



# Legal Services Amendment Directions 2008 (No. 2)<sup>1</sup>

## *Judiciary Act 1903*

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

Dated 16 September 2008

ROBERT McCLELLAND  
Attorney-General

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**1 Name of instrument**

This instrument is the *Legal Services Amendment Directions 2008 (No. 2)*.

**2 Commencement**

This instrument commences on the day after it is registered.

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

Schedule 1 amends the *Legal Services Directions 2005*.

## **Schedule 1 Amendments**

(section 3)

**[1] Schedule, after paragraph 9.1**

*insert*

**9A. Procurement of legal service providers**

9A.1 An FMA agency must comply with the directions on legal services procurement at Appendix F when procuring legal services from external legal services providers.

**[2] Schedule, paragraph 12.3 (d)**

*omit*

, and

**[3] Schedule, paragraph 12.3 (e)**

*substitute*

(e) comply with the requirements of paragraph 7, concerning the handling of claims of public interest immunity, and

**[4] Schedule, after paragraph 12.3 (e)**

*insert*

(f) comply with paragraphs 9A.1, 11.1 (da), 11.2 (ba), 11.3, 11.4 and 11.5.

**[5] Schedule, paragraph 12.3A**

*omit*

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**[6] Schedule, after Appendix E***insert***Appendix F Legal services procurement****Obligation to use common form tender documents to procure ongoing legal services**

- 1 A Commonwealth agency must use the common form tender documents to arrange for the procurement of ongoing legal services from 1 or more legal services providers.
- 2 A Commonwealth agency that procures ongoing legal services by signing a Notice of Inclusion Form is taken to comply with paragraph 1 for the procurement.

**Exemption from obligation to use common form tender documents**

- 3 Paragraph 1 does not apply to a Commonwealth agency that has been exempted by the Attorney-General, under paragraph 13 of the Schedule, from compliance with paragraph 1.

**Matters to be taken into account when engaging a legal services provider**

- 4 A Commonwealth agency must take the following matters into account when deciding if it will enter into a Deed of Standing Offer or a contract for legal services:
  - (a) the amount and type of pro bono work the legal services provider has carried out or will carry out;
  - (b) whether the legal services provider has signed up to the National Pro Bono Aspirational Target of the National Pro Bono Resource Centre.

*Note 1* Paragraph 4 applies whether or not a tender process is to be used to select a legal services provider. The template Request for Tender for the provision of legal services to the Commonwealth provides that pro bono work will be a criterion for evaluation of tenders.

*Note 2* For information about the National Pro Bono Aspirational Target, see the National Pro Bono Resource Centre website at <http://www.nationalprobono.org.au>.

**Obtaining competitive quotes under a Deed of Standing Offer**

- 5 A Commonwealth agency may seek a competitive quote from a legal services provider that is a party to a Deed of Standing Offer only if the agency considers that:
  - (a) the value of the services to be provided is likely to exceed \$80 000; or
  - (b) the expertise of the panel should be tested for a new area of work.

*Note* This arrangement will be included in all Deeds of Standing Offer.

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## Reporting to be provided for in Deed or contract

- 6 A Commonwealth agency must ensure that all contracts for legal services and Deeds of Standing Offer that it enters into include a requirement that the legal services provider, within 30 days after the end of each financial year, report to OLSC using a template approved by OLSC that specifies the matters to be reported.

## Definitions

- 7 In this Appendix:

**common form tender documents** means the following documents approved by the Attorney-General and issued by OLSC:

- (a) the template Request for Tender for the provision of legal services to the Commonwealth; and
- (b) the template Deed of Standing Offer for the provision of legal services to the Commonwealth.

**contract for legal services** means a contract with a legal services provider for the provision of legal services to the Commonwealth, but does not include a contract under a Deed of Standing Offer.

**Deed of Standing Offer** means a Deed of Standing Offer that has been completed as required by the template Deed of Standing Offer for the provision of legal services to the Commonwealth.

**legal services provider** means a legal services provider external to the Commonwealth agency to which the legal services are to be provided, but does not include counsel.

*Note* For the engagement of counsel, see paragraph 6 of the Schedule.

**Notice of Inclusion Form** means a Notice of Inclusion Form under a Deed of Standing Offer.

**pro bono legal work** means any of the following:

- (a) giving legal assistance for free or at a substantially reduced fee to any of the following:
  - (i) individuals who can demonstrate a need for legal assistance but cannot obtain legal assistance or otherwise access the legal system without incurring significant financial hardship;
  - (ii) individuals or organisations whose matter raises an issue of public interest that would not otherwise be pursued;
  - (iii) charities or other non-profit organisations that work on behalf of low income or disadvantaged members of the community, or for the public good;
- (b) conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
- (c) participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community, or on issues of public interest;

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- (d) providing a lawyer on secondment at a community organisation (including a community legal organisation) or at a referral service provider such as a public interest law clearinghouse;

but does not include:

- (e) giving legal assistance to any person for free or at a reduced fee without reference to whether a person has the capacity to pay; or
- (f) free first consultations with clients who are otherwise billed at a firm's normal rates; or
- (g) legal work provided under a grant of legal assistance; or
- (h) contingency fee arrangements or other speculative work that is undertaken with a commercial expectation of a fee; or
- (i) the sponsorship of cultural and sporting events, work undertaken for business development, and other marketing opportunities; or
- (j) time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

*Note* This definition is based on the definition of 'pro bono legal services' in the National Pro Bono Aspirational Target Statement of Principles developed by the National Pro Bono Resource Centre, as at 1 September 2008.

***pro bono work*** means any of the following:

- (a) pro bono legal work, including any pro bono legal work that the legal services provider has or will carry out in the Asia-Pacific region;
- (b) unpaid capacity building work in the Asia-Pacific region that the legal services provider has or will carry out;
- (c) other community or charitable work carried out by the legal services provider;

but does not include work carried out by personnel of the legal services provider on their own initiative, for example, work for their local sporting association.

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## Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.