

Memorandum of Understanding

between

The Attorney-General, Victoria

and

The Courts Council of Court Services Victoria

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Execution page

Signed by the Attorney-General
the Hon Martin Pakula MP:

[Signature]

7 May 2015

Signed for and on behalf of
the Courts Council of Court Services Victoria by
The Hon Chief Justice Marilyn Warren AC

[Signature]

7 May 2015

Memorandum of Understanding between

The Attorney-General, Victoria (on behalf of the Executive Government) and The Courts Council of Court Services Victoria

1 Purpose

- 1.1 The purpose of this Memorandum of Understanding (**MOU**) is to set out certain principles and processes agreed between the Attorney-General and the Courts Council of Court Services Victoria (**CSV**) (the **Parties**) regarding the relationship between CSV and Executive Government.

2 Definitions

- 2.1 In this document these terms have the following meanings

Chair	Chair of the Courts Council, the Chief Justice of the Supreme Court of Victoria.
Commencement Date	The date on which this MOU is signed by the Attorney-General and the Chair on behalf of the Council.
Council	The Courts Council established under section 10 of the CSV Act.
Courts	The Supreme Court of Victoria, County Court of Victoria, Magistrates' Court of Victoria, Children's Court of Victoria and Coroners Court of Victoria.
Court CEO	Court CEOs appointed by the Courts Council on the recommendation of the Head of Jurisdiction under section 30 of the CSV Act.
CSV	Court Services Victoria, the body corporate established under section 5 of the CSV Act.
CSV Act	The <i>Court Services Victoria Act 2014</i> (Vic).
CSV CEO	The Chief Executive Officer of CSV appointed by the Courts Council under section 22 of the CSV Act or any person acting in that capacity under section 29 of the CSV Act
Executive Government	Ministers of the Crown and Departments established under the <i>Public Administration Act 2004</i> (Vic).
DJR	The Department of Justice and Regulation of the State of Victoria established under section 10 of the <i>Public Administration Act 2004</i> (Vic).
DTF	The Department of Treasury and Finance of the State of Victoria established under section 10 of the <i>Public Administration Act 2004</i> (Vic).
JCV	The Judicial College of Victoria established under the <i>Judicial College of Victoria Act 2001</i> (Vic).
Jurisdictions	The Supreme Court of Victoria, the County Court of Victoria, the Magistrates' Court of Victoria, the Children' Court, the Coroners Court and the Victorian Civil and Administrative Tribunal.
MOU	The agreement evidenced by this document.
Secretary	The Secretary to DJR.

3 Context and General Principles

3.1 The respective roles of the Parties and other related bodies and officers provide the context for this MOU and are summarised below.

General Principles

3.2 The relationship between the Parties is intended to reflect a mutual respect for the different constitutional roles of the Courts and Executive Government, consistently with Victoria's system of responsible government and the rule of law.

The Attorney-General

3.3 The Attorney-General is the Minister of the State of Victoria responsible to the Parliament for the administration of the CSV Act. The Attorney General has particular responsibilities under the CSV Act including:

- a. Budget approval (section 41);
- b. Agreement to Allocation Statements (section 48); and
- c. Recommending the vesting of Crown Land in CSV (section 58).

3.4 Where changes are proposed to CSV's approved appropriation pursuant to sections of the *Financial Management Act 1994 (Vic)* (**FM Act**) applicable to CSV, the Attorney-General will make decisions in conjunction with the Treasurer in line with their respective powers.

3.5 The Attorney-General is the first law officer of the State of Victoria and may be called upon to answer questions in Parliament (and Parliamentary committees) which relate to CSV or the Jurisdictions or matters affecting them; however, the Attorney-General is not responsible for the administration of CSV or the Jurisdictions.

3.6 The Attorney-General is responsible for:

- a. bringing to Cabinet (including its Committees) proposals for legislative and policy reforms, and budget proposals, relating to the justice system, including the courts and tribunals; and
- b. advising Cabinet about the impact of proposed legislation and government policy brought to Cabinet by other Ministers on the justice system, including on courts and tribunals.

The Jurisdictions

3.7 Each Jurisdiction is established by its own legislation which provides for its composition and the scope of its jurisdiction. Each Court is comprised of its judicial members and has its own internal governance mechanisms. The Courts form the independent third arm of government. Each Court is responsible for establishing how the judicial business of the court is managed in accordance with law. Each Jurisdiction, through the Head of Jurisdiction, directs the administrative support provided by CSV Jurisdiction-based staff under the management of the Court CEO.

3.8 Each Court reports annually to the Governor regarding its own operations. By convention, the Governor provides those annual reports to the Attorney-General and requests that the Attorney-General table them in Parliament. The Victorian Civil and Administrative Tribunal reports annually directly to the Attorney-General who tables that report in Parliament.

CSV and Council

3.9 CSV is governed by the CSV Act and is the independent statutory body which provides (or arranges for the provision of) administrative services and support for all Jurisdictions and JCV.

3.10 The Council is the governing body of CSV and has the general direction and superintendence of CSV. The Council is responsible for directing the strategy, governance and risk management of CSV. It is the principal administrative policy making body for CSV with respect to the administrative support provided to the Jurisdictions.

The Department of Justice and Regulation

- 3.11 DJR assists the Attorney-General to perform the functions within his or her responsibilities. DJR manages the development of legislation under the direction of the Attorney-General and advises the Attorney-General regarding matters concerning the justice system including courts, tribunals and the judiciary.
- 3.12 DJR provides a number of services to CSV and CSV provides a number of services to DJR. The arrangements for these services are intended to be set out in an operational agreement intended to be entered into between CSV and DJR.
- 3.13 DJR is responsible for the administration of the corrections system, the enforcement of certain court orders and the provision or funding of other services which interact with the court system (e.g. victims support).
- 3.14 The Secretary is responsible for the overall operation of DJR.
- 3.15 DJR will nominate contact officers for engagement between CSV and DJR. Contact officers will be nominated for this purpose by the Secretary in relation to the following issues:
- a. the provision of corporate support services;
 - b. policy on civil law matters; and
 - c. policy on criminal law matters.
- 3.16 CSV will nominate contact officers for engagement between CSV and DJR in relation to the following issues:
- a. media inquiries; and
 - b. policy matters.

The Treasurer and Minister for Finance

- 3.17 The Treasurer is responsible for managing the State's finances (including, without limitation, specific responsibilities under the FM Act). Primary responsibilities include:
- a. maintaining the public account;
 - b. preparing and delivering the annual state budget;
 - c. managing the State's budget and forward estimates; and
 - d. overseeing and managing the State financial performance against budget expectations and key financial objectives, including the preparation of State consolidated financial reports.
- 3.18 The Minister for Finance is responsible for the State's financial governance, reporting and accountability frameworks. Primary responsibilities include:
- a. preparing the departmental performance statements and providing performance reporting;
 - b. maintaining public sector financial governance, management and reporting requirements;
 - c. the Victorian Government Risk Management Framework;
 - d. overseeing the insurance policy for the State (the Victorian Managed Insurance Agency); and
 - e. whole of Victorian Government purchasing and procurement arrangements including oversight of the Victorian Government Purchasing Board.

Department of Treasury and Finance (DTF)

- 3.19 DTF is responsible for providing advice and support to the Treasurer and the Minister for Finance in the exercise of their functions.

4 Scope

- 4.1 This MOU should be read in conjunction with the CSV Act and any document created under the CSV Act.

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- 4.2 This MOU does not create legal relations or constitute a legally binding agreement between the Parties. Nevertheless, the Parties intend to act in accordance with the terms and the spirit of the MOU.
- 4.3 The Attorney-General enters into this MOU as the representative of Executive Government as aspects of the MOU recognise the relationship of the Council and CSV with DTF as well as the relationship with the Attorney-General and DJR.
- 4.4 The Council enters into this MOU as the governing body of CSV and the MOU only extends to CSV.
- 4.5 Nothing in this MOU should detract from the existing arrangements for private communications between the Attorney-General and the Heads of Jurisdictions including, for example, in relation to appointments and matters of a personal nature.
- 4.6 Sections of this MOU have been prepared by reference to the *Guidelines for Communications and Relationships between the Judicial Branch of Government and the Legislative and Executive Branches (Guidelines)*, adopted by the Council of Chief Justices of Australia and New Zealand on 23 April 2014. The Parties agree that this MOU should be construed, so far as possible, consistently with the Guidelines.

5 Term and Review

- 5.1 It is intended that this MOU provide an overarching framework for the arrangements between the Parties until 30 September 2017, unless otherwise agreed in writing. The parties will meet no later than 1 March 2017 for the purposes of discussing an extension or renegotiation of this MOU.

6 Information Sharing

Information requests of the Parties

- 6.1 The Parties agree to facilitate the mutual and timely provision of information reasonably required for the performance of the roles and responsibilities of the bodies and officers as outlined in section 3 of this MOU.
- 6.2 The Parties acknowledge that information the Attorney-General may reasonably require for the performance of the Attorney General's roles and responsibilities may include information relevant to:
- a. CSV and Jurisdiction budget proposals and requests for budget variation;
 - b. Parliamentary questions about the Jurisdictions and CSV;
 - c. Cabinet's consideration of matters pertaining to the Jurisdictions and CSV;
 - d. legislative, regulatory and budget proposals;
 - e. issues raised by members of the public, media organisations and stakeholder groups; and
 - f. the status of current projects for which dedicated funding has been expressly provided under the budget or through the Court fee pool.
- 6.3 CSV will inform the Attorney-General of significant operational decisions or financial issues relevant to the Attorney-General's role and responsibilities and, at the Attorney-General's request, will provide copies of all financial and performance reporting information provided to DTF.
- 6.4 The Parties acknowledge that information CSV may reasonably require for the performance of its roles and responsibilities may include information relevant to:
- a. proposed legislation; and
 - b. parliamentary or executive action,

that may affect the administration of CSV or a Jurisdiction, including regulatory and budgetary proposals.

Privacy, Confidentiality and Cabinet material

- 6.5 The Parties acknowledge that information sharing arrangements are subject to legal restrictions on the disclosure of information including privacy restrictions and various legislative confidentiality provisions.

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- 6.6 The Parties agree that where information is provided on a confidential basis, that confidentiality will be maintained and the information provided will be kept securely. The Parties acknowledge that reasonable and proper endeavours will be taken to ensure all information provided is authorised by the Party providing the information.
- 6.7 The Parties acknowledge that all information provided is contextual and no Party shall seek to use the information without respecting the context in which the information has been provided.
- 6.8 The Parties acknowledge the conventions around Cabinet discussions and agree that documents provided on a Cabinet-in-Confidence basis will be treated in accordance with those conventions and only distributed within the organisation to the extent necessary to provide an informed response.
- 6.9 The Parties agree that information not already in the public domain will only be released to the public in consultation with (and with the permission of) the Party that provided the information.
- 6.10 The Parties acknowledge and agree that disclosure of information by a Party may be required by law or to satisfy the requirements of Parliamentary accountability or statutory duty.

Requests for information

- 6.11 Information may be sought from CSV or a Jurisdiction by:
- a. the Attorney-General (or the Attorney-General's Office);
 - b. DJR, for the purposes of advising, or developing policy for the Attorney-General; or
 - c. DTF for the purposes of reporting, and managing the State's budget, forward estimates and cash, for example as may be communicated in DTF Information Requests, for the Treasurer or the Minister for Finance.
- 6.12 Other Ministers may request information pertaining to the administration of CSV or a Jurisdiction. CSV will provide the Attorney-General with a copy of the information provided to the Minister or their department.
- 6.13 Where a request for information relates to the operations of the Jurisdiction(s) but is originally made to CSV, CSV will facilitate the consideration of that request by the relevant Jurisdiction(s) and inform the requesting party of the appropriate contact for the request within the relevant Jurisdiction(s).
- 6.14 Prior to briefing the Attorney-General on matters related to CSV or a Jurisdiction, DJR will as far as practicable, advise CSV or the relevant Jurisdiction of the content and purpose of the briefing, subject to any instructions (specific or general) from the Attorney-General.
- 6.15 DJR will seek to verify with CSV the accuracy of potential financial or resourcing implications arising from DJR's legislative, regulatory or budget proposals in advance of consideration of the proposal.
- 6.16 CSV may seek information from Executive Government for the purposes informing its operations, planning and budget bids.
- 6.17 Each Party acknowledges that the other Party may require information urgently. The Parties agree to use their reasonable and proper endeavours to provide information within any requested timeframe and to give priority to requests that are urgent.

7 Media Enquiries/Contact

- 7.1 Where the Attorney-General wishes to respond to a media enquiry which relates to CSV or a Jurisdiction, the Attorney-General's staff or DJR may contact the relevant media officer directly to request information to assist in preparing a response.
- 7.2 Where a media enquiry is made of CSV which relates to the functions of the Attorney-General, the enquiry will be notified to relevant personnel in the Attorney-General's Office and to DJR as soon as practicable.
- 7.3 Where the Attorney-General publishes a media release involving CSV or the Jurisdictions a copy should be provided to CSV.

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- 7.4 Where CSV publishes a media release relevant to the functions of the Attorney-General, a copy of that release should be provided to the Attorney-General.
- 7.5 There may be circumstances in which the Attorney-General and CSV or a Jurisdiction wish to co-ordinate media releases. This can be done through contact between the relevant media officers in the first instance.
- 7.6 As most enquiries will relate to the Jurisdictions, they will be the principal point of contact for most enquiries.

8 Freedom of Information Requests

- 8.1 CSV will notify the Attorney-General as soon as practicable of any Freedom of Information requests made to CSV and the date of intended delivery of the response to such requests and will provide to the Attorney-General the response authorised by the CEO of CSV (as principal officer).

9 Consultation

- 9.1 Subject to instructions from the Attorney-General, and to the requirement to maintain the confidentiality of Cabinet discussions, DJR will consult with the Jurisdictions and CSV on any proposed:
- a. legislation that may affect them, including on any proposed law of a kind set out in **Attachment 1**; and
 - b. parliamentary or executive action that may not involve new legislation but may nevertheless have an effect upon the functions of the Jurisdictions or CSV, including any regulatory or budgetary proposals.
- 9.2 CSV will advise DJR and DTF at an early stage in relation to proposed State budget bids. Similarly, DJR will seek advice at an early stage from CSV in relation to any proposed State budget bid that could affect a Jurisdiction or CSV.
- 9.3 When consulted regarding a legislative or non-legislative proposal, CSV and any affected Jurisdictions will seek to draw the Attorney-General's and DJR's attention to:
- a. any significant resource implications;
 - b. any significant administrative or functional issue likely to arise; and
 - c. any ambiguity or uncertainty in the text of a proposed law (to the extent reasonable, without prejudging any question of constitutionality or interpretation which may come before a court).
- 9.4 The Attorney-General will inform Cabinet of any matters raised by CSV or the Jurisdictions which are yet to be resolved or addressed.
- 9.5 Where proposed legislation or parliamentary or executive action goes ahead, the Attorney-General and/or DJR will advise CSV or a Jurisdiction of Executive Government's decision regarding the resolution of matters raised by CSV or the Jurisdiction.

10 Financial Information and the budget process

- 10.1 The parties acknowledge that:
- a. the primary source of CSV's funding is the annual appropriation by the Parliament to the Treasurer for CSV made under the annual Appropriation Acts;
 - b. the Treasurer is accountable to the Parliament for the administration of the annual Appropriation Acts, including the acquittal of the appropriated funds; and
 - c. the Treasurer relies on information provided by agencies that receive the amounts appropriated to discharge the accountabilities to Parliament.
- 10.2 Accordingly, CSV will provide all information necessary for the Treasurer and Minister for Finance to compile the annual Budget Papers, as if CSV were a 'department' for the purposes of section 40 of the FM Act.

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- 10.3 While it is acknowledged CSV is not a Department¹ (CSV is a public body under the FM Act), CSV agrees to comply with the Standing Directions to the FM Act and Financial Reporting Directions relating to performance reporting (currently covered in 4.2 and 4.4 of the Standing Directions and Financial Reporting Direction 8C), as amended from time to time, on the same basis as a Department. DTF notes, consistent with the 2014-15 State Budget, the variation to these requirements is that CSV will report on 'estimates' in lieu of 'targets'.
- 10.4 CSV will provide the Treasurer, through DTF, with quarterly budget updates, of the kind ordinarily submitted by Victorian departments to the DTF. These updates will also be copied to the Attorney-General.
- 10.5 Section 41 of the CSV Act provides that before the end of each financial year, the Council must prepare and submit a budget for the forthcoming year for the Attorney-General to approve. The Attorney-General may also request, at any time for a specified period that the Council prepare a budget. A budget must:
- a. be in the form and include the information specified by the Attorney-General; and
 - b. provide estimates of receipts and expenditure for CSV together with separate estimates of receipts and expenditure for each Jurisdiction and for the JCV.
- 10.6 Section 41(4) of the CSV Act allows the Attorney-General to approve a budget with or without modification.
- 10.7 The Parties acknowledge that the budget provided for in section 41 of the CSV Act is to be predicated on falling within the parameters of the appropriations made by the Parliament and the budget framework administered by the Treasurer. Any request from CSV for a change to the budget approved by the Attorney-General will be copied to the Treasurer. Any proposal from Executive Government for modification of the budget pursuant to the terms of section 41 of the CSV Act will be provided to CSV.

11 CSV's official bank accounts

- 11.1 It is acknowledged that CSV, unlike other entities funded by annual appropriation to the Treasurer, is not bound by section 15 of the FM Act ('Accounts of departments').
- 11.2 Consistent with it receiving funding by annual appropriation from the Treasurer, and notwithstanding that it is not required by legislation to do so, CSV will:
- a. seek the approval in writing of the Minister for Finance to open and maintain any account with an authorised deposit-taking institution or institutions (Bank Account) and will open and maintain any such Bank Account in accordance with such terms and conditions as the Minister for Finance determines; and
 - b. not withdraw money from its Bank Account or Accounts except in accordance with regulations and directions made pursuant to section 15(3) of the FM Act.
- 11.3 In the event of any ambiguity in the application of regulations or directions made pursuant to section 15(3) of the FM Act to CSV, CSV will seek advice from DTF.

12 Workplace relations - wages policy

- 12.1 CSV acknowledges that:
- a. the Government's wages policy, as currently set out in Public Sector Workplace Relations Policies, sets the Government's expectations for public sector employers' conduct of enterprise bargaining (and the wages outcomes reached); and
 - b. enterprise bargaining and wage outcomes that CSV reaches may have implications for CSV's budget and for the broader public sector.

¹ CSV is specified as a Department in one instance under the FM Act, under section 29, which relates to appropriations. Otherwise, CSV is not a Department under the FM Act.

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- 12.2 CSV agrees that it will adhere to wages policy (as that policy applies to budget funded agencies) as promulgated by the Government and amended from time to time.
- 12.3 CSV agrees that, prior to entering into a new enterprise agreement, it will provide the Government with an opportunity to assess the implications of any proposed outcome for:
- a. CSV's budget, as approved by the Attorney-General pursuant to section 41 of the CSV Act; and
 - b. the broader public sector.

13 Corporate planning

- 13.1 The Council agrees that it will, each year, prepare a corporate plan and provide that corporate plan to the Attorney-General.
- 13.2 The Council acknowledges that the Attorney-General may submit CSV's corporate plan annually to relevant Cabinet Committees for noting as an input to the budget and forward planning cycles.
- 13.3 The Council acknowledges that it will be of assistance to the Attorney-General, if CSV's corporate plan is, to the extent possible, consistent with requirements for corporate planning that apply generally to entities in the Victorian public sector, as set out in the *Guide to Corporate and Long-term Planning* published by DTF (**Guide**), as amended from time-to-time.
- 13.4 The Parties acknowledge that references in the Guide to delivery of government policy do not apply to CSV.

14 Managing the Relationship and Communication between Parties

- 14.1 The Parties acknowledge that a successful partnership on the matters covered by this MOU will require effective relationship management and clear and timely communication.
- 14.2 The Attorney-General, the Chair of the Council, the Secretary and the CSV CEO (the **Governance Group**), will continue to meet quarterly to ensure the maintenance of a successful partnership.
- 14.3 The Secretary and the CSV CEO will establish further regular consultation forums on a subject matter basis.
- 14.4 CSV and DTF will seek to meet regularly.

15 Dispute Resolution

- 15.1 The Parties will approach the resolution of any disputes arising between them in respect of this MOU in good faith and with a view to achieving a timely solution, consistent with the principles agreed to in this MOU.

16 Variation / Changes

- 16.1 The Parties may vary this MOU by agreement in writing.
- 16.2 The Parties will pursue any such agreement as soon as possible after it is apparent that a variation is necessary or desirable.

ATTACHMENT 1: CONSULTATION ON PROPOSED LEGISLATION

1. Proposed laws relating to the abolition of existing Jurisdictions and the creation of new Jurisdictions.
2. Proposed laws affecting the jurisdiction and powers of the Jurisdictions.
3. Proposed laws relating to judicial office holders including laws which:
 - a. affect criteria and processes for the appointment of judicial officers.
 - b. define specific performance obligations on judicial officers.
 - c. impose continuing education and training obligations on judicial officers.
 - d. affect the criteria for the removal of judicial officers.
 - e. provide for disciplinary sanctions short of removal to be imposed upon judicial officers by a non-judicial body.
 - f. confer disciplinary functions and powers upon the head of jurisdiction.
4. Proposed laws affecting the judicial function including laws which:
 - a. mandate particular procedures such as ex parte hearings, closed courts or tribunals, suppression orders and pre-litigation alternative dispute resolution processes.
 - b. create new exclusionary rules in relation to evidence or direct particular modes of taking evidence.
 - c. prescribe matters to be taken into account or to which judicial officers must have regard in making certain classes of decision.
 - d. remove or restrict judicial discretion – eg by mandating orders to be made where certain conditions are satisfied and sometimes reflected in the statutory formula “...the court must...”
5. Proposed laws affecting the administration of the Jurisdictions and CSV including laws which:
 - a. create accountability mechanisms in relation to the efficient use by the Jurisdictions of public resources.
 - b. affect lines of administrative authority in Jurisdictions or CSV – eg imposing obligations on Jurisdictions administrators to report directly to executive government officials or to a Minister.
 - c. provide for executive government management and oversight of Jurisdictions administration including expenditure of funds appropriated for the purposes of the Jurisdictions.
 - d. transfer to Jurisdictions support functions previously provided by the executive government eg security and protection.
6. Proposed laws affecting the distinctive character of the Jurisdictions including laws which:
 - a. classify Jurisdictions for administrative purposes in a way that is indistinguishable from the classification of agencies or authorities of the executive government
 - b. confer functions on the Jurisdictions which are functions of the executive government- eg non-judicial dispute resolution processes incorporated in, or closely connected to the judicial process.

END OF SCHEDULE