



# Legal Services Amendment Direction 2012 (No. 1)<sup>1</sup>

## *Judiciary Act 1903*

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I, Nicola Roxon, Attorney-General, make the following direction under section 55ZF of the *Judiciary Act 1903*.

Dated 31 May 2012

Nicola Roxon  
Attorney-General

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**1 Name of direction**

This direction is the *Legal Services Amendment Direction 2012 (No. 1)*.

**2 Commencement**

This direction commences on 1 June 2012.

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

Schedule 1 amends the *Legal Services Directions 2005*.

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## Schedule 1 Amendments

(section 3)

### [1] Paragraph 12.3

*omit*

government business enterprise prescribed under the CAC Act or a Corporations Act company controlled by the Commonwealth,

*insert*

Commonwealth company or government business enterprise,

### [2] After paragraph 12.3

*insert*

12.3A A non-FMA body that is an approved Commonwealth company or approved government business enterprise must comply with paragraph 9A.1 when using an external legal services provider on the LSMUL.

### [3] Paragraph 15

*insert*

***approved Commonwealth company*** means a Commonwealth company approved by OLSC to access the LSMUL under subparagraph 3 (3) of Appendix F.

### [4] Paragraph 15

*insert*

***approved government business enterprise*** means a government business enterprise approved by OLSC to access the LSMUL under subparagraph 3 (3) of Appendix F.

### [5] Paragraph 15

*insert*

***Commonwealth company*** has the meaning given by subsection 34 (1) of the CAC Act.

### [6] Paragraph 15

*insert*

***government business enterprise*** has the meaning given by section 5 of the CAC Act.

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[7] **Schedule 1, Appendix F**

*substitute*

## **Appendix F Procurement of Commonwealth legal work**

### **1 Definitions for Appendix F**

In this Appendix:

**agency** means:

- (a) an FMA agency; or
- (b) a CAC Act body.

**CAC Act body** means a Commonwealth authority, or Commonwealth company, within the meaning of the CAC Act, but does not include a government business enterprise or a Commonwealth company.

**external 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 engagement of counsel, see paragraph 6 of the Schedule.

**LSMUL** means a list, known as the Legal Services Multi-use List, of external legal providers approved by OLSC to provide Commonwealth legal work.

**pro bono legal work**: see paragraph 2.

### **2 Meaning of pro bono legal work**

- (1) In this Appendix:

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

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

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- (c) providing free community legal education on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
  - (d) providing a lawyer on secondment to a community organisation (including a community legal organisation) or to a referral service provider (for example, as a public interest law clearinghouse).
- (2) However, *pro bono legal work* does not include:
- (a) giving legal assistance to a person for free or at a reduced fee without having regard to whether the person can pay for the assistance; or
  - (b) a free first consultation with a client who is otherwise billed at normal rates; or
  - (c) legal work provided under a grant of legal assistance; or
  - (d) legal work undertaken under a contingency fee arrangement, or other speculative legal work that is undertaken with a commercial expectation of a fee; or
  - (e) the sponsorship of a cultural or sporting event, or work undertaken for business development or marketing purposes; or
  - (f) time spent by a lawyer 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.

### 3 Agencies may use only approved providers

- (1) On or after 1 June 2012 and before 1 June 2013, an agency may enter into a contract with an external legal services provider to undertake Commonwealth legal work only if the agency obtains the services of the provider in accordance with:
  - (a) Appendix F of these Directions as in force immediately before 1 June 2012; or
  - (b) subparagraph (2).
- (2) On or after 1 June 2013, an agency may enter into a contract with an external legal services provider to undertake Commonwealth legal work only if:
  - (a) the provider's name is included on the LSMUL; and
  - (b) the agency obtains the services of the provider in accordance with guidance material issued by the Department.

*Note* Guidance material on the operation of the LSMUL is available at [www.ag.gov.au/lsmul](http://www.ag.gov.au/lsmul).

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#### **4 Use of LSMUL by approved Commonwealth companies and approved government business enterprises**

- (1) OLSC may, on request from a Commonwealth company or government business enterprise, approve the company or enterprise to access the LSMUL for the purpose of identifying external legal services providers to undertake Commonwealth legal work.
- (2) If an approved Commonwealth company or approved government business enterprise uses an external legal services provider on the LSMUL, the company or enterprise must obtain the services of the provider in accordance with guidance material issued by the Department.

*Note* Guidance material on the operation of the LSMUL is available at [www.ag.gov.au/lsmul](http://www.ag.gov.au/lsmul).

#### **5 Matters to be taken into account in selecting external legal services providers**

- (1) An agency, approved Commonwealth company or approved government business enterprise, must take the following matters into account in deciding whether to use a particular external legal services provider on the LSMUL to undertake Commonwealth legal work:
  - (a) the amount and kind of pro bono legal work the provider has undertaken or will undertake;
  - (b) whether the provider has signed up to the National Pro Bono Aspirational Target of the National Pro Bono Resource Centre.

*Note* Information about the National Pro Bono Aspirational Target is available at [www.nationalprobono.org.au](http://www.nationalprobono.org.au).

- (2) Subparagraph (1) does not limit the matters that the agency, company or enterprise may take into account.

#### **6 Reporting on Commonwealth legal work undertaken by external legal services providers**

- (1) If an agency, approved Commonwealth company or approved government business enterprise uses an external legal services provider on the LSMUL to undertake Commonwealth legal work, the agency, company or enterprise must give a written report to OLSC about the service received.
- (2) The report must be:
  - (a) in the form approved by OLSC; and
  - (b) given to OLSC, in electronic form, within the time period specified by OLSC.

**7 OLSC must publish reports on LSMUL**

As soon as practicable after receiving a report under paragraph 6 from an agency, approved Commonwealth company or approved government business enterprise, in relation to an external legal services provider, OLSC must make the report available to each agency, company and enterprise.

**8 Agencies must provide assistance**

- (1) An agency, approved Commonwealth company or approved government business enterprise must provide all reasonable assistance in response to an inquiry to the agency, company or enterprise by the Attorney-General or the Attorney-General's Department in relation to the procurement by the agency, company or enterprise of legal services from an external legal services provider on the LSMUL.
- (2) Without limiting the operation of subparagraph (1), if the Attorney-General, or a person authorised by the Attorney-General for the purposes of subsection 55ZH (2) of the *Judiciary Act 1903*, asks an agency, approved Commonwealth company or approved government business enterprise for a document or information relating to the procurement of legal services from an external legal services provider on the LSMUL, the agency, company or enterprise must comply with the request.

**9 Providers must report to OLSC each year**

If an agency, approved Commonwealth company or approved government business enterprise contracts in a financial year with an external legal services provider on the LSMUL for the provision of Commonwealth legal work, the agency, company or enterprise must ensure the contract requires the provider to report to OLSC:

- (a) in the form approved by OLSC; and
- (b) not later than 30 days after the end of the financial year.

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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 [www.comlaw.gov.au](http://www.comlaw.gov.au).