

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Judiciary Act 1903

Legal Services Amendment Directions 2009 (No 1)

Section 55ZF of the *Judiciary Act 1903* (Cth) provides, relevantly, that the Attorney-General may issue directions (Legal Services Directions) that are to apply generally to Commonwealth legal work. 'Commonwealth legal work' is broadly defined as any work performed by a person for the Commonwealth; or for a body established by an Act or regulations, including a company in which the Commonwealth has a controlling interest.

Schedule 1 to the amendment inserts new paragraph 4.9 into the Directions.

Subparagraph 4.9(a) provides that an FMA agency may only apply for an order to prohibit or restrict the disclosure or publication of evidence or information in a proceeding if it considers this is reasonably necessary to protect the interests of the Commonwealth.

Subparagraph 4.9(b) further provides that those agencies must not apply for such an order only to avoid the disclosure or publication of evidence or information that may be embarrassing to the Commonwealth or its agencies.

The purpose of this amendment to the Directions is to establish clear circumstances in which the Commonwealth and its agencies should not seek suppression orders from the court.

This amendment will have the effect that any FMA agency seeking suppression orders to avoid embarrassment, in the absence of a legitimate purpose such as protecting the interests of the Commonwealth, will be in breach of the Directions. Breaches of the Directions must be reported to the Office of Legal Services Coordination in the Attorney-General's Department.

This amendment comes into effect the day after registration.

The *Legislative Instruments Act 2003* (Cth) requires an explanatory statement to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken.

Relevant stakeholders, including Commonwealth Departments and agencies, were consulted on this proposal in 2008. While the need for an amendment was questioned, on balance it was considered that there was a public interest and benefit in holding the Commonwealth to a higher standard than other litigants, and this amendment will assist to ensure that information is only suppressed where necessary and appropriate.