



# Legal Services Amendment Directions 2008 (No. 1)

## *Judiciary Act 1903*

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I, ROBERT McCLELLAND, Attorney-General, make these Directions under section 55ZF of the *Judiciary Act 1903*.

Dated 26 June 2008

ROBERT McCLELLAND  
Attorney-General

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**1 Name of instrument**

This instrument is the *Legal Services Amendment Directions 2008 (No. 1)*.

**2 Commencement**

This instrument commences on 1 July 2008.

**3 Amendment of *Legal Services Directions 2005***

Schedule 1 amends the *Legal Services Directions 2005*.

**Schedule 1 Amendments**

(section 3)

**[1] Schedule, paragraph 4.2**

*omit*

Appendix B.

*insert*

Appendix B, noting that the agency is not to start legal proceedings unless it is satisfied that litigation is the most suitable method of dispute resolution.

**[2] Schedule, after paragraph 11.1 (d)**

*insert*

(da) the agency reports to OLSC about the legal services expenditure and legal work of the agency, using a template approved by OLSC that specifies the matters to be reported, within 60 days after the end of each financial year

**[3] Schedule, paragraph 11.2 (b)**

*omit*

year, and

*insert*

year

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**[4] Schedule, after paragraph 11.2 (b)**

*insert*

- (ba) give details of the following aspects of the agency's use of persons appointed by the Attorney-General under section 63 of the *Judiciary Act 1903* to receive service in proceedings to which the Commonwealth is a party:
- (i) the names of appointed persons who have received service;
  - (ii) the title of proceedings in which appointed persons have received service;
  - (iii) the issues raised in proceedings in which appointed persons have received service;
  - (iv) the nature of each document served on an appointed person and the date on which it was served;
  - (v) the date on which the agency or OLSC was advised of the receipt of service of each document by the appointed person; and
  - (vi) any other information requested by OLSC, and

**[5] Schedule, after paragraph 11.2**

*insert*

*Pro bono work by legal services providers*

- 11.3 The Chief Executive of an FMA agency is responsible for ensuring that the agency, when selecting and retaining legal services providers, does not adversely discriminate against legal services providers that have acted, or may act, pro bono for clients in legal proceedings against the Commonwealth or its agencies.
- 11.4 Paragraph 11.3 does not apply if, were a legal services provider to be selected or retained by the agency, an actual conflict of interest would arise between the legal services provider and the agency because of the pro bono work of the legal services provider.
- 11.5 For paragraph 11.4, circumstances in which an actual conflict of interest would arise include the following:
- (a) if a legal services provider already acts for the Commonwealth or a Commonwealth agency in legal proceedings and accepts a request to act pro bono in those proceedings for another client, and
  - (b) if a legal services provider has, because it has previously provided legal services to the Commonwealth or its agencies, confidential information about the Commonwealth or its agencies that would make it unreasonable for the provider to act pro bono for another client against the Commonwealth or agency.

**[6] Schedule, after paragraph 12.3***insert*

- 12.3A A CAC Act body is also to comply with paragraphs 11.1 (da), 11.2 (ba), 11.3, 11.4 and 11.5.

**[7] Schedule, after paragraph 12.5***insert***12A Obligations of persons appointed under section 63 of the Judiciary Act 1903 to receive service**

- 12A.1 Persons appointed by the Attorney-General under section 63 of the *Judiciary Act 1903* to receive service are to report to the agency on behalf of which they have received service:

- (a) by close of business on the next business day after they have received service; and
- (b) using a template approved by OLSC that specifies the matters to be reported.

- 12A.2 If documentation that is served on a person appointed under section 63 of the *Judiciary Act 1903* is not clear as to which agency the person is to report, the person is to report to OLSC using the template mentioned in paragraph 12A.1 (b).

**[8] Schedule, General notes, after note 2***insert****Who can receive service in proceedings to which the Commonwealth is a party***

- 2A Lawyers providing legal services to the Commonwealth or its agencies may be appointed by the Attorney-General under section 63 of the *Judiciary Act 1903*.

**[9] Schedule, Appendix A, paragraph 6***omit*

clause 5 (b)

*insert*

paragraph 5 (b)

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**[10] Schedule, Appendix A, paragraph 8 (a)**

*omit*

clause 3B

*insert*

paragraph 5 (b)

**[11] Schedule, Appendix B, after paragraph 2 (a)**

*insert*

(aa) making an early assessment of:

- (i) the Commonwealth's prospects of success in legal proceedings that may be brought against the Commonwealth; and
- (ii) the Commonwealth's potential liability in claims against the Commonwealth

**[12] Schedule, Appendix B, paragraph 2 (e) (i)**

*omit*

true, and

*insert*

true

**[13] Schedule, Appendix B, after paragraph 2 (e) (ii)**

*insert*

- (iii) monitoring the progress of the litigation and using methods that it considers appropriate to resolve the litigation, including settlement offers, payments into court or alternative dispute resolution, and
- (iv) ensuring that arrangements are made so that a person participating in any settlement negotiations on behalf of the Commonwealth or an agency can enter into a settlement of the claim or legal proceedings in the course of the negotiations

**[14] Schedule, Appendix B, paragraph 5**

*substitute*

5.1 The Commonwealth or an agency is only to start court proceedings if it has considered other methods of dispute resolution (eg alternative dispute resolution or settlement negotiations).

5.2 When participating in alternative dispute resolution, the Commonwealth and its agencies are to ensure that their representatives:

- (a) participate fully and effectively, and

- (b) subject to paragraph 2 (e) (iv), have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.

**[15] Schedule, Appendix B, paragraph 6, including the note  
*omit***