

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Group 2**

**Program 1.1**

**Question No. 130**

**Senator Humphries asked the following question at the hearing on 23 May 2012:**

- a) Referring to answers to question on notice 1439 provided by the Attorney General on 9 Feb 2012. What was the state of the Directions in 2008 and what elements were identified as being in need of reform, and what consultations with the legal and business community were conducted and with what results?
- b) What is the annual budget allocation for the Office of Legal Services Coordination, and approximately what percentage of this allocation is attributable to the administration of the Model Litigant Rules?
- c) How many officers in the Office of Legal Services Coordination conduct media and court monitoring in relation to the Model Litigant Rules?
- d) How many officers in Office of Legal Services Coordination have carriage of policy matters in relation to the Model Litigant Rules?
- e) How many officers in Office of Legal Services Coordination are responsible for maintaining and updating compliance records for the Model Litigant Rules?
- f) What other functions are encompassed in Office of Legal Services Coordination in relation to the Model Litigant Rules – please list and describe each function?
- g) During the past four years has the department expended any consultancy moneys in relation to the operation of the Legal Services Directions, if so at what cost and with which consultancy provider?

**The answer to the honourable senator's question is as follows:**

- a) A copy of the *Legal Services Directions 2005* before the 2008 amendments is at **Attachment A**.

On 2 May 2008, the then Assistant Secretary of the Office of Legal Services Coordination wrote to Commonwealth agencies, external law firms and other interested parties who had expressed an interest in legal services reform, outlining proposed reform initiatives and inviting stakeholders to contribute their ideas on the proposed changes. These included:

- establishing a whole-of-government legal services panel or an optional legal services panel for smaller agencies that cannot otherwise access a panel
- more direct briefing of barristers in relation to advice work
- increased responsibilities for the Office of Legal Services Coordination such as auditing of procurement arrangements, providing information about best practice and development of a standardised form of contract
- an increase in legal services expenditure reporting requirements
- a stronger emphasis on alternative dispute resolution
- use of local law firms in regional areas
- equal opportunity for women in Commonwealth legal services procurement, and
- encouraging legal service providers to the Commonwealth to undertake pro bono work.

In 2008, consultative forums were held in Canberra, Sydney and Melbourne. The dates and attendees of consultative forums were:

Canberra – Tuesday, 20 May 2008

- ACT Bar Association
- ACT Law Society
- Austrac
- Australian Bureau of Statistics
- Australian Communications and Media Authority
- Australian Competition and Consumer Commission
- Australian Federal Police
- Australian Government Solicitor
- Australian Parliamentary Services
- Air Services Australia
- Australian Sports Anti-Doping Authority
- Australian Taxation Office
- Blake Dawson
- Centrelink
- Chamberlains Law Firm
- Child Support Agency
- Clayton Utz
- Crimtrac
- Deacons
- Department of Broadband, Communications and the Digital Economy
- Department of Defence
- Department of Education, Employment and Workplace Relations
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Finance and Deregulation
- Department of Foreign Affairs and Trade
- Department of Health and Ageing
- Department of Immigration and Citizenship
- Department of Infrastructure, Transport, Regional Development and Local Government
- Department of Innovation, Industry, Science and Research
- Department of Prime Minister and Cabinet
- DLA Phillips Fox
- IP Australia
- Law Council of Australia
- Malleson Stephen Jaques
- Minter Ellison
- National Archives of Australia
- Office of the Registrar of Indigenous Corporations
- Ombudsman

Sydney – Wednesday, 21 May 2008

- Australian Crime Commission
- Australian Government Solicitor
- Allsop Glover Pty Ltd

- Ally Consulting
- Australian Bar Association
- Australian Securities Investment Commission
- Clayton Utz
- Corrs Westgarth Chambers
- Deacons
- DLA Phillips Fox
- Julian Midwinter & Associates
- Migration Review Tribunal – Refugee Review Tribunal
- NSW Bar Association
- Sparke Helmore

Melbourne – Thursday, 22 May 2008

- Australian Communications and Media Authority
- Australian Government Solicitor
- Australian Securities Investment Commission
- Australian Women Lawyers
- Bureau of Meteorology
- Centrelink
- Clayton Utz
- Deacons
- Federal Magistrates Court
- Harris Cost Lawyers
- National Competition Council
- Office of the Australian Building and Construction Commissioner
- Public Interest Clearing House
- Sparke Helmore
- Victorian Bar Association

Canberra – Friday, 30 May 2008 – Agency only consultation

- Air Services Australia
- AusAid
- Austrac
- Australian Bureau of Statistics
- Australian Communications and Media Authority
- Australian Crime Commission
- Australian Customs Service
- Australian Federal Police
- Australian Fisheries Management Authority
- Australian Maritime Safety Authority
- Australian Parliamentary Services
- Australian Securities Investment Commission
- Australian Security Intelligence Office
- Australian Taxation Office
- Bureau of Meteorology
- Centrelink
- Comcare
- Child Support Agency

- Department of Agriculture, Fisheries and Forestry
- Department of Broadband, Communications and the Digital Economy
- Department of Defence
- Department of Education, Employment and Workplace Relations
- Department of Environment, Water, Heritage and the Arts
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Finance and Deregulation
- Department of Foreign Affairs and Trade
- Department of Immigration and Citizenship
- Department of Infrastructure, Transport, Regional Development and Local Government
- Department of Innovation, Industry, Science and Research
- Department of Health and Ageing
- Department of Human Services
- Department of Prime Minister & Cabinet
- Family Court of Australia
- Migration Review Tribunal – Refugee Review Tribunal
- National Archives of Australia
- National Capital Authority
- Ombudsman
- Professional Services Review
- The Treasury

Canberra – Thursday, 5 June 2008 – Private sector legal services stakeholders

- Deacons
- Malleson Stephen Jaques
- Moray & Agnew
- NSW Law Society

Canberra – May/June 2008 – Individual private sector legal services stakeholders

- Australian Government Solicitor
- Clayton Utz
- DLA Phillips Fox
- Minter Ellison
- National Pro Bono Resource Centre
- Sparke Helmore

Written submissions were received from the following stakeholders:

Non-Commonwealth agency stakeholders (22):

- Australian Government Solicitor
- Australian Lawyers for Human Rights
- Allsop Glover
- Australian Women Lawyers
- Blake Dawson
- Dale Boucher
- Clayton Utz
- Wal Jurkiewicz
- Corrs Chambers Westgarth
- Deacons

- DLA Phillips Fox
- Freehills
- Julian Midwinter & Associates
- Ladbray
- Law Council of Australia
- Mallesons
- Minter Ellison
- National Pro Bono Resource Centre
- NSW Bar Association
- NSW Law Society
- Private International Law Clearing House
- Sparke Helmore

Commonwealth agencies:

- Australian Competition and Consumer Commission
- Australian Customs Service
- Australian Securities and Investments Commission
- Australian Security Intelligence Organisation
- Australian Taxation Office
- Bureau of Meteorology
- Comcare
- Commonwealth Ombudsman
- Department of Broadband, Communications and the Digital Economy
- Department of Defence
- Department of Education, Employment and Workplace Relations
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Finance and Deregulations
- Department of Immigration and Citizenship
- Department of Infrastructure, Transport, Regional Development and Local Government
- Department of Innovation, Industry, Science and Research
- Department of the Treasury

After the commencement of the *Legal Services Amendment Directions 2008 (No. 1)* a further forum was hosted by Office of Legal Services Coordination on 1 August 2008 for Commonwealth agency stakeholders.

Canberra – 1 August 2008 – Agency-only legal services stakeholders

- AusAid
- Austrac
- Australian Competition and Consumer Commission
- Australian Crime Commission
- Australian Customs Service
- Australian Fisheries Management Authority
- Australian Maritime Safety Authority
- Australian Research Council
- Australian Radiation Protection and Nuclear Safety Agency
- Australian Securities Investment Commission
- Australian Taxation Office

- Bureau of Meteorology
- Comcare
- Commonwealth Ombudsman
- Comsuper
- Crimtrac
- Department of Broadband, Communications and the Digital Economy
- Department of Defence
- Department of Education, Employment and Workplace Relations
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Finance and Deregulation
- Department of Foreign Affairs and Trade
- Department of Innovation, Industry, Science and Research
- Department of Health and Ageing
- Department of Human Services
- Department of Prime Minister & Cabinet
- Family Court of Australia
- IP Australia
- Medicare Australia
- Workplace Ombudsman

Three amendments were made to the Legal Services Directions in 2008:

The *Legal Services Amendment Directions 2008 (No. 1)* (made on 26 June 2008) made the following amendments:

- paragraph 5.1 was inserted into Appendix B to the Directions to require an agency to only start court proceedings if it has considered other methods of dispute resolution.
- subparagraph 11.1(da) was inserted to require Chief Executives of agencies to report to Office of Legal Services Coordination within 60 days after the end of each financial year about their agency's legal services expenditure and the legal work of the agency, using a template approved by Office of Legal Services Coordination.
- subparagraph 11.2(ba) was introduced to impose a responsibility on Chief Executives of agencies to provide specified details to Office of Legal Services Coordination on an annual basis about aspects of the agency's use of persons appointed by the Attorney-General under section 63 of the Judiciary Act 1903 to receive service in proceedings to which the Commonwealth is a party.
- paragraphs 11.3, 11.4 and 11.5 were introduced to require the Chief Executive of an agency to ensure that in procuring legal services the agency does not adversely discriminate, subject to an actual conflict of interest arising, against legal services providers that have acted, or may act, pro bono for clients in legal proceedings against the Commonwealth or its agencies.
- Paragraph 12.3A was inserted to extend the application of these amendments to the Directions to bodies that are not agencies regulated by the Financial Management and Accountability Act 1997.
- Paragraph 12A was inserted to oblige persons appointed by the Attorney-General under s.63 of the Judiciary Act 1903 to accept service, to report to the agency on whose behalf service has been accepted, about the receipt of the service using a template approved by Office of Legal Services Coordination.
- General notes were inserted into the Directions to provide examples, interpretive assistance and further information on issues concerning or closely relating to the Directions.

- subparagraph 2(aa) of Appendix B to the Directions was inserted to require the Commonwealth and its agencies to make an early assessment of the Commonwealth's or the agency's prospects of success in legal proceedings that may be brought against the Commonwealth or its agencies; and the Commonwealth's potential liability in claims against the Commonwealth or its agencies
- subparagraphs 2(e)(iii) and 2(e)(iv) of Appendix B to the Directions were inserted to require the Commonwealth and its agencies to consider other methods for resolving the dispute throughout the course of litigation.
- Paragraph 5 of Appendix B to the Directions was amended to emphasise the importance of resolving disputes without recourse to litigation.

The *Legal Services Amendment Directions 2008 (No. 2)* (made on 16 September 2008) made the following amendments

- Paragraph 9A.1 of the Directions was inserted to provide that an agency to which the Financial Management and Accountability Act 1997 applies must comply with Appendix F of the Directions which sets out the requirements for the procurement of legal services from external legal services providers.
- Subparagraph 12.3(f) was inserted to extend the application of the amendments to the Directions to bodies that are not agencies regulated by the Financial Management and Accountability Act 1997, nor government business enterprises under the Commonwealth Authorities and Companies Act 1997, nor a Corporations Act body controlled by the Commonwealth.
- Appendix F, setting out requirements for legal services procurement, was inserted.

The *Legal Services Amendment Directions 2008 (No. 3)* (made on 7 October 2008) introduced paragraph 10A which requires an agency which is subject to the *Financial Management and Accountability Act 1997* that seeks legal advice from the Australian Government Solicitor (AGS) on a constitutional law issue to provide a copy of the request for advice to the Secretary of the Attorney-General's Department at the same time as the request is made to AGS.

b) The annual budget allocation for the Office of Legal Services Coordination for the 2011-12 financial year is \$1,935,627 excluding the budget allocated to the Queensland Flood Inquiry.

The team responsible for administration of the Legal Services Directions, including policy matters in relation to the model litigant obligations include one PLO, two Senior Legal Officers and one Legal Officer. The team is supervised by an Assistant Secretary.

Administration of the model litigant obligation represents only one element of the budget for the administration of the Directions by the Office of Legal Services Coordination as the Legal Services Directions impose a number of obligations on FMA and CAC agencies, in addition to the model litigant obligation.

c) The Department has a media monitoring service that circulates media articles of possible interest to the Department on a daily basis. Where a media article refers to the Legal Services Directions or model litigant obligations, it will be included in the daily circulation.

Under paragraph 11.1(d), the Chief Executive of an FMA Agency is obliged to report as soon as practicable to the Attorney-General or Office of Legal Services Coordination about any possible or apparent breaches of the Directions by the agency, or allegations of breaches by the agency of which the agency is aware, and about any corrective steps that have been taken or are proposed to

be taken, by the agency. This includes matters where the media or judiciary have raised issues of compliance with the model litigant obligation.

(d-f)

As noted in response to question (b), the team responsible for administration of the Legal Services Directions, including policy matters in relation to the model litigant obligations include one PLO, two Senior Legal Officers and one Legal Officer. The team is supervised by an Assistant Secretary.

Administration of the Legal Services Directions includes

- Providing policy and legal advice
- Policy matters relating to compliance with and the nature and context of the model litigant obligations
- Answering queries from stakeholders about the model litigant obligation
- Reviewing circumstances of possible non-compliance with the model litigant obligation, and
- Delivering training to agencies and service providers

A Senior Legal Officer in the Office of Legal Services Coordination who is employed part time is primarily responsible for maintaining and updating the compliance records relating to the Legal Services Directions, including the model litigant obligation.

(g) Over 2008-09 and 2009-10, OLSC engaged Anthony Blunn AO for consulting services at a total cost of \$78,977 including GST, and Sibylle Irmgard Krieger as a legal services review consultant at a total cost of \$93,680 including GST. The Report of the Review of Commonwealth Legal Services Procurement by Blunn and Krygier was produced as a result of this engagement.

In 2011-12, OLSC engaged Harriss Wagner Pty Ltd for the development of a permanent IT Solution for the Legal Services Multi-Use List at a cost of \$38,397 including GST.

In February 2012, Office of Legal Services Coordination engaged Mr Stephen Grech of Doing Business Better Pty Ltd to:

- conduct a series of four workshops based on Lean Six Sigma practice, in order to identify areas of risk, and areas for improvement in the Commonwealth counsel engagement system, and
- facilitate a series of four workshops to document the compliance casework process.

Mr Grech was engaged at a total cost of \$30,391 (including GST and travel expenses).