



# **LEGAL SERVICES AMENDMENT DIRECTIONS 2006 (No. 1)**

(issued by the Attorney-General under section 55ZF of the  
*Judiciary Act 1903*)

## **Name of instrument**

1. This instrument is the *Legal Services Amendment Directions 2006 (No. 1)*.

## **Commencement**

2. This instrument commences on 3 April 2006.

## **Schedule 1 – amendment of principal instrument**

3. Schedule 1 to this instrument sets out amendments of the *Legal Services Directions 2005*.

## SCHEDULE 1

### AMENDMENTS OF THE *LEGAL SERVICES DIRECTIONS 2005*

**[1] Paragraph 3**

*insert after Note 6*

3.2 A claim that is required to be reported by an agency to the Attorney-General or OLSC under paragraph 3.1 is not to be settled without the agreement of the Attorney-General.

**[2] Note following paragraph 4.1**

*substitute*

NOTE 1. An instruction could relate to such matters as the arguments to be put to the court and the lawyers to handle the matter. (In extreme cases, it could require that the agency change its lawyers in a matter). The need to give instructions could occur, for example, where constitutional or 'whole of government' issues arise or where the proposed conduct of a matter might be inconsistent with the Attorney-General's First Law Officer role (eg the Attorney-General's responsibility for ensuring that the Commonwealth acts as a model litigant). The FMA agency will be responsible for any costs incurred by it or the lawyers involved in complying with the instruction.

NOTE 2. Other provisions of the Directions may also be relevant to the handling of a claim by or against the Commonwealth, including the requirements:

- (a) to act in accordance with the Directions on *The Commonwealth's obligation to act as a model litigant*, at Appendix B
- (b) to handle monetary claims in accordance with the Directions on *Handling monetary claims*, at Appendix C, and
- (c) for counsel to be engaged in accordance with the Directions on *Engagement of counsel*, at Appendix D.

**[3] Paragraph 4.5**

*insert after paragraph 4.5*

4.5A The agency is to tell the other party to a confidential settlement that disclosure of the settlement may nevertheless be required by law; in particular, to the Parliament or to a Parliamentary Committee which has power to compel disclosure.

**[4] Note 1 following paragraph 4.5A**

*omit*

**[5] Paragraph 10.5**

*omit*

(such as legislative amendment).

*insert*

(such as proposing a legislative amendment to the responsible Minister).

**[6] Paragraph 10.8, note 2**

*substitute*

NOTE 2. The Administrative Arrangements Orders will not define ‘administering agency’ in all cases, but will provide the starting point. If a department and one of its portfolio agencies have agreed that consultation will be with the portfolio agency, it is recommended that OLSC be notified so that details of those consultation arrangements can be made available on the OLSC website. It is also recommended that OLSC be notified of consultation arrangements where departments share policy responsibility.

**[7] Paragraph 12.1**

*omit*

bodies who are not FMA bodies.

*insert*

bodies which are not FMA agencies.

**[8] Paragraph 12.3**

*omit*

Corporations Law company

*insert*

Corporations Act company

**[9] Appendix A, paragraph 5**

*insert after paragraph 5*

NOTE. Where an agency in-house legal unit was exempt from the tied work rules in relation to public international law work under paragraph 5 (b) of the Legal Services Directions issued in September 1999 because a relevant category of public international law work was ‘currently undertaken’ at the commencement of those Directions, and that work is not exempt under paragraph 5 (b) of the *Legal Services Directions 2005*, an exemption may be sought from the Attorney-General if the agency has recognised expertise in relation to that category of tied legal work.

**[10] Appendix A, note following paragraph 6**

*omit*

**[11] Appendix A, note 2 following paragraph 7**

*omit*

**[12] Appendix A, new paragraph 9**

*insert after paragraph 8*

9. OLSC may give an opinion, which it has received under paragraph 8, to any tied provider of the relevant category of legal work.

**[13] Appendix A, paragraph 10**

*omit*

**[14] Appendix B, paragraph 5, note 1**

*omit*

**[15] Appendix B, paragraph 5, note 2**

*substitute*

NOTE. Agencies are encouraged to develop dispute management plans addressing the place of litigation and alternative strategies in addressing disputes.

6. An agency which agrees to participate in an alternative dispute resolution process is to tell the other party to the process whether or not a representative attending the process will have the authority to settle the matter to finality.

NOTE. When participating in alternative dispute resolution processes, regard is still to be had to the requirements for settling major claims under paragraph 4.4 and Appendix C. In practical terms, this may mean that a representative attending an alternative dispute resolution process may not be given authority to settle a matter to finality.

**[16] Appendix C, paragraph 1**

*insert after paragraph 1*

NOTE. An action to enforce a penalty imposed under Commonwealth legislation is not considered to be a monetary claim for the purposes of Appendix C.

**[17] Appendix C, after paragraph 6**

*insert*

6A. Paragraph 6 does not apply if the claimant is the Commonwealth.

**[18] Appendix C, paragraph 7**

*omit*