



Express law *fast track information for clients*

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The Legal Services Directions 2005

The Attorney-General has issued new Legal Services Directions (LSDs), known as the [Legal Services Directions 2005](#) to replace the Legal Services Directions issued in 1999. The new LSDs commence on 1 March 2006.

In the Explanatory Statement accompanying the Directions, the Office of Legal Services Coordination (OLSC) advises:

For clarity and ease of use, the Attorney-General has decided not to amend the existing Directions, but to issue a new instrument which comprises certain changes to the Directions in their previous form.

Major changes at a glance

Foremost among the new changes are:

- the threshold for a 'major claim' rises from \$10,000 to \$25,000
- extension of the coverage of Appendix C ('Handling monetary claims') to claims *by* the Commonwealth, as well as claims *against* the Commonwealth
- agency heads must make available records of their agency's legal services expenditure
- agency heads must after the end of each financial year disclose to OLSC any possible breach of the LSDs not previously reported
- barristers who have been or are presently bankrupt and who have been the subject of an adverse disciplinary finding on that account, are only to be briefed with the approval of the Attorney-General
- agencies conferring subrogation rights on contractors must use their best endeavours to ensure that the contractor agrees to comply with the model litigant policy, and consult with the agency if matters arise relevant to the tied work or 'sharing of advice' obligations under the LSDs
- the type of limitation period that is to be invoked, in the absence of approval otherwise, now excludes those applying to judicial or merits review
- the Attorney-General may impose sanctions for non-compliance with the LSDs.

What is the overall effect of the new LSDs?

Of particular note, there is a strengthening of:

- agency accountability for LSD compliance
- the 'whole of government' focus in the provision of legal services to agencies.

What is the application of the new LSDs?

As with the former LSDs, the new LSDs apply to all agencies that are FMA agencies (that is, prescribed agencies for the purposes of the *Financial Management and Accountability Act 1997*). They have the same limited application as the former LSDs to bodies covered by the *Commonwealth Authorities and Companies Act 1997* that are not government business enterprises (GBEs) or companies under the Corporations Act controlled by the Commonwealth (see cl 12).

What are the new requirements on reporting and LSD compliance by agencies?

Agency heads under cl 11 will now be required by 30 October each year to make publicly available records of their agency's legal services expenditure for the previous financial year. Further, the agency head is responsible for giving to OLSC, within 60 days after the end of each financial year:

- details of any possible breach of the LSDs not reported to OLSC
- details of actions taken to address breaches occurring during the financial year
- any other information relevant to the agency's LSD compliance.

Do the new LSDs affect the model litigant policy?

The model litigant policy detailed in Appendix B has been given further definition in new cl 2(d) to make clear that the requirement to limit legal proceedings wherever possible includes giving consideration to alternative dispute resolution before initiating legal proceedings, and participating in alternative dispute resolution processes where appropriate.

Have there been changes to the requirements for consulting administering agencies on requests for advice?

Clause 10, addressing advices sought on legislation administered by other agencies, has been amended to clarify and expand upon the obligation to consult on a request for advice, requiring, among other things:

- the provision of a copy of the request for advice to the administering agency
- such reasonable consultation with that agency as it may require before the advice is finalised.

The exemption for advices on a routine matter that merely applies a settled interpretation has been tightened slightly. As a result, even routine advices will need to be provided to an administering agency (or at least the agency consulted) where:

- the advice relates to legislative provisions not previously considered by the courts, is contrary to existing policy, or could raise new policy issues in respect of the legislation
- the matter could create a precedent, or
- the requesting agency has identified a potential weakness in the legislation.

Has there been any change to requirements on the conduct of litigation using in-house lawyers?

There has been no change to cll 5.1 and 5.2, which stipulate that an agency may only conduct litigation using in-house lawyers with the Attorney-General's permission.

Where can the new LSDs be found?

The new LSDs are accessible through [OLSC's website](#). In addition, the website carries an Information Briefing and Explanatory Statement outlining the changes. The contact officers in OLSC for queries about the new LSDs are Susan Cochrane, Principal Legal Officer (02) 6250 6599 and Karl Alderson, Assistant Secretary, (02) 6250 6611, email olsc@ag.gov.au.

AGS, as the leading legal services provider to Commonwealth agencies, stands in a unique position to help agencies to understand and comply with the new LSDs as they may apply to the conduct of matters.

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