government;
2. Advisory services on matters significant to all of Government or more than one Government Department or agency;
3. Litigation by or against
  - a) the State and State entities (other than autonomous Government Trading Enterprises); or
  - b) any body for whose conduct the State might be liable whether vicariously or by agreement, or Ministers

## Non-core services comprises work outside these "core" definitions:

These will, principally (and by exclusion) be:

1. routine advice and litigation raising issues only for one Department or agency;
2. contracts and other legal documents generally relating only to one Department or agency;
3. minor and routine civil litigation;  
not raising a significant issue of Government policy or practice.

# Core services - detail



## Work in relation to the operation of executive Government includes:

1. legal advice to the Cabinet, Ministers, departments or central agencies of Government in relation to existing or proposed submissions to Cabinet;
2. legal work involving matters of particular sensitivity to Government including work relating to the administration of justice, the Parliament and judicial officers, Royal Commissions, inter-Governmental arrangements, relations with the Commonwealth or another State or Territory;
3. matters involving the constitutional powers and privileges of the State or the Commonwealth;
4. the drafting of ratified State Agreements and advice and litigation in relation to those agreements.

## Litigation includes:

1. the receipt or expenditure of public money or the collection of State revenue;
2. planning matters involving questions of Government policy or decisions by the Minister for Planning or WAPC;
3. prosecutions and criminal appeals by departments or central agencies; matters for which Treasury allocations are made;
4. matters affecting or having implications for more than one Department or agency,

### other than:

- a) ordinary personal injury and property loss work; or
- b) contract claims which are not otherwise classified as core work;

# Core services - detail



## **Advisory services on matters significant to all of Government or more than one Government department including, in particular:**

1. native title and Aboriginal heritage;
2. industrial law;
3. environmental and resource management law;
4. the application of the Freedom of Information Act 1992;
5. the application of anti-discrimination legislation;
6. issues of public interest privilege;
7. planning matters involving questions of policy;
8. contracts where the documents involve or have implications for more than one Department or agency;
9. statutory interpretation affecting or having implications for more than one Department or agency; and
10. protection of the intellectual property of the Crown.

## **Matters involving the operation and enforcement of:**

1. heritage, land titling and development, environment and planning,
2. the Native Title Act, indigenous land tenure issues, and Aboriginal heritage,
3. criminal and quasi-criminal legislation,
4. privacy and freedom of information,
5. public sector management legislation, employment conditions, human resources, redundancy and workers compensation,
6. joint ventures and public private partnerships,
7. contracts in a form commonly used by more than one Department or agency, and
8. Government regulation, public law and administrative law;

will frequently, if not generally (and in some cases exclusively) fall within core work due to the whole of Government implications of those issues.

SSO works closely with the Department of Premier and Cabinet Lands and Native Title Unit in ensuring a coordinated approach to native title, tenure and heritage issues across Departments and agencies.



# Continuing Professional Development in the Government Sector

**The SSO is a key provider of CPD for the Government Legal Sector.**

***Legal Profession Regulations 2009 Reg. 15***

**The SSO also provides advice to the Attorney General on CPD arrangements.**



As part of our commitment to professional development across the Government sector, the Office offers 8 hours of CPD for government legal officers, in two 4 hour sessions conducted in October and March, at nominal cost.

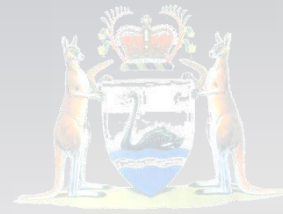
These sessions focus specifically on governmentally relevant legal issues and are designed to meet the majority of the base CPD needs of government legal officers. The attendees are solely WA Government lawyers and the sessions are conducted under “Chatham House” Rules to promote free communication about State legal issues.

Recent CPD conferences have included sessions on:

1. Government practice: Freedom of Information Legislation; Equal Opportunity; Key Concepts In Financial Management
2. Legislation: Working with WA Laws; The interpretation of subsidiary legislation; Conflict between State and Commonwealth Laws
3. Public law practice issues: Public Trust and the Exercise of Public Power, Frank and Fearless Advice; Providing and Obtaining Advice on Proposed Prosecutions; Preparing for Inquests; the operations of SAT; RiskCover
4. Common legal problems: Personal Property Securities Act /Procurement; Native Title 101; State Agreements; Overview Approaches to Infrastructure Projects
5. Ethics and professional issues: Written submissions and grounds of appeal; Dealing with Professional Discourteous Behaviour

In addition, the Office conducts specialist training, for lawyers and non-lawyers in the Government sector on:

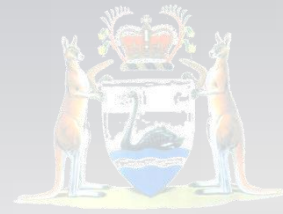
1. conducting investigations;
2. preparing a prosecution brief;
3. fundamentals of Native Title; and
4. fundamentals of good administrative decision making.



# Organisation and people

Teams, individuals, areas of practice

# SSO structure and services



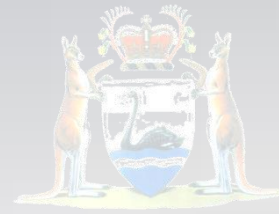
**The SSO is the second oldest legal practice in Western Australia, the first State Solicitor was appointed in 1838 to support the earliest activities of the new Colonial government. SSO has continually provided service to the Government and the State since that time. It is now one of the largest general purpose legal organisations in Western Australia, with some 130 FTE legal and 70 FTE support staff providing a very wide range of legal services to government.**

**Approximately 70% of the services delivered by SSO to government comprise litigation and advice across every area of legal practice other than criminal prosecutions on indictment before a jury. The balance comprise a wide variety of essentially “commercial” legal services.**

**As a brief indication of just some other things we do:**

- the review of Cabinet submissions to advise the Attorney General and Cabinet Secretariat on policy and legislation across all portfolios;
- the assessment of applications for the exercise of the Royal prerogative of mercy, and ex gratia and act of grace payments;
- prosecutions under any statute (other than indictable offences);
- interventions and applications in constitutional cases;
- the interpretation of any statute law, whether Commonwealth or State;
- the development of policy and legislation within the Justice portfolio directly and in support of DotAG;
- the provision of seconded and embedded staff to Departments and agencies and the ad hoc provision of relief legal staff;
- support to departments and agencies in relation to commissions of enquiry and Royal commissions;
- the undertaking of litigation and arbitrations in any court, tribunal or forum;
- contract negotiation, documentation and management of significant procurement, construction and development initiatives;
- project management of major commercial and infrastructure undertakings;
- advice and support to structural reform, including membership of task forces steering committees and Project control groups;
- the negotiation and enforcement of industrial agreements and awards;
- the protection and recovery of State revenues; and
- education and skill development, in particular in relation to investigative agencies and functions;

# The Department of the Attorney General



**SSO is one of the principal operating divisions in the Department of the Attorney General, the others being:**

- Parliamentary Counsel's Office
- Court and Tribunal Services
- Policy and Aboriginal Services
- Public Trustee
- Office of the Public Advocate
- Registry of Births, Deaths and Marriages
- Commissioner for Victims of Crime

Each of which reports administratively to the Department's Director-General and the accountable authority for the Department.

In relation to its professional services, SSO is accountable, and reports directly, to the Attorney-General.

**Within the SSO, the senior leadership positions are appointed by the Director-General, and held by Officers within the jurisdiction of the Salaries and Allowances Tribunal.**

**The State Solicitor holds wide ranging delegations from the Director-General in relation to the internal management of the SSO, and the Office is autonomous to a significant degree in IT and internal systems.**

# SSO Senior leadership team



Nick Egan  
State Solicitor



George Tannin SC  
State Counsel



Ilse Petersen  
Adviser



Angela Komninos  
Adviser



Jeff O'Halloran,  
Senior Adviser



Alan Sefton  
Deputy State Counsel



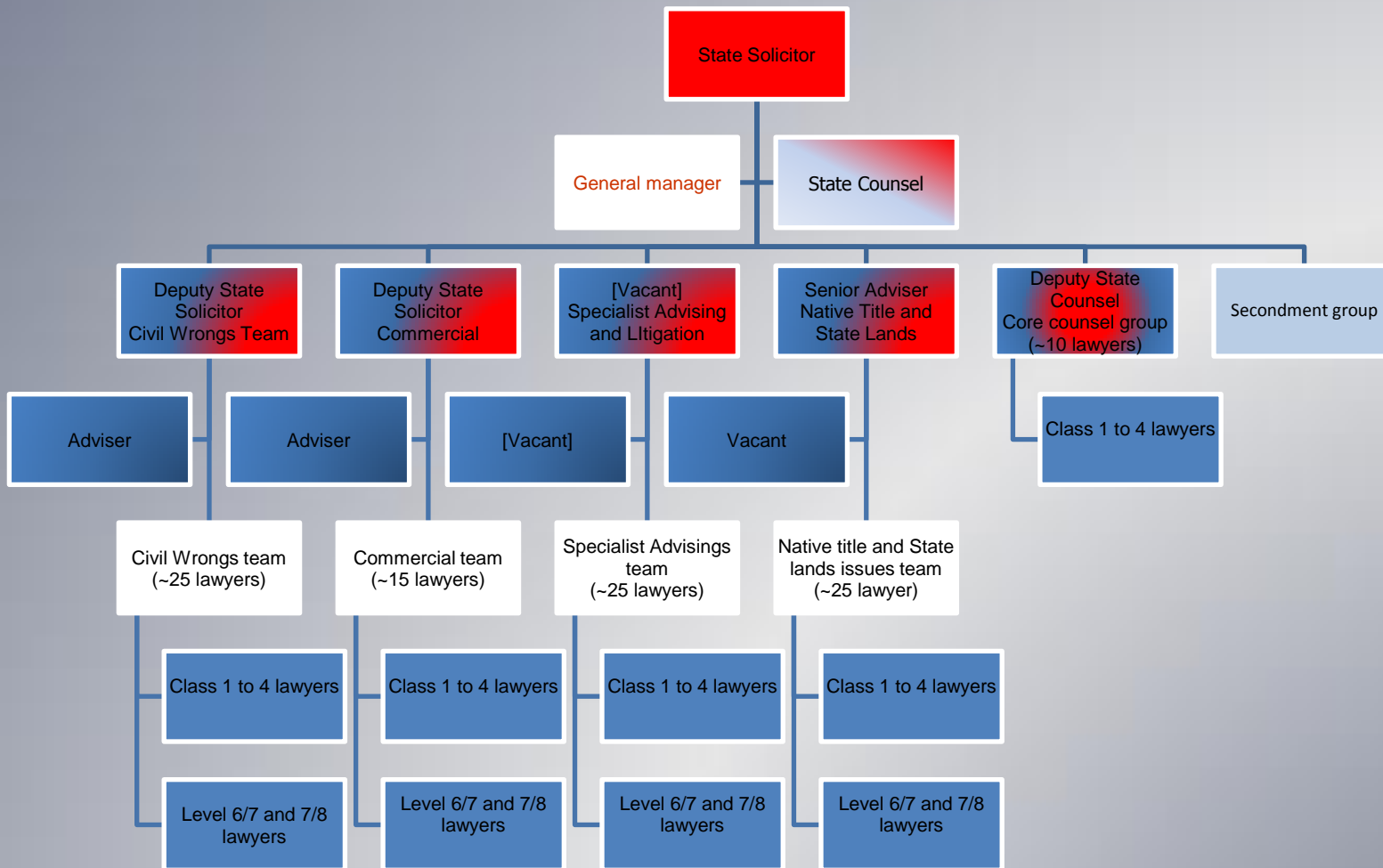
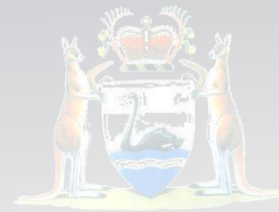
Michele Payne  
Adviser



Craig Bydder  
Adviser



Keith Whitehouse  
General Manager



## SSO a quick overview

The SSO is formally structured into 4 practice teams each headed by a senior lawyer plus the Counsel and secondment groups. Every lawyer is a member of a primary team, but may be an adjunct member of one or more additional teams.

Lawyers in their first 4 years are grouped into year “cohorts” with a dedicated team leader/coach to assist them through their first years of practice.



# In practical terms

The diversity of interests and skills amongst our lawyers means that many if not most of our lawyers practice in several areas at the same time.

Most of our lawyers, in particular in their first few years, will gain broad exposure to core work including:

- Departmental and Police prosecutions
- State revenue & debt recovery
- Town planning appeals
- Regulatory enforcement actions
- Single Judge Appeals
- Coronial inquests
- Drafting Formal advice and opinions

Functionally there is considerable scope for overlap in the activities of our 4 core teams, while the Counsel team supports all our operations with advice and representation in court.



# The management team

**The SSO's management team is responsible for the overall management of the Office and its staff, the allocation of work, budgeting and planning.**

**The State Solicitor and General Manager are supported by a small group that provides financial analysis and business management, human resources management and information systems and technology support to the SSO.**

## State Solicitor

Nicholas holds a Bachelor of Laws, a Master of Laws (Commercial law), an MBA, and is presently completing a Masters in Public Administration. Nicholas joined the State Solicitors Office in 2006 from the private sector, having worked in a number of jurisdictions including New South Wales (Sydney), England (London), Germany (Hamburg), the United States (New York), and Western Australia (Perth).

Nicholas has extensive experience in relation to very large construction and insurance litigation as well as front end complex social and economic infrastructure projects, having advised in recent times on matters such as Elizabeth Quay, Fiona Stanley Hospital, Perth Children's Hospital, new Perth Stadium, Perth Arena, Midland Hospital, Eastern Goldfields Regional Prison, and the Wheatstone and Macedon natural gas projects. Nicholas was appointed to his current position in 2012 and has overseen the doubling of the size of the Commercial Section, which has not only resulted in savings to Government, but has meant that the Section, and the Office, has been able to provide a broader range of commercial law services to government.

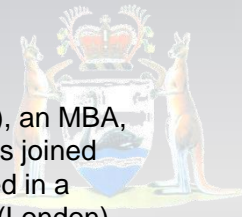
Nick was substantively appointed as the State Solicitor on 17 November 2017 following a merit selection process.

## General Manager

Keith Whitehouse was appointed General Manger of the SSO in 2012, the culmination of a career with the Public Service that spans almost 40 years. Over that time Keith has worked in a variety of roles in Court's & Tribunal Services and the State Solicitor's Office.

Trained and skilled as a litigation paralegal Keith has a wide experience in the practical operations of SSO having held a number of senior paralegal and senior managerial positions within the office.

Keith holds a Bachelor of Arts from the University of WA and is a member of the Australasian Legal Practice Management Association.





# Specialist Advising and Litigation

**SALT provides the SSO's core Government advisory practice and its commercial and specialist litigation capability, including sub-groups dealing with:**

- **Public Sector Management;**
- **Financial Management;**
- **Privacy and Freedom of Information;**
- **State Taxes and Revenue protection;**
- **Environmental law; and**
- **Specialist and commercial litigation.**

The State Solicitor heads the Specialist Advising and Litigation team assisted by

## **Craig Bydder, Adviser**

Craig joined the Office in December 1996 as Professional Assistant to the then Crown Counsel and graduated from Murdoch University in 1999 with a Bachelor of Laws degree (First Class Honours) and a Bachelor of Arts degree (History).

Since his admission in December 1999, Craig has provided legal advice to Government and its agencies in a wide range of areas, including constitutional, administrative, regulatory prosecution, tort, local government and planning and environment law. He has also appeared as counsel in these and other areas, including in the High Court, the Supreme Court (Court of Appeal and General Division), the District Court, the Magistrates Court and the State Administrative Tribunal.

Craig has supervised the Office's planning review and medical malpractice areas and guided two cohorts of the Office's junior lawyers in their first years with the Office. He also spent 17 months outposted with the Department of Agriculture and Food early in his career, providing both commercial and general legal advice and services.



# Civil Wrongs

**CWT deals with all kinds of disputes and issues relating to wrongs to the person, property and economic interests of the State, with specialist sub-groups dealing with:**

- **Medical negligence and health;**
- **Asbestos injuries;**
- **Insured claims (for RiskCover);**
- **Industrial relations;**
- **Equal opportunity and discrimination; Child protection and Hague Convention; and**
- **Coronial inquests.**

## **Ilse Petersen, Adviser**

Ilse graduated from the University of Western Australia with a B. Juris and Bachelor of Laws degree. After admission, Ilse worked predominately in the Administrative Law area.

In 1992 Ilse joined the Crown Solicitor's Office. She has provided advice and acted as solicitor on a wide range of civil matters; including workers' compensation, common law, medical malpractice and debt recovery. Ilse advises on legislation and policy matters, particularly relating to the family law and succession.

Ilse acts as solicitor and appears as Counsel in the Hague Convention Abduction of Children on behalf of the Central Authority. She supervises the Hague Convention Abduction of Children, "child abuse", and administration and guardianship matters in the Civil Wrongs Team.

Ilse has been the Convenor of Law Society's Equal Opportunity Committee and has served on the Law Society Council and held the position of inaugural secretary in the Western Australian Chapter of the Australian Institute of Administrative Law Inc. Ilse was the SSO representative on the WA Law Reform Commission for a period of six years.



# Commercial

**The Commercial Team delivers, alone or in conjunction with external service providers:**

- **Major infrastructure projects for the State through a variety of structures including;**
  - Public private partnerships;
  - DBOM, BOOT and D&C
  - Direct build; and
  - Alliancing;
- **Land and property acquisition and development;**
- **Major State procurement contracts and procurement frameworks; and**
- **Leasing of State buildings and accommodation;**

**as well as ongoing support to Departments in relation to their commercial activities.**

## **Angela Komninou, Adviser**

Angela holds a Bachelor Laws degree from the University of Western Australia.

Angela joined the commercial section of State Solicitor's office from the private sector in 1999, and specialises in large construction and social and economic infrastructure projects. Angela has been a key adviser to government on major projects including Eastern Goldfields Regional Prison, Queen Elizabeth II Medical Centre Car Park, NIB Stadium, 140 William St Development, Perth to Mandurah Railway Tunnel, and CBD Courts Development.

As Adviser Angela assists the Deputy State Solicitor (Commercial) in the management and organisation of the Commercial Section. She is part of the Senior Lawyers group in the SSO, and takes a role in the training of SSO lawyers, and is a member of the committee which deals with reclassifications of lawyers in SSO



# Native Title and State Lands

**NTSL deals with all matters relating to the acquisition and administration of State lands including:**

- **Native Title claims and agreements;**
- **Aboriginal Heritage;**
- **Compulsory acquisition of land;**
- **Compensation for the acquisition of land and related property interests; and**
- **Planning advice and appeals.**

## **Jeff O'Halloran, Senior Adviser**

Jeff graduated from the University of Western Australia in 1981 with a B.Juris, LLB, and has worked with the State Solicitor's Office (SSO) and its predecessors since 1982 in a variety of roles.

He has managed the SSO Recoveries section, and the Insurance Law/ Personal Injuries section, and since 1995 he has worked in and led the Land Claims section (now part of the Native Title & State Lands Team).

In this role, Jeff has managed the SSO's legal, research and paralegal team responding to the Commonwealth Native Title Act, including native title claim litigation and mediation in the Federal Court, through to significant High Court challenges by the State and other parties, National Native Title Tribunal arbitration, and associated superior court litigation involving indigenous issues and the State.

He has advised Governments and their agencies at the highest levels in respect of the development of native title and indigenous affairs policies, he has represented the State and assisted Attorneys General in their dealings with the Commonwealth Government on matters of native title law and policy, and he has worked with agencies in respect of major projects and native title settlements, including the historic South West Noongar settlement.

Jeff currently heads up the SSO Native Title & State Lands Team, the areas of practice including Native Title, Land Compensation, Town Planning and State Agreements.

He is part of the Senior Lawyers group in the SSO, and takes a role in the training of SSO lawyers, and is a member of the committee which deals with reclassifications of lawyers in SSO.

## **Michele Payne, Adviser**

Michele graduated from the University of Western Australia in law in 1985 before entering private practice.

Michele was admitted to the partnership of McLeod & Co, a leading Perth planning practice in 1989, spending 10 years as a partner before undertaking a Masters of Science in Urban Planning from Columbia University where she also spent time as part of the faculty. She returned to Perth to join SSO specialising in planning, land acquisition and compensation matters.

In addition to a busy practice, she has been a lecturer at the Curtin University of Technology, a member of numerous legal professional associations and committees, and a frequent publisher and presenter of papers on planning and related issues.



# Counsel Team

**The Core Counsel team comprises a small number of senior and experienced advocates who are responsible for:**

- **the provision of advocacy services in, in particular, superior and appellate courts; and**
- **the training, development and supervision of junior advocates within SSO.**

**The core counsel team is coordinated by Alan Sefton with support from George Tannin SC and other senior members of the counsel team.**

## **George Tannin SC, State Counsel**

George holds a Bachelor of Arts, Bachelor of Jurisprudence and Bachelor of Laws degrees from the Australian National University and the University of Western Australia. He is the most senior civil, criminal and regulatory law counsel in government practice in Western Australia with a history of involvement in the development of the law in Western Australia spanning over 30 years.

In the early 1980s and until 1992, first as Assistant Crown Counsel and later as Senior Assistant Crown Counsel, George regularly conducted major civil litigation including personal injuries, medical negligence, workers' compensation, industrial law, mining law, town planning, administrative law, liquor licensing, commercial arbitration and trade practices disputes involving the State and its instrumentalities. In addition, he advised and appeared as leading counsel in major criminal trials and appeals involving almost every facet of criminal law. In 1992 he joined the office of the Director of Public Prosecutions at the time of its creation, as a Senior Crown Prosecutor appearing as an advocate in the most difficult criminal matters. In 1997 he re-joined the then Crown Solicitor's Office as Senior Assistant Crown Counsel and was appointed as Counsel Assisting Mr Geoffrey Miller QC in the first Anti Corruption Commission special investigation, and in 1998 was appointed a Special Investigator by the Anti Corruption Commission, conducting a major investigation into police corruption. Since the 1990's he has become the State's principal counsel in relation to administrative law matters as well as industrial and regulatory litigation. He has appeared as counsel in more than 300 reported matters in the Supreme Court (at first instance and on appeal), Federal Court and High Court of Australia. He was appointed as Crown Counsel in 1999, took silk in 2002 and became State Counsel in 2003 (when references to the Crown were removed from a number of State positions, including SSO).

## **Alan Sefton, Deputy State Counsel**

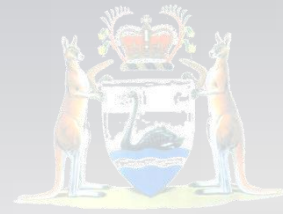
Alan commenced in the Office in 1992 after graduating with a Bachelor of Commerce and Bachelor of Laws with Honours from the Australian National University in 1991.

Alan has extensive experience practising as both solicitor and counsel across a broad range of areas including administrative law, common law, regulatory prosecutions, anti-discrimination, coronial, commercial, revenue and land compensation law. Alan also spent two years in the middle of his career outplaced at the Western Australia Police where he was predominantly involved in advising the then Commissioner of Police and his Assistant Commissioner for Professional Standards in relation to a wide range of complex and sensitive matters, including successfully negotiating with the Union the terms for the removal of police officers for loss of confidence.

Alan has extensive experience in conducting large scale commercial and other significant litigation for the State, both as solicitor and counsel, including, in particular, before the State Administrative Tribunal, Supreme Court, Court of Appeal and High Court.

Alan is a past legal member of the WA Infectious Diseases Advisory Panel and a national working group established to review and make recommendations in relation to management of health care workers with infectious diseases. Alan is the current Chairman of the Appeal Costs Board and was a Commissioner of the WA Law Reform Commission from August 2011 to 2016..





# Working with SSO

People, process, cost

# Contacting and briefing SSO



## Who to contact:

**In the ordinary course, requests for legal advice, assistance or representation should be:**

1. made in writing; and
2. be addressed to the General Manager of the SSO.

**In very urgent cases you may contact a senior lawyer with whom you have had prior dealings in a relevant matter but preferably:**

1. The State Solicitor.
2. State Counsel or Deputy State Counsel for serious litigious matters.
3. A Deputy State Solicitor, Senior Adviser or Adviser

**To ensure the most prompt and effective briefing of your instructions to the right legal officer it greatly assists the conduct of your matter if you follow these Guidelines in briefing SSO.**

## Our general contact details are:

**The General Manager  
State Solicitor's Office  
David Malcolm Justice Centre  
28 Barrack Street  
Perth WA 6000**

**Telephone: 08 9264 1888**

**By Facsimile: 08 9264 1111**

**By E-mail: [sso@sso.wa.gov.au](mailto:sso@sso.wa.gov.au)**

**You will always get a timely response by using this channel to contact SSO.**

# There are three critical things to supply when briefing SSO:

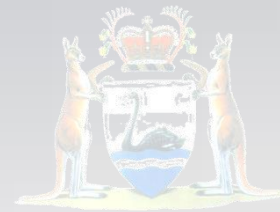
- 1. The name and full contact details of the briefing officer within your Department or agency and the name of any in-house legal officer involved in the matter.**
- 2. Your agency reference - file number, cost code or other (preferably unique) identifier which should appear on your correspondence and our correspondence and accounts.**
- 3. A brief assessment (and preferably explanation) of the importance and urgency of the matter.**

## In addition you should provide to SSO:

- a succinct statement of the relevant facts giving rise to the issue on which you need help;
- copies of:
  - all relevant documents that you have, and where any documents that you do not have may be obtained;
  - any correspondence between your Department or agency and third parties;
  - any court documents with which you have been served which relate to the matter, immediately they have been received (and the date of service);
  - any policies relevant to the matter of which you are aware (including those of other agencies, if relevant) that may have a bearing on the advice to be provided;
- details (including copies where possible), of any legal advice which has already been provided in relation to this issue, including any provided by your in-house lawyers, SSO or external service providers;
- reference to any statutory provisions of which you are aware which you think may have a bearing upon the issue, in particular to your portfolio primary and subsidiary legislation;
- a summary of specific issues that make the matter sensitive for your Department or agency or Government generally;
- details of any discussions you may have had with third parties about these issues and in particular any representations or concessions made in relation to them; and
- the name and contact details of the person within your organization to whom factual or policy queries should be directed.

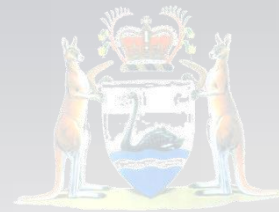
Generally speaking, it is difficult and inappropriate to provide legal advice in relation to hypothetical questions. This is because in almost all cases the answer to a legal problem will depend on the specific factual context in which the problem arises. You should, therefore, avoid asking hypothetical questions where possible.

We are, however, more than happy to discuss, and given formal advice as appropriate, on various options which may be available to provide real solutions to a problem.





# Urgency and importance



To allocate your matter properly we need to know how urgent and how critical your matter really is. SSO now uses a matrix test to assess urgency and importance, reflecting the risk management assessment framework common across large parts of Government.

Our standard time frame for routine *advice*, unless greater urgency is required, is 30 days. If you need advice faster than the standard time please be specific: eg: within 4 hours, by date ##, and tell us why!

Assessing criticality requires you to assess the potential impact of your issue upon your Department or agency, and more broadly upon Government and report that assessment as part of the briefing as a simple 0 to 5 score (using the highest score on any of the 4 risk criteria).

Risk criteria				
Score	Value at risk \$	Reputational risk (of Government/Department)	Compliance risk (by Government/Department)	Operational efficiency risk (of Government/Department)
0	<10,000	No impact no news value	Minor regulatory issue	No material impact.
1	<100,000	Very low impact, negligible news value or risk to Departmental credibility	Business area procedures issue. Moderate regulatory issue.	Little impact.
2	<1,000,000	Low impact, some news potential. PSC probity issue	Internal policies and guidelines issue. Significant regulatory issue.	Inconvenience in operations.
3	<5,000,000	Some impact and news potential, some risk to Departmental credibility. Possible Ministerial/Parliamentary question. Parliamentary Ombudsman issue. Possible CCC/WAPOL issue.	Executive instructions issue. Minor disciplinary issue. Important regulatory issue.	Delay in significant deliverable.
4	<20,000,000	Substantial impact and news coverage, real risk to Departmental credibility. Ministerial/Parliamentary questions. Significant CCC/WA Police issue	Breach of Federal or State law. Significant disciplinary action. Critical regulatory issue.	Failure of significant deliverable. Delay in key policy initiative.
5	<50,000,000	Severe impact. Sustained news coverage. Severe damage to Departmental credibility. Independent inquiry. Prosecution likely.	Breach of core Federal or State law or constitution.	Failure of key policy initiative.

# Defining deliverables



It is very important that in briefing SSO you make clear, as early as possible, what you expect the “deliverable” to be.

That may be:

1. **Written advice on a specific question;**
2. **Help in the resolution of an identified problem;**
3. **Assistance in undertaking negotiations;**
4. **The preparation of a document to achieve a specific objective;**
5. **Representation in a legal proceeding and the outcome sought to be obtained in that proceeding.**

**The list is not exhaustive.**

**Generally, where advice has been sought in writing it will be provided in writing:**

1. Oral advice may be provided where the lawyer involved considers it appropriate but usually only for routine and minor matters. For example it may be appropriate to provide oral advice where the advice is needed urgently or where it is sought orally and concerns a relatively simple or routine matter. More complex advice, even if given orally on a preliminary basis, will be recorded in more formal written advice.
2. To ensure rigour in advice, reduce the risk of inappropriate onward transmission and assist in the maintenance of legal professional privilege SSO policy generally prohibits lawyers from providing substantive legal advice in the body of an e-mail (although a scanned PDF copy of an advice may be sent as an attachment to an e-mail in the interests of expedition).
3. Written advice should identify the issue briefed, SSO’s opinion as to the answer to the issue briefed, a recommended course of action (where appropriate), a level of confidence in relation to that answer where there is uncertainty, and some consideration of the risks (to the extent that they are identifiable) associated with the answer and the recommended course of action.
4. Sometimes it may be apparent in the course of addressing the issue briefed, that other questions may be relevant, and that needs to be answered. The briefed legal officer should discuss with you those additional questions.
5. Sometimes it is desirable for an opinion or advice to be provided to you in draft. In doing so, that advice is not provided for negotiation, but for the purpose of ensuring that the issues or questions posed have been properly identified, and that the advice addresses the issues with which you are concerned.
6. SSO provides frank, fair and objective advice on legal issues. Client organisations are responsible for making operational and policy decisions having taken that legal advice into account. On some occasions when legal and policy issues overlap, we may make some comment on matters of policy. Generally, however, legal advice will deal only with legal issues and will leave policy questions for the determination of the organisation seeking the advice.

# Allocation and communication

When your instructions are received they will be assessed:

1. for urgency and importance;
2. against current workload within SSO;
3. with a view to assigning the matter to the “best fit” in terms of experience, skills and availability.

This may involve consultation with a number of senior lawyers within SSO to allocate the appropriate legal officer. Some matters may require the tasking of a balanced team, and others will require peer review or the allocation of a senior lawyer to provide oversight and assistance.

When your instructions are received SSO goes through the following the process:

1. We assess whether the instructions are sufficient to be allocated, and a matter which is properly handled by SSO;
2. We will acknowledge receipt of the instructions and identify any preliminary difficulties, usually within **2 business days** of receipt;
3. The instructions are then briefed to the appropriate legal officer, a file created and a file number allocated;
4. The allocated legal officer or a paralegal working with them, will communicate to you:
  - a) the name and contact details of the legal officer briefed,
  - b) the file number;
  - c) a preliminary assessment of whether the matter is core, non-core or mixed;
  - d) any preliminary additional information requests;
  - e) if necessary, a suggested time frame for a preliminary meeting or telephone discussion to clarify any aspects of the instructions;**within 5 business days** of the receipt of instructions.
5. Your instructions will then be queued according to their urgency and importance. However, our benchmark response times are:
  - a) For urgent advice on a matter of importance: **4 – 72 hours from instructions**;
  - b) For standard operations of government advice: **within 30 days from instructions** (approximately 35% of instructions are completed within 10 days, and 65% within 30 days);
  - c) For commercial advice, timing will vary according to the requirements of the transaction;
  - d) For Departmental prosecutions, *indicative* timings are:

Simple prosecutions:

1. Preliminary assessment: **1 month from instructions**;
2. Clarifications: **2 months from instructions**;
3. Prosecution advice and prosecution notices: **3 months from instructions**

Complex prosecutions:

1. Preliminary assessment: **2 months from instructions**;
2. Clarifications: **2-4 months from instructions**;
3. Prosecution advice and prosecution notices: **6 months from instructions**



# Briefing departmental prosecutions



## Departmental prosecutions present a number of specific challenges in briefing:

1. The Office handles the prosecution of regulatory offences for numerous departments and agencies. That service includes:
  - a) the initial assessment of the prosecution “brief”,
  - b) the drafting of a prosecution notice;
  - c) appearances in Magistrates Court around the State;
  - d) conducting or defending appeals to superior courts.
2. Wherever possible, the counsel who assesses the brief will appear at the trial. In more serious prosecutions they may do so as junior to a more senior lawyer who has been consulted in the course of preparing the prosecution.
3. The initial assessment of the brief determines whether the evidence presented discloses a *prima facie* case. This is a question of law and involves SSO determining whether Court could conclude beyond reasonable doubt (on the basis of the available evidence) that all of the elements of the offence have been established.
4. In order to proceed, the prosecution must also be in the public interest – here the primary assessment is whether there are reasonable prospects of securing a conviction based on the available evidence but other factors come into play..
5. Although primarily directed to the prosecution of indictable offences, the *Statement of Prosecution Policy and Guidelines 2005* issued by the Director of Public Prosecutions provides useful guidance on these matters and is applied by the SSO in assessing and managing prosecutions.
6. The aim of the Office is to ensure that where a prosecution is appropriate, the prosecution is commenced as quickly as possible consistent with mounting a robust case.
7. To achieve that the brief must progress through 4 distinct “gateways”:
  - a) Preliminary review and allocation by the prosecutions manager;
  - b) Detailed assessment of the brief by allocated counsel.
  - c) Preliminary advice on prospects and evidence. This will often include a request for further evidence or the clarification of materials in the brief.
  - d) Draft prosecution notice and particulars for consideration by briefing agency.
  - e) Final decision to prosecute and issue of prosecution notice.

A level of peer review occurs within SSO appropriate to the complexity and seriousness of the charges at each stage.

## Challenges in briefing prosecution matters:

- The prosecution brief is the most crucial factor in ensuring that prosecution action occurs promptly.
- When the brief contains all of the relevant evidence needed to make the assessments referred to in 2 and 3, opposite, the task of counsel in assessing the brief in a timely fashion is made very considerably easier.
- When the brief is:
  - missing key information; or
  - conversely, contains extensive irrelevant material,then the task of counsel assessing the brief is more difficult and additional time is required.

In planning, researching and preparing a prosecution brief it is very important to:

- focus on the purpose of the brief – which is to provide material that could be used as evidence:
  - to support a charge; and
  - identify possible defences that may be raised and which needs to be assessed;
  - distinguish between the contents of a brief and the contents of a report prepared for a regulatory investigation or coronial inquest, where different considerations, including policy recommendations, may be in issue;
- ensure that witnesses are properly identified and are likely to be available during the assessment period and for trial;
- maintain the structural and physical integrity of documentary materials, in particular by:
  - segregating investigators’ notes from materials produced by compulsive procedures ;
  - ensuring that each bundle of compelled materials is keep intact in the form in which it was produced and supplied with a copy of the relevant compulsion notice; and
  - properly cross-referencing witness statements to documents referred to in those statements; and
- have regard to the principles of admissibility of evidence relevant to the specific nature of the prosecution action that is contemplated.

# Briefing civil, commercial and other litigation



**SSO conducts all types of litigation on behalf of Departments and agencies including:**

- **Tortious liability and loss claims (including medical injury, personal injury workers compensation and property damage claims);**
- **Contractual claims (including building and construction, procurement and other contract disputes);**
- **Administrative law challenges to Government action;**
- **Employment claims;**
- **Discrimination claims;**

**And has tools, systems and processes, including document management tools, and experienced support staff, to handle all scales of case.**

**When working with a client that is frequently involved in a particular type of claim SSO will often become familiar with the preferred approach, and business risks, which will be raised by a particular type of case.**

**Particular cases and types of cases may, however, raise particular sensitivities, such as:**

- **Policy or precedential issues;**
- **Operational impacts;**
- **Political sensitivities;**
- **Loss provisioning;**
- **Reporting requirements;**
- **Timing issues.**

**It is important to proactively engage with SSO to identify any constraints that such issues may impose on the conduct of the litigation, and how we can assist in meeting or mitigating those issues.**

**In all cases SSO will assist clients to act as Model Litigants.**

# The model litigant, prosecutor and counterparty



The State is a model litigant, a model prosecutor and a model commercial counterparty in its business dealings.

That has very significant implications for the way in which the SSO undertakes its role as a legal representative for client Departments and agencies.

In representing your Department or agency we will:

1. abide by our ethical obligations as legal professionals; and
2. ensure that you and other Departments and agencies comply with relevant obligations as a model litigant, prosecutor and commercial counterparty.

What that means in practice is that on some occasions the things that we do, and advise you to do, will appear to be at odds with your objectives and may not be what you would like us to do.

If so, that is because that is what in our view is necessary to discharge the State's obligations.

That is particularly important in relation to Departmental prosecutions, where compliance with State prosecution guidelines and Professional Conduct Rules requires the exercise of independent judgement as to whether there is a reasonable prospect that the prosecution will succeed.

The model litigant sentiment is captured in this passage from a recent full Federal Court decision:

[42.] *Speaking generally and without reflecting on counsel who appeared before us, being a model litigant requires the Commonwealth and its agencies, as parties to litigation, to act with complete propriety, fairly and in accordance with the highest professional standards. This obligation may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations ...[there is], in the words of Griffith CJ in Moorhead, an "old-fashioned traditional, and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects". Its powers are exercised for the public good. It has no legitimate private interest in the performance of its functions. And often it is larger and has access to greater resources than private litigants. Hence it must act as a moral exemplar.... In our opinion, counsel representing the executive government must pay scrupulous attention to what the discharge of that obligation requires, especially where legal representatives who are independent of the agency are not involved in the litigation.*

*LVR (WA) Pty Ltd v Administrative Appeals Tribunal*  
[2012] FCAFC 90 (22 June 2012)

It is a sentiment that goes back a long way:

*I am sometimes inclined to think that in some parts – not all – of the Commonwealth, the old-fashioned traditional, and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary, is either not known or thought out of date. I should be glad to think that I am mistaken*

*Melbourne Steamship Co Ltd v Morehead (1912) 15 CLR 333 at 342 per Griffith CJ*

# Costs recovery



SSO is not fully funded for its cost of operations.

Accordingly, where SSO is successful in litigation:

1. If the matter is core work, and the party-party costs incurred by the SSO have not been paid for by the client Department or agency in the course of the proceedings, then any costs awarded to that Department or agency as a result of the successful conduct of the litigation flow to the SSO. If the Department or agency has funded any disbursements in the course of the proceedings, and a specific award of costs is made in respect of those disbursements, then the quantum ordered in respect of those disbursements will be reimbursed to the Department or agency. Where a costs order or agreement is achieved for a global sum (inclusive of legal work and disbursements), and the quantum is less than the total amount claimed for the legal work carried out and the disbursements funded, then the global sum will be allocated between the SSO and the Department or agency by agreement, but in default on a pro rata basis (such that both the SSO and the Department or agency will recoup the same percentage of the amount claimed for legal work carried out, or disbursements funded).
2. Where a Department or agency requests that external counsel be briefed when SSO has available counsel (but not where SSO recommends or requests that external counsel be briefed) any award of costs will first go to meeting SSO's party-party costs, and only after those costs have been met the balance will be applied to the fees charged by external counsel.
3. If the matter is non-core work, and has been paid for by the client Department or agency, recovered costs and disbursements will be reimbursed to the client Department or agency.

Usually, the State, Departments and agencies are defendants in litigation, but whether plaintiff or defendant there is a cost risk in relation to that litigation.

Where that cost risk lies depends upon the nature of the matter.

SSO is funded to provide legal services through its establishment. It is not funded to provide the costs of procuring external services such as:

1. Expert evidence;
2. Specialist forensic services; or
3. External counsel;

and these must be funded from the resources of the briefing Department or agency.

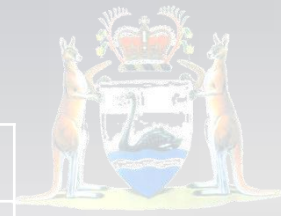
Where costs are recoverable, and accrued to SSO's account, SSO cannot (for budgetary reasons) and should not (for policy reasons), forego those costs.

Exposure to costs risk imposes an important discipline upon parties to litigation, assists in focusing the parties upon matters properly in dispute, and ultimately should minimise the total cost risk of all parties.

SSO maintains an expertise in the assessment and taxation of litigious costs and will prepare, from time to time during the conduct of significant litigation, estimates of the current costs at risk for all parties.

At the conclusion of litigation, if the State is successful, SSO will proceed to tax a bill of costs, upon the basis allowable under the prevailing Scale of costs (which may be different to the internal costs, in core work) and seek to recover those costs against the unsuccessful party.

# Scale of costs



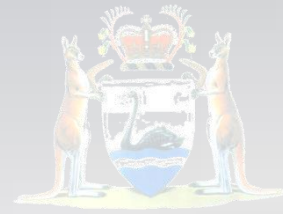
**You will receive a bill from us detailing:**

1. in relation to “core” work (in respect of which no charge is payable by you), the services provided and the cost to SSO of providing those services;
2. in relation to “non-core” work (in respect of which charges are payable by you) the services provided and the associated charges;
3. in either case, any disbursements (at cost) [etc, including identifying the means of payment]; and
4. in either case, any disbursements (at cost) which we incur to third party suppliers for goods and services required to perform the work that you have requested.

**Any amount payable is required to be paid within 30 days of delivery of the bill.**

<b>POSITION</b>	<b>HOURLY RATE</b>
State Solicitor	\$335
State Counsel (SC rate)	\$325
Deputy State Solicitor	\$325
Senior Adviser	\$315
Adviser	\$305
Senior Assistant State Solicitor / Counsel	\$300
Assistant State Solicitor / Counsel	\$260
Senior Solicitor	\$230
Solicitor	\$170
Trainee Solicitor (Articled Clerk) Professional Research Assistant	\$110
Senior Managing Law Clerk	\$120
Managing Law Clerk	\$105
Senior Law Clerk	\$80 - \$105
Law Clerk	\$65 - \$80
[All rates are exclusive of GST] State Solicitor's Office	

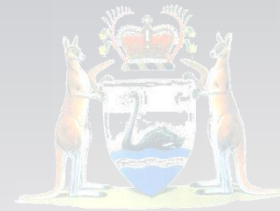




# Working with outside lawyers

Through SSO

# Using outside lawyers



**SSO has a State Supply Commission exemption for the procurement of external legal services.**

**It also has excellent relationships with a number of top tier law firms, at deeply discounted rates.**

**To assist in the consistency of briefing and delivery of services by external service providers, Legal Services Guidelines have been prepared to provide a framework for the provision of services by external service providers.**

A key part of our role is to assist Departments and agencies to manage external legal counsel who may be retained to assist either SSO, or a Department or agency, to undertake a specific matter or related matters.

Over the last 13 financial years the State Solicitor's Office assisted client Departments and agencies in managing external legal services provided primarily in connection with the undertaking of a number of major infrastructure development projects (including the development of the Fiona Stanley Hospital, New Children's Hospital, Midland Hospital Campus, and the facilitation of the Browse ILUA, the Macedon and Wheatstone projects and a number of major road projects).

This has involved supervising more than \$95 million of externally provided work.

Over the last financial year this included over 37,000 hours of professional work at an average cost of \$416 per hour.

This service was provided principally to the Departments of Treasury, Finance, Health and State Development, Main Roads and the Public Transport Authority.

Core work is rarely briefed out and will be briefed only where there is an acute shortage of SSO resources and particular expertise of a very high level is required or a specific circumstance precludes SSO from acting.

To assist Departments and agencies in briefing external legal services where that is necessary and cost effective:

1. SSO has developed and published to the private profession a set of Guidelines for the Undertaking of Legal Services for the State of Western Australia its Departments and Agencies (released 1 November 2012) which sets out a comprehensive suite of service standards and practice guidelines for the private profession in providing services to the State;
2. SSO maintains an informal and flexible panel of leading general practice and specialist law firms, who have agreed to a common rate structure determined by SSO after market soundings and analysis, and to compliance with the Guidelines, whose services are procured under SSO's procurement exemption under the *State Supply Commission Act* and who can be briefed quickly and flexibly as needs dictate;
3. SSO has established protocols for briefing firms, billing and reporting and supports Departments and agencies by peer reviewing matter plans and bills submitted by law firms.
4. Where appropriate and in particular on large and complex projects SSO will provide a dedicated resource to act as Governmental legal adviser to oversight an external provider and provide specific advice on the operations, rights and obligations of Government.