

## **EXPLANATORY STATEMENT**

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

*Judiciary Act 1903*

*Legal Services Amendment Direction 2012 (No. 2)*

Under section 55ZF of the *Judiciary Act 1903* (the Act), the Attorney-General may issue legal services directions applying generally to Commonwealth legal work (as defined in that section) or in relation to Commonwealth legal work performed in relation to a particular matter.

The power to issue legal services directions was conferred having regard to the Attorney-General's responsibility, as first law officer, for legal services provided to the Commonwealth and its agencies, including Commonwealth litigation, and for the provision of legal advice to Cabinet.

Legal Services Directions were initially issued under this provision in 1999. They are administered by the Attorney-General with the assistance of the Office of Legal Services Coordination (OLSC) in the Attorney-General's Department.

The Directions set out requirements for sound practice in the provision of legal services to the Commonwealth.

The purpose of the *Legal Services Amendment Direction 2012* (the Amendment Direction) is to implement a government decision to transfer the functions of the Office of Legislative Drafting and Publishing (OLDP) within the Attorney-General's Department to the Office of Parliamentary Counsel (OPC).

The Amendment Direction supports the changes which are being made by the Parliamentary Counsel and Other Legislation Amendment Bill 2012, which transfers functions from the Secretary of the Department to the First Parliamentary Counsel; and from the Department to OPC.

The Amendment Direction amends the *Legal Services Directions 2005* (the Directions). The Directions provide that most drafting work is tied to government providers of legal services, in accordance with the Directions on *Tied Areas of Commonwealth Legal Work* at Appendix A.

Schedule 1 of the Amendment Direction would amend Clause 3 of Appendix A to remove references to OLDP and provide that only OPC is to undertake, or arrange for, the drafting of government Bills, government amendments of Bills, regulations, ordinances and regulations of non-self-governing Territories, and other legislative instruments made or approved by the Governor-General.

The Directions are declared not to be a legislative instrument under section 7(1)(a) of the *Legislative Instruments Act 2003*.

The Amendment Direction commences on the commencement of Schedule 1 to the *Parliamentary Counsel and Other Legislation Amendment Act 2012*.

The Amendment Direction was developed in consultation with the Office of Parliamentary Counsel and the Office of Legislative Drafting and Publishing. The Office of Best Practice Regulation has also advised that a Regulation Impact Statement is not required as the amendments are machinery in nature and do not change the regulatory burden placed on businesses or the non-profit sector.

The Amendment Direction is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The amendments made by the Amendment Direction do not engage any of the applicable rights or freedoms under that Act.

Authority: Section 55ZF of the *Judiciary Act 1903*.