

Requests for the intervention of the Attorney General in court or tribunal proceedings

Factsheet

Under Australia's system of justice, courts and tribunals make their decisions independently, according to the law, and based on the evidence presented to them.

The NSW Parliament makes the law in NSW and the Executive governs the State in accordance with the law. It is the role of courts and tribunals to interpret the laws made by Parliament. A court or tribunal may examine the law to determine its validity and, if valid, will apply the law to the facts of the case before it.

This independence of courts and tribunals helps maintain community confidence that the justice system is fair and impartial. The principle of judicial independence means that adjudicators decide cases fairly, without interference from the Executive or Parliament.

The role of the NSW Attorney General

The NSW Attorney General is the legal advisor to the Government of NSW. The Attorney General is responsible for representing the State and may act on its behalf in all legal proceedings in which the State is a party.

The Attorney General also has a range of administrative responsibilities regarding the justice system in NSW. These include an obligation to ensure the system:

- is fair and efficient
- is consistent in the level and nature of penalties imposed under the law
- observes the rules of natural justice, and
- preserves civil liberties.

However where court or tribunal proceedings do not involve the State, the circumstances in which the Attorney General might intervene are very limited. Those circumstances are described over

the page. The Attorney General does not become involved in private legal disputes between individuals.

Intervention by the Attorney General in legal proceedings

The Attorney General has no power to 're-open' civil proceedings which have been finalised by a court or tribunal, or to review their decisions.

The Attorney General may become involved in active or ongoing civil proceedings, where there is a public interest that would not otherwise be protected before the court. For example, the Attorney General may become involved in proceedings if there is no other party (contradictor) to the proceedings. The Attorney General may also intervene if the matter is one of significant public importance, that is, the outcome of the matter has significant implications for the community, which go beyond the interests and concerns of the parties involved in the proceedings.

The meaning of 'no proper contradictor' is that there is no party in the proceedings who can appropriately put forward an opposing view to the court or tribunal. The meaning of 'significant public importance' is that the outcome of the matter has significant implications for the wider public, which go beyond the interests and concerns of the parties involved in the proceedings.

In most cases, the Attorney General will seek leave from the court or tribunal before becoming a party to the proceedings. On some occasions, the court may request assistance from the Attorney General where there is a matter of public importance that may not be adequately addressed by the parties. In this capacity, the Attorney General is *amicus curiae* or 'friend of the court'.

There are also a few examples where legislation specifically provides for some form of intervention by the Attorney General. These include section 44 of the *Civil and Administrative Tribunal Act 2013* and section 13 of the *Contracts Review Act 1980*.

Where proceedings raise any issue involving the constitutional power of the Commonwealth, the parties must give notice to the Attorney General and there is a right for the Attorney General to intervene.

If the Attorney General intervenes in proceedings then all the rights of a party, including the right to appeal usually follow.

Criminal proceedings

The NSW Police Force and the NSW Director of Public Prosecutions are generally responsible for prosecuting criminal charges. They perform that function independently of the Attorney General. The Director of Public Prosecutions may consult with the Attorney General, but the Director of Public Prosecutions acts independently and is not subject to the direction of the Attorney General.

Although the Attorney General maintains certain powers in relation to the commencement of criminal proceedings and appeals, these are only exercised in extraordinary circumstances, for example, where the Director of Public Prosecutions has a conflict of interest. For further information, see the fact sheet called 'Review of convictions or sentences'.

There is also an Attorney-General for Australia, who is a Minister in the Australian Government. The NSW Attorney General cannot comment on the responsibilities of the Attorney-General for Australia, which include family law, federal criminal law, bankruptcy law and national security. The Attorney-General for Australia can be contacted by writing c/o Parliament House, Canberra ACT 2600.

DISCLAIMER: This fact sheet contains general information only, is not legal advice, and does not take into account individual circumstances. You should seek independent legal advice about your own particular circumstances. Neither the Attorney General nor the Department can provide legal advice.