Legal Procedure - Court Orders, Claims and Investigations

Section 1 - Purpose

(1) This procedure supports the Legal Policy and sets out procedures for the management of court orders, claims and government and police investigations.

Scope

(2) This procedure applies to all employees and organisational units of Charles Sturt University (the University).

Section 2 - Policy

(3) This procedure is made under the Legal Policy.

Section 3 - Procedure

Part A - Procedures for dealing with court orders

What is a court order?

(4) A court order is any order issued under the seal of a court and includes a subpoena, summons, notice to produce, search warrant or writ. A court order may require a party to attend court or to produce documents to the court. Non-compliance with a court order without a lawful excuse may have serious consequences (for example, you may be held in contempt of court and a warrant may be issued for your arrest, and you may also be ordered to pay another party's legal costs).

Instructions for service of court orders upon the University and identifying who should respond

(5) If a third party wishes to arrange service of any court order upon the University, they should address the court order to "The Proper Officer, Charles Sturt University", to the following address for service:

> Legal Services
> Charles Sturt University
> 346 Leeds Parade
> ORANGE NSW 2800
> Attention: The Proper Officer, Charles Sturt University.

Any court order received by the University must then be forwarded to the responsible officer (see clause (8)) who is named as having responsibility for arranging the University's response for the relevant type of court order.

(6) If a court order is left with, posted to or served elsewhere in the University, the court order must be immediately

sent to the responsible officer (see clause (8)) who is named as having responsibility for arranging the University's response for that type of court order, with a copy to the General Counsel, Legal Services. Any failure to effect proper service or delay in notifying the responsible officer of service of the court order may cause substantial delays in responding to the court order, which could be prejudicial to the University.

(7) If a third party attempts to serve a court order on the University that is materially defective (for example if it is not addressed to the University or if the last date for service named in the court order has passed) then service should generally not be accepted.

(8) The following are, at the date of approval of this procedure*, the 'responsible officers' for various types of court orders who have responsibility for arranging the University's response to the court order on behalf of the University:

Court orders for production of employee records	Executive Director, People and Culture
Court orders for production of student records	Division of Student Experience email: partners@csu.edu.au Attn: Manager, Partners
Court order for the production of subject materials, course materials or related materials	Executive Dean of faculty
Court orders requiring an employee to give evidence	The named employee (any employee who is required to give evidence in their professional capacity should notify Legal Services immediately)
All other court orders	As determined by Legal Services

*Note: Responsible officers may change from time to time, General Counsel should be consulted for any changes.

(9) After finalisation of the University's response to a court order, the responsible officer must register in the University's records management system with restricted access (which file must be individually marked ‘Strictly Confidential’ or ‘Commercial in Confidence’):

a. a copy of the court order, and
b. all information supplied or other actions taken in response to that court order.

Responding to a court order - timeframe for compliance, information to be provided and identifying defects

(10) A court order must be complied within the specified compliance time frame (known as the 'return date' in a subpoena for production), unless special circumstances apply as described in this procedure or otherwise permitted by law.

(11) In the case of a subpoena for the production of documents the University generally must supply all documents information required by the court order in the timeframe provided (typically unless the University has contacted the issuing party and arranged to reduce the scope of the subpoena).

(12) Upon receipt of a court order, the responsible officer must immediately:

a. identify any defects in the court order
b. identify the date required for compliance (return date), and
c. determine what response the court order demands and whether the University can comply. For example:
    i. in the case of a subpoena for production of documents the responsible officer must:
        - assess what documents are requested and consider whether there are any grounds for having the subpoena set aside (for example, in the case of a subpoena for production, if the documents

sought are so broad as to be oppressive or if the subpoena is not seeking evidence directly relevant to the case), and

- determine whether the information requested is held by the University, and
- determine whether the information requested can be collated and returned in the timeframe required.

ii. in the case of a subpoena to give evidence the responsible officer must assess:

- whether the requirement to give evidence relates to their professional capacity, in which case the employee must comply with that notice or, if they do not wish to comply, they may discuss the matter with Legal Services, or
- whether the requirement to give evidence relates to their personal capacity, in which case the employee must make their own assessment of their obligations.

(13) The responsible officer should contact Legal Services for legal advice in relation to a court order if:

a. the University is named as a party to litigation
b. the responsible officer believes there may be defects in the court order (for example, if the return date is less than five days and the court has not approved the short return date, or if the information is so broad as to be oppressive)
c. the information being sought is not directly relevant to the matter in issue in the relevant proceedings (in which case the University may consider contacting the issuing party to try to reach agreement on a reduction in the scope of the information)
d. the cost of locating and producing the information sought may be excessive (as the University may be entitled to seek an indemnity for its reasonable costs)
e. the requested information includes legal advice or correspondence with Legal Services
f. the requested information includes counselling records relating to a sexual assault
g. the responsible officer does not believe they will be able to comply with the court order in the required timeframe (to discuss options for obtaining an extension of time), or
h. the responsible officer believes the information should not be supplied, or part of the information should not be supplied.

(14) The General Counsel may determine whether or not to oppose the court order or seek extra time to comply. The General Counsel may also determine whether or not to claim legal professional privilege over certain documents, after consultation with the University Secretary or Vice-Chancellor.

(15) The information required by the court order must be supplied by the time limit set out in the court order unless legal advice confirms otherwise.

(16) All employees must provide such assistance to the responsible officer as is required to comply with the court order within the timeframe provided.

Fees for complying with a court order (conduct money)

(17) Fees accompanying a court order are normally referred to as 'conduct money'. In the case of a subpoena conduct money should be included to provide reasonable compensation for the cost to the University of complying with the subpoena. If the cost of locating and producing the information sought is likely to exceed the amount of conduct money provided, contact Legal Services to seek advice on whether the University can and should seek an indemnity for its reasonable costs.

(18) Unless otherwise determined by the court or specified in the legal guidelines, the General Counsel may determine the amount of conduct money required by the University.

Part B - Management of claims by or against the University

(19) From time to time the University may become involved in claims involving third parties (refer to the Legal Policy for the definition of a claim) which can sometimes escalate to litigation or other significant legal action by or against the University.

(20) This procedure does not apply to:

a. complaints, being expressions of concern, dissatisfaction or frustration with the quality or delivery of service, a policy or procedure, or the conduct of another person. Complaints are to be managed in accordance with the University's Complaints Management Policy or by other processes under other statutory or policy frameworks, except where these escalate to action through a court, tribunal or regulatory authority
b. disputes or litigation involving the University or a university controlled entity that are handled by the University's insurers (for example, worker's compensation, public liability claims), or
c. matters under investigation for the purposes of the Independent Commission Against Corruption Act 1988, which are handled in accordance with the Fraud and Corruption Control Policy.

Responsibilities of employees in respect of actual or potential claims

(21) Any employee who becomes aware of any actual or potential claim against the University or a controlled entity should contact Legal Services immediately and provide all relevant details (see Legal Procedure - Requesting Legal Advice).

(22) Employees should provide to Legal Services all information and documents related to the claim available to them (including emails, letters, statements of claim and court orders), even if these documents do not reflect favourably on the University or individual employees. Selective disclosure of information could result in action being taken, or legal advice being given, on the basis of incorrect or misleading information about the facts and circumstances of the relevant matter. Full disclosure will assist Legal Services in making an initial assessment of the merits of the claim and, where appropriate, provide opportunity to try to resolve it without further escalation. Delay in notifying Legal Services could result in the claim escalating unnecessarily.

(23) A formal claim against the University can be in a number of forms, including:

a. a letter of demand from an individual or an organisation, or their lawyer
b. a letter from a regulatory authority, including a court or a tribunal, or
c. a court order.

(24) Employees who believe that the University has or may have a claim against or a dispute with a third party relating to the business of the University (for example a breach of contract) should contact Legal Services as soon as possible and provide all relevant information and documents. Legal Services will then assess the merits of the claim (which may include obtaining external legal advice) and then prepare a report and recommendations for further action to the Vice-Chancellor or other appropriate executive for instructions.

(25) All employees must ensure that all documents and communications relating to a claim are preserved and maintained in accordance with the University's Records Management Policy to ensure the integrity of the University and controlled entity records and compliance with any rules or orders of courts or tribunals relating to discovery or production of documents.

(26) If a claim involves damage to property owned by the University or a controlled entity, that property should be preserved and secured to avoid evidence being tainted or tampered with. Wherever possible, a physical record (such as a photograph or video) should be taken of the damaged property, together with a note of who made or took it,

when and where it was made.

(27) If a claim involves possible termination of or other action under an agreement by the University (or a controlled entity) for breach by the other party, it is essential to first obtain advice from Legal Services. Failure to follow any requirements set out in an agreement or required by law can result in action against the University (or controlled entity) by the other contracting party. Legal Services can assist in providing legal advice to ensure that:

a. all potential commercial and other risks and benefits of termination (including disengagement) have been properly identified and assessed
b. the University (or controlled entity) does in fact have proper reasons for terminating, and
c. notice of termination is given correctly in accordance with the process described in the agreement or required by law.

(28) Employees must not discuss any claim or disclose any records or information about a claim to any person outside the University (or controlled entity) under any circumstances (other than external legal advisers engaged to assist with the claim), or to any other employee unless they are directly involved and have an absolute "need to know". This will ensure that is:

a. the University (or controlled entity) is able maintain any claim it might have for legal professional privilege (see the Legal Guidelines - Legal Professional Privilege), and
b. the interests of the University (or controlled entity) are not compromised through inadvertent disclosure or admission of liability.

(29) Employees should also exercise caution and be circumspect in all communications (especially emails) about a claim to minimise the risk of compromising the interests of the University (or controlled entity). These communications are potentially discoverable in any litigation, or else could be subject to disclosure under the Government Information (Public Access) Act 2009.

Vice-Chancellor may authorise the commencement of litigation

(30) Only the Vice-Chancellor has delegated authority to commit to, or authorise the commencement of, litigation or similar significant legal action or other claims on behalf of the University, against third parties (other than debt recovery action undertaken by an authorised delegate under a University delegation), after obtaining legal advice. Where external legal advice is required, the Vice-Chancellor's authority is subject to any limits on their delegated authority to incur legal expenditure in the University's delegations (meaning approval may need to be sought from the Chancellor, Council Executive Committee or Council to commence litigation).

(31) No other employee may commence legal action or other claims against a third party (other than debt recovery action undertaken by an authorised delegate under a University delegation), or commit the University to litigation with a third party.

(32) Employees should not threaten legal action against a third party, unless the matter in dispute has been brought to the attention of the Vice-Chancellor and legal advice has been obtained.

Management or oversight of claims (including litigation) by Legal Services

(33) Except as provided by this procedure, the Director, Legal and the University's lawyers will manage the delivery of legal advice in relation to all litigation and other legal proceedings on behalf of the University, and will refer such matters to appropriate external lawyers (in accordance with Legal Procedure - Requesting Legal Advice) to obtain appropriate legal advice and assistance.

(34) University lawyers and any external lawyers engaged on behalf of the University (or a controlled entity) provide

independent advice that takes into account the overall interests of the organisation - not just the specific interests of the officer, employee or organisational unit concerned.

(35) Before making a recommendation about whether to commence or defend a claim or try to settle it, Legal Services will carefully consider the University's, or controlled entity's, interests and risks and the capacity of the opposing litigant to satisfy any judgment to pay money, and any ongoing relationship between the University or controlled entity and opposing litigant.

Claims (including litigation) in relation to insured risks managed by the University's insurers

(36) The University's insurers are responsible for the management of claims by or against the University in relation to insured risks, including the management of legal advice in respect of such claims, subject to the specific terms and conditions of the applicable contract of insurance.

(37) Where the University's insurers accept a claim as an insured claim, the insurer becomes the entity responsible for the management of the claim, including for any litigation relating to the claim, in accordance with the terms and conditions of the contract of insurance.

(38) The insurer's responsibility includes developing appropriate strategies for the defence and settlement of claims in consultation with the University. Subject to clause (39), the General Counsel will manage communications with the insurer's lawyers, will assist the insurer's lawyers in obtaining information necessary to defend the claim, and will liaise with employees who have management responsibilities and insights into matters relevant to the claim.

(39) The Chief Financial Officer is primarily responsible for the management of claims covered by the University's core and non-core insurances. This includes property damage, motor vehicle, contract works, corporate travel, personal accident for students, personal accident for voluntary workers, expatriate, journey and workers compensation insurances for all Australian states and territories. The Chief Financial Officer may liaise directly, or direct the University's insurance officer to liaise directly, with any external lawyers appointed by the University's insurers with regards to claims arising under such insurances.

Claims (including litigation) relating to employment managed by Division of People and Culture

(40) The Executive Director, People and Culture, is responsible for the management of claims by or against the University in relation to conditions of employment, industrial instruments and all related employment matters, including the management of requests for legal advice in respect of such claims.

Claims (including litigation) relating to debt recovery managed by Division of Finance

(41) The Chief Financial Officer is responsible for the management of claims in relation to the recovery of debts owed to the University in accordance with the Finance Procedure - Expected Credit Losses and Bad Debts.

Settling claims (including litigation) or verdicts made against the University

(42) A small number of delegated approvers have authority to settle claims (or authorise payments in settlement of verdicts), subject to the financial limits for that delegate in accordance with any conditions in Delegation Schedule A - Governance and Legal, where settlement is considered to be in accordance with legal principles and best practice. The Council Executive Committee and the University Council also have authority to settle claims or authorise payments in settlement of verdicts (see Delegation Schedule A - Governance and Legal).

Issuing apologies when litigation is pending or commenced

(43) Where a claim has been made (including if litigation has commenced), or has been threatened:

a. the Vice-Chancellor may issue or direct the issue of an apology, after obtaining legal advice from the General Counsel, where appropriate, and
b. no other employee may issue an apology on behalf of the University.

Reliance on statutes of limitation defences

(44) The University will rely on a statute of limitations defence, and oppose applications for extension of limitations periods, unless approval to waive the defence or not to oppose the application for an extension is given by the Vice-Chancellor, Council Executive Committee or the Council (depending on the quantum of the claim). Approval to waive such defences or decisions not to object to an application for an extension will normally only be given or made in exceptional circumstances, or where it is expected that the application would succeed.

Claims (including litigation) between the University and controlled entities

(45) The following paragraphs apply where civil proceedings are being contemplated by a controlled entity of the University, or an entity in which the University has an interest, against another university entity or the University itself (including civil proceedings by way of cross-claim), or if proceedings are commenced against two or more University entities.

(46) Civil disputes between University entities must not be litigated unless all attempts have been made to resolve the dispute between the Vice-Chancellor, or a senior executive representing the University, and the chair of the board of the entity, or a senior representative of the entity, with a view to resolving the matter without recourse to litigation.

(47) Where it is not possible to resolve the matter in dispute in accordance with clause (48), the parties will submit the dispute to mediation administered by the Australian Disputes Centre (ADC) in accordance with the ADC Guidelines for Commercial Mediation in place at the date of referral.

(48) If mediation in accordance with clause (47) is unsuccessful, the parties will submit the dispute to arbitration in accordance with the ADC's Guidelines on Commercial Arbitration in place at the time of referral.

Part C - Procedures relating to government and police investigations

Lawful investigations

(49) Employees shall:

a. assist government authorities (including the police) in any lawful investigation
b. have regard to their duty to maintain the privacy of personal information and to maintain the confidentiality of confidential information.

(50) The above obligations will sometimes conflict. Employees must not disclose personal information about an individual, or confidential information about the University or any other person, unless authorised or legally obligated to do so.

(51) In general, where a lawful investigation is being conducted the investigating officer should supply the employee with a copy of a court order or formal document setting out the basis for the investigation and detailing the investigating officer's powers of investigation. This requirement may not be observed where the employee has a reasonable belief that the investigation is being undertaken because of an imminent threat to the health and safety of a person (and to form a 'reasonable belief' that there is an imminent threat employees should usually obtain a clear

statement from the investigating officer to that effect).

(52) Where an investigator from a government agency (including the police) requests an interview with an employee, or seeks data, documents, or access to files (other than routine publicly available information), the relevant employee should:

a. inform the investigator that the University will generally cooperate, but only after consultation with a University lawyer
b. ask for information confirming the basis of the investigation and evidence of the investigator's powers of investigation, and
c. immediately telephone Legal Services for legal advice and instructions.

(53) Where the investigator advises an employee that the investigation concerns an imminent threat to the health and safety of a person, the employee may assist the investigator without the need to first contact Legal Services (although the employee should advise Legal Services about the investigation as soon as is reasonably practicable).

(54) Employees must not disclose personal information about any person unless:

a. the individual to whom the information relates consents to the disclosure, or
b. the University is compelled by law to disclose the personal information, for example under a court order or pursuant to statutory powers of investigation.

(55) If access to personal information is requested as part of an informal inquiry by a government authority that is not part of a lawful investigation conducted pursuant to statutory powers of investigation, then the University must not disclose the personal information (unless consent is given by the relevant individual(s) to whom the personal information relates).

Section 4 - Legal Guidelines

(56) Refer to the Legal Guidelines - Legal Professional Privilege

Section 5 - Glossary

(57) Refer to the Legal Policy.

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