



Australian Government
Attorney-General's Department
Civil Justice Policy and
Programmes Division

18/362

3 May 2018

Legal and Constitutional Affairs Legislation Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear

**Senate Legal and Constitutional Affairs Legislation Committee - Judiciary Amendment
(Commonwealth Model Litigant Obligations) Bill 2017**

I refer to submission 15 received from Civil Liberties Australia (CLA) by the Senate Legal and Constitutional Affairs Legislation Committee inquiry (Senate Inquiry) into the Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017 (the Bill). I note that the CLA submission includes comments about public reporting requirements of agency compliance with the *Legal Services Directions 2017* (the Directions) and makes assertions about the interaction between contingent liability reporting and the model litigant obligation (MLO).

The Attorney-General's Department (the department) makes the following comments in relation to the CLA submission, which may be of assistance to the Committee:

- There is no legislative obligation through the Directions or in the *Judiciary Act 1903* (the Act) to publish information relating to agency compliance with the Directions.
- The department does publish statistical information from agency compliance assessments undertaken in accordance with the Directions. This information has been published annually in the department's annual reports and/or the department's website. We acknowledge that the Guidance Note on our website requires updating and will seek make the required amendments.
- The department considers that the CLA's view that the reporting of contingent liabilities amounts to a confirmation of non-compliance with the model litigant obligation reflects a misunderstanding of the reporting of contingent liabilities.
- The inclusion of quantifiable contingent liabilities in the department's financial statements is a recognition that damages or costs are likely to be awarded against the department based on advice from the department's legal representatives. The process of disclosing contingent liabilities in the financial statements ensures the department properly considers its potential liabilities and sets aside funds to meet costs where it is deemed likely the department will have to pay.

- Contingent liability reporting is not comprehensive reporting of all aspects of litigation managed by the department. It would not be appropriate to include summary of all aspects of a matter such as:
 - all the appropriate steps taken in consideration of our obligations as a model litigant to settle or partly settle claims where liability might be established
 - whether contingent liabilities arise in all aspects of a matter, and
 - the expectations of other parties to the litigation, including unsuccessful attempts to settle the matter.

Thank you for the opportunity to comment.

Yours sincerely

Sára Sañios | Assistant Secretary (A/g)
Office of Legal Services Coordination
Attorney-General's Department