

Legal Services

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About this Legal Policy

This policy outlines the legal services arrangements within the department and is relevant to all officials within the department.

Adopting appropriate legal services arrangements is critical to the department meeting its obligations under the Public Governance, Performance and Accountability Act 2013 ('PGPA Act') to manage its resources and risk appropriately.

In addition, appropriate legal services arrangements are critical for ensuring that legal services are handled efficiently and effectively (as required under the Legal Services Directions issued by the Attorney-General under the Judiciary Act 1903 s 55ZF).

Legal Services Arrangements

Provision of Legal Services

Final responsibility for legal services required by the department, other than Anti-Dumping Commission Legal Services (ADC Legal Services)¹, rests with the department's General Counsel.

Final responsibility for ADC Legal Services rests with the Commissioner of the ADC.

Responsibility for legal services other than ADC legal services

In respect of legal services required by the Department, other than ADC Legal Services, the General Counsel is responsible for:

- ensuring that legal services within the department are handled efficiently and effectively; and
- ensuring that appropriate management strategies and practices are adopted so as to achieve compliance with the Legal Services Directions.

Responsibility for ADC legal services

The Commissioner of the ADC is responsible for:

- ensuring that ADC Legal Services are handled efficiently and effectively; and
- ensuring that appropriate management strategies and practices are adopted within the ADC so as to achieve compliance with the Legal Services Directions in relation to ADC Legal Services.
- consulting with the General Counsel about the delivery of ADC Legal Services including the engagement of an appropriately qualified legal counsel to manage and deliver the ADC Legal Services.

The Department's approach to legal services delivery

The department's approach to the provision of legal services and advice is based on the following principles:

For all legal services

- all legal services and advice are to be provided in accordance with the requirements of the Legal Services Directions;

¹ ADC Legal Services are legal services provided to the Commissioner of the ADC by lawyers who are made available to the Commissioner of the ADC under s 269SMQ of the *Customs Act 1901* and by any lawyers otherwise contracted to provide advice to the Commissioner of the ADC.

the legal function within the Legal, Audit and Assurance Branch (Legal) is responsible for the management of the department's compliance with the Legal Services Multi Use List processes and external legal services must be engaged through Legal.

For all legal services other than ADC Legal Services

Other than the General Counsel, only those officials permitted by the General Counsel to do so, may provide those legal services within the department (referred to as Authorised Legal Officers² throughout this policy); and

Authorised Legal Officers will take a partnership approach to the delivery of legal services by providing advice in a way that assists the department to achieve its objectives and manage its legal risks.

For ADC Legal Services

The Commissioner of the ADC is responsible for ensuring appropriate arrangements for the delivery of ADC Legal Services

The Commissioner of the ADC will take a partnership approach to the delivery of legal services by ensuring that ADC Legal Services are provided in a way that assists the department to achieve its objectives and manage its legal risks.

Responsibilities of Departmental Officials

Officials, must not obtain legal services and advice other than from either:

- the General Counsel;
- an Authorised Legal Officer (within Legal or outposted³ in a division of the department);
- an external legal services provider that is being instructed by the General Counsel or an Authorised Legal Officer located within Legal.
- In relation to ADC legal services, in addition to the above, ADC legal officers⁴.

Outposted Authorised Legal Officers and ADC Legal Officers must consult with Legal before engaging external legal services.

Officials must not:

- authorise the settlement of a claim involving the Commonwealth unless authorised to do so by the Secretary; or
- authorise the institution of proceedings by the Commonwealth unless authorised to do so by the Secretary.

² Authorised Legal Officers can include departmental officers working in Legal, lawyers seconded from external providers to work in Legal or within divisions in the department, or departmental officials authorised to work as a lawyer in a division, in accordance with this policy. ADC Legal

³ Outposted arrangements can include short or long term secondments from Legal or from an external legal provider, or arrangements where an Authorised Legal Officer is permanently engaged. Further information on outposted arrangements is found on page 4 of this policy.

⁴ ADC lawyers are who are made available to the Commissioner of the ADC under s 269SMQ of the Customs Act 1901 and by any lawyers otherwise contracted to provide advice to the Commissioner of the ADC

Matters that must be referred to Legal

Officials must immediately notify an Authorised Legal Officer within Legal if they are in receipt of:

- notice of legal proceedings (including any attempt to serve court documents on the department, proceedings before courts, tribunals, inquiries, Royal Commissions, coronial inquests and in arbitration and other alternative dispute resolution processes) involving the department or an official as a result of the official performing his or her duties;
- notice of any representation to the effect that a person (whether individual or body politic or corporate) intends to or is contemplating taking legal proceedings against the department or an official as a result of the official performing his or her duties or considers such legal proceedings are otherwise likely to be commenced;
- a request or claim for monetary compensation or damages other than in the context of legal proceedings (for example, a letter of demand);
- a request or claim for compensation arising from defective administration under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme);
- a request or claim for an Act of Grace payment under s.65 of the PGPA Act;
- a request or claim for an Ex Gratia payment;
- a request or claim for payment pursuant to *Public Service Act 1999* s 73;
- a subpoena or notice to produce issued to the department;
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- a request, query or complaint from an Ombudsman, the Australian Human Rights Commission or the Office of the Australian Information Commissioner;
- a freedom of information application made under the *Freedom of Information Act 1982* or a request for documents which appears to be a freedom of information request;
- notice of any event which could lead to a claim by or against the department, including privacy complaints.

Refer to the *Requesting Legal Services* page for more information - <http://icentral/Legal/Legal-advice/Pages/Requesting-legal-services.aspx>

When Legal Advice must be obtained

Officials must request advice from an Authorised Legal Officer when they are:

- developing legislation or legislative instruments, including before providing advice to the Minister's office in relation to the timing and procedure for passage of a bill through Parliament, or in relation to any amendments proposed to be made to a bill before the Parliament;
- seeking constitutional advice or considering constitutional issues (Note: all constitutional advice must be obtained from the Australian Government Solicitor through Legal);

- considering the termination of a contract, agreement or other arrangement with a supplier, grant recipient, or other third party;
- considering claiming compensation from a third party on behalf of the Commonwealth;
- seeking to engage patent or intellectual property services from an external provider;
- considering entering into a contract where the Commonwealth Contracting Suite (CCS) or the department's standard terms and conditions have been modified;
- considering entering into a contract that is not based on, the CCS or the department's standard template, and the activity is considered medium or high risk (i.e. not considered low risk – when considered against the Supplier terms and conditions agreement checklist);
- considering entering into an arrangement for the receipt, expenditure or custody of Commonwealth money with a third party other than the Commonwealth;
- developing agreement templates for new programmes; or

specifically required to do so by an Accountable Authority Instruction or departmental policy.

Advice regarding new policy proposals and ad hoc spending must be sought from the Finance Group – Corporate Network in the first instance who will refer requests for legal advice to Legal as required.

Advice regarding human resources and personnel related administrative decisions must be sought from People & Planning Branch in the first instance who will seek legal advice from Legal as required.

Any matters relating to possible fraud should be referred to the Fraud Section in the first instance.

Legal will maintain a suite of Standing Legal Advices on the intranet to assist line areas to deal with common legal issues.

Officials are encouraged to seek legal advice in any other instance where they are uncertain about the legal risk faced by the department in engaging in a particular course of action. The types of matters that can generate legal risk include:

- implementing new programmes;
- contract variation;
- management of intellectual property;
- confidentiality obligations;
- administrative decision making (particularly decisions that involve matters which are sensitive or high risk); and
- dispute resolution.

For more information please contact Legal Services.

Outposted or Seconded Legal Officers

All Authorised Legal Officers must operate from within Legal unless an outposted arrangement³ is supported by the General Counsel and the relevant Division Head.

Before a decision to outpost an Authorised Legal Officer is made, regard must be had to the management of risks arising from outposted arrangements. Key risks include:

- failure to adhere to the Legal Services Directions 2005;
- over-reliance on a specified individual in a panel firm or the in-house unit for specialist legal advice;

- inadequate attention to succession planning or professional development;
- loss of legal corporate knowledge with staff turnover;
- failure to take all relevant issues (including whole-of-government issues) into account in legal advice;
- inconsistent legal services from different providers given to different areas of the agency;
- potential threat to the agency's capacity to claim legal professional privilege over particular legal services;
- not knowing or controlling agency in-house legal service costs; and
- not keeping track of legal advice and other services obtained.

[Source: ANAO Report on Legal Service Arrangements]

Where an Authorised Legal Officer is outposted to a Division (whether from Legal or otherwise), the following requirements apply:

- the General Counsel must be satisfied that the outposted officer has the appropriate skills and experience to undertake the work;
- the General Counsel must be satisfied appropriate arrangements for the conduct and supervision of the work will be in place, taking into account the skills and experience of the outposted officer (this supervision could be provided by an officer from Legal, another more senior outposted officer or the external firm that supplied the outposted officer);
- the outposted officer must provide a copy of any legal advice to **s47E(d)** @industry.gov.au ;
- the outposted officer must provide the General Counsel with further information regarding any legal matter if requested to do so;
- the outposted officer must ensure that they comply with the requirements of the Legal Services Directions and must complete the annual Legal Services Directions compliance certification;
- any breaches of the Legal Services Directions must be reported to the General Counsel as soon as the outposted officer becomes aware of the breach; and
- The outposted arrangement will be reviewed at regular intervals by the General Counsel and the relevant Division Head to ensure the arrangement continues to be relevant and appropriate (including whether the arrangement continues to be considered value for money).

ADC Legal Officers

- The Commissioner of the ADC and the General Counsel must be satisfied that ADC Legal Officers have the appropriate skills and experience to undertake work as ADC legal officers.
- the Commissioner of the ADC and the General Counsel must be satisfied appropriate arrangements for the conduct and supervision of the work of ADC legal officers will be in place, taking into account the skills and experience of the ADC legal officer (this supervision could be provided by another ADC legal officer);
- ADC Legal Officers must provide a copy of any legal advice to **s47E(d)** @industry.gov.au;

- ADC Legal Officers must provide the General Counsel with further information regarding any legal matter if requested to do so;
- ADC Legal Officers must comply with the requirements of the Legal Services Directions and must complete the annual Legal Services Directions compliance certification;
- any breaches of the Legal Services Directions that an ADC Legal Officer becomes aware of must be reported to both the Commissioner of the ADC and the General Counsel as soon as the ADC Legal Officer becomes aware of the breach; and
- The arrangements for ADC Legal Officers will be reviewed at regular intervals by the Commissioner for the ADC, the General Counsel and the relevant Division Head to ensure the arrangement continues to be relevant and appropriate (including whether the arrangement continues to be considered value for money).

Independence Policy

- Legal services must be provided in an independent and professional manner in accordance with each lawyer's responsibilities as an officer of the Court or Courts in which they are admitted to practice and the laws, regulations and professional rules applying to legal practitioners in Australia, including the *Legal Profession Act 2006* (ACT) as applicable.
- In certain circumstances, the professional duties of the General Counsel and any Authorised Legal Officers and ADC Legal Officers may take precedence over their duties to the department or individuals within the department or, in the case of ADC Legal Officers, to the Commissioner of the ADC.
- The role of the General Counsel, any Authorised Legal Officers and ADC Legal Officers is to provide legal advice as opposed to commercial or policy advice. This distinction must be clearly understood where a lawyer is providing legal advice to the business to assist the business in making a commercial or policy assessment of a particular matter.
- The department, its executive and staff, must not seek to inappropriately influence the proper exercise of the independent professional judgment of the General Counsel or any Authorised Legal Officers or ADC Legal Officers.
- If the General Counsel or any Authorised Legal Officers or ADC Legal Officers form the view that their ability to provide impartial legal advice has been or may be compromised, they should immediately inform the General Counsel, Deputy Secretary responsible for the Corporate Network, or the Secretary (as appropriate). In relation to the ADC Legal Officers the Commissioner of the ADC should also be notified
- Where the General Counsel or any Authorised Legal Officers or ADC Legal Officers perform both legal and non-legal roles, those roles must be clearly delineated and the distinction identified where appropriate in relevant communications.
- The General Counsel or any Authorised Legal Officers and ADC Legal Officers acknowledge that they owe a duty of confidentiality to those whom they advise and have a duty to act always with the utmost integrity.

References

Legislation

Public Governance Performance and Accountability Act 2013

Public Service Act 1999

Judiciary Act 1903 s 55ZF - Attorney General may issue directions

Judiciary Act s 55ZG - Compliance with Legal Services Directions

Judiciary Act s 61 - Suits by the Commonwealth

Legal Profession Act 2006 8

Other References

Legal Services Directions 2005 - issued by the Attorney General
Accountable Authority Instructions and Departmental Policies
ANAO Report on Legal Service Arrangements



SERVICE OFFER

Service Name: Legal Services

We will support divisions by providing clear, practical legal advice in plain English.

Name	Description	Deliverables	Accountability	Service Level
Provision advice and assistance	<ul style="list-style-type: none"> Provision of advice and assistance to all divisions who request legal advice in relation to their activities. 	<ul style="list-style-type: none"> Legal advice on the Department's activities, including: <ul style="list-style-type: none"> Administrative decision making privacy and confidentiality issues statutory interpretation contract and commercial drafting contract management regulatory issues Management of litigation matters Undertaking legal compliance reporting 	<p>Corporate Network – Legal</p> <ul style="list-style-type: none"> Ensure that all advice provided is accurate and timely Ensure compliance with legal services directions <p>Division</p> <ul style="list-style-type: none"> Ensure requests for advice are cleared at an appropriate level To provide useful instructions, which include: <ul style="list-style-type: none"> a question (where possible) all relevant background material, and relevant advices Not to change standard terms and conditions without identifying the changes and the reason for the change To impose reasonable deadlines – we can only prioritise your request at the expense of someone else's Ensure activities are adequately planned so that Legal is engaged early in the process so Legal has time to properly advise and can add value by managing legal risk, and is not just a compliance measure or attempt to transfer responsibility for decisions already taken 	<ul style="list-style-type: none"> A lawyer will contact the client within 48 hours of receiving a request for legal advice and agree a timeframe for providing the advice. Advice will be provided within agree timeframes.
External Legal Services	<ul style="list-style-type: none"> Management of the Department's procurement of legal services from external providers, including from providers on the legal services multi-use list. 	<p>Assistance and advice will include:</p> <ul style="list-style-type: none"> Advice on whether the legal branch is able to advise on the matter in-house as an alternative to outsourcing Legal input into the Stage 1 and Stage 2 approval minutes; Legal will prepare the following documents: <ul style="list-style-type: none"> a request for quote form (based on client instructions); a Contracts Module Data Input form Legal will provide recommendations of appropriate external legal services providers Reviewing services provided and invoices to ensure they are value for money 	<p>Corporate Network – Legal</p> <ul style="list-style-type: none"> To undertake the informed purchaser role on behalf of the Department, including: <ul style="list-style-type: none"> Ensuring that proposed external legal providers have appropriate expertise Reviewing advice provided to ensure that consistent legal services are provided by differing providers Reviewing invoices to ensure that charges are fair and reasonable Reviewing advice provided to ensure the provider has considered all relevant issues (including who-of-government issues) In making recommendations about potential suppliers, to ensure that external legal work is spread appropriately between firms to avoid dissipating legal work over too many providers or concentrating it on too few; or over-reliance on a specific individual in a panel firm for specialist legal advice. 	<ul style="list-style-type: none"> A lawyer will contact the client within 48 hours of receiving a request to outsource legal services and agree a timetable for the procurement process. Services will be provided in accordance with the timetable.



Name	Description	Deliverables	Accountability	Service Level
			<p>Division</p> <ul style="list-style-type: none"> Responsible for providing financial approval, paying invoices from external providers, and entering invoice in the finance system (properly broken down into fees, disbursement and counsel's fees). In choosing external legal services providers, to give genuine consideration to legal services recommendations about providers, including alternative providers. 	
<p>Freedom of Information</p>	<ul style="list-style-type: none"> Provision of advice and assistance to all divisions in responding to requests under the <i>Freedom of Information Act 1982</i> (FOI Act) Managing the Department's obligations under the FOI Act 	<p>Advice and assistance will include:</p> <ul style="list-style-type: none"> Coordinate the processing of all FOI requests and requests for consultation (under Federal and State FOI legislation) received by the department. Ensure all FOI requests are processed in accordance with relevant statutory timeframes. Advise FOI decision makers on the application of relevant exemptions within the FOI Act. Manage the department's response to all requests for external review. Administer the department's FOI Disclosure Log. Undertake FOI compliance reporting. 	<p>Corporate Network – Legal</p> <ul style="list-style-type: none"> Deliver service in accordance with established procedures and policies set out in the Department's FOI Procedure Manual. Assist the department with robust and defensible FOI decision making which will withstand external challenge. Ensure the department is compliant with all FOI statutory timeframes. Ensure that advice provided is accurate and timely. <p>Division</p> <ul style="list-style-type: none"> Ensure responsibilities are discharged in accordance with established procedures and policies set out in the Department's FOI Procedure Manual with particular reference to the 'Line Area Checklist for processing an FOI request'. Notify the FOI team of any potential FOI requests received directly by Divisions. On receipt of a new FOI request ensure that an appropriate decision maker is identified and a contact officer is made available to assist with the process. 	<ul style="list-style-type: none"> Timeframes for each stage of the FOI process to be agreed between the FOI team and Divisions in accordance with requirements of the FOI Act and the FOI Procedure Manual.
<p>Legislation</p>	<ul style="list-style-type: none"> Coordinating the legislative bids process and legislation approval process (LAP) for portfolio bills and government amendments. 	<p>Management of the legislation process, including legislative bids:</p> <ul style="list-style-type: none"> Management of Department's legislative bids process (including variations) for portfolio bills and government amendments. Provision of advice and review of bids and drafting instructions submitted by divisions. Provision of advice and assistance with during a bill's drafting. Provision of advice and assistance with preparation of supporting documents for bills and government amendments (ie, explanatory memorandum, statement of compatibility, second reading speech, joint party room brief. Management of LAP (legislation approval process) and tabling requirements for introduction of portfolio bills and government amendments. Liaising with PM&C, OPC, Parliamentary Liaison Officers and Minister's office to ensure industry's 	<p>Corporate Network – Legal</p> <ul style="list-style-type: none"> Deliver service in accordance with established procedures and policies as set out in the Department's Legislation Handbook. Ensuring compliance with PM&C's timeframes for submission of coordinated legislative bids. Ensuring compliance with PM&C's timeframes for submission of bills and government amendments for LAP and introduction purposes. <p>Division</p> <ul style="list-style-type: none"> Ensure responsibilities are discharged in accordance with established procedures and policies as set out in the Department's Legislation Handbook. Ensuring that Legal is engaged at an appropriate stage of the legislation process to ensure that LAP and the submission of coordinated legislative bids to PM&C are not delayed. 	<ul style="list-style-type: none"> Call for bids will be made by General Counsel. LLO will follow up with line areas who have indicated need for legislation.



Name	Description	Deliverables	Accountability	Service Level
		legislation program is efficiently coordinated with the government's overall legislation agenda.	<ul style="list-style-type: none"> Ensuring staff are made available during the drafting of bills and for attendance for Parliament debate of portfolio bills. 	
Legal instruments	<ul style="list-style-type: none"> Managing the legislation process for preparation of Exco instrument (tied work under the Legal Services Directions) In-house drafting of non-tied legislative instruments and all associated supporting documents. 	<ul style="list-style-type: none"> Management of Department's Exco instrument bids process (including variations) for regulations and other tied instruments for making by the Governor-General. Provision of advice and assistance with preparation of supporting documents for tied legislative instruments. Liaising with PM&C and Minister's office to ensure compliance with Exco requirements. In-house drafting of non-tied legislative instruments and all supporting documents Drafting of custom template legislative instruments for non-tied work. Provision of advice and assistance with preparation of supporting documents for non-tied legislative instruments Registering all legislative instruments on Federal Register of Legislative Instruments 	<p>Corporate Network – Legal</p> <ul style="list-style-type: none"> Deliver service in accordance with established procedures and policies as set out in the Department's Legislation Handbook. Ensuring compliance with OPC's timeframes for submission of coordinated Exco instruments bids. Ensuring compliance with PM&C's timeframes for submission of instruments for consideration by the Governor-General (including execution of documents by the Minister). <p>Division</p> <ul style="list-style-type: none"> Ensuring that Legal is engaged at an appropriate stage of the policy development of instruments to value add during the bids and drafting process. Ensure deadlines are complied with in accordance with established procedures and policies as set out in the Department's Legislation Handbook. 	<ul style="list-style-type: none"> Call for bids will be made by LLO. LLO will follow up with line areas who have indicated need for legislation.
Ombudsman Complaints	<ul style="list-style-type: none"> Manage the Department's response to Ombudsman complaints 	<ul style="list-style-type: none"> Central point of contact for correspondence from the Ombudsman Identify and liaise with relevant line area Provide advice and assistance to line areas in the preparation of a response to the Ombudsman Carry out reporting on Ombudsman matters as required. 	<p>Corporate Network – Legal</p> <ul style="list-style-type: none"> Ensure that correspondence from the Ombudsman is brought to the attention of the relevant line area as quickly as possible. Manage the Department's timeframe for responses including liaising with the Ombudsman to obtain extensions where necessary. <p>Division</p> <ul style="list-style-type: none"> Provide accurate and timely input into responses to the Ombudsman. Ensure final responses are cleared at an appropriate level. 	<ul style="list-style-type: none"> Correspondence will be forwarded to line areas within 48 hours of receipt from the Ombudsman.
Compensation for Detriment caused by Defective Administration (CDDA Scheme)	<ul style="list-style-type: none"> Manage the Department's response to claims under the CDDA Scheme 	<ul style="list-style-type: none"> Central point for correspondence relating to CDDA Claims Identify and liaise with relevant line area Liaise with applicant Prepare preliminary decision for decision maker Prepare final decision in accordance with decision maker's instructions 	<p>Corporate Network – Legal</p> <ul style="list-style-type: none"> Ensure that CDDA claims are brought to the attention of the line area Manage the Department's response including preparation of correspondence and recommendation to delegate <p>Division</p> <ul style="list-style-type: none"> Provide accurate and timely input into responses Ensure final responses cleared at an appropriate level 	<ul style="list-style-type: none"> Claims acknowledged within 7 days. Response prepared in a timely manner.

PRACTICE DIRECTION

Legal, Audit and Assurance Branch

Topic	Provision of advice relating to Low Risk Supplier Agreements
Date of Issue	20 June 2016

Purpose

The purpose of this direction is to set out the:

- procedure for filing of advices relating to Low Risk Supplier Agreements

Provision of advice

Upon receipt of a request for advice in relation to Low Risk Supplier Agreements covered by the [Standing Legal Advice](#), please ensure that you:

- Complete a file note within LEX 57682 ‘Branch Admin – Standing Legal Advice on Low Risk Supplier Contracts, Agreements and Arrangements’ noting:
 - the date the request was received;
 - who requested the advice and the department they are from;
 - the nature of the advice they are seeking, including any applicable LEX matter given to you (noting that you shouldn’t be having separate LEX matters created as all such advices can be saved under LEX 57682); and
 - the action taken to resolve the enquiry.

Below is an example of such a file note:

16/06/2016 – I received a request from [NAME] to review the terms and conditions provided by [NAME of SUPPLIER]. I referred [NAME OF CLIENT/BRANCH/DIVISION] to the Standing Advice and talked him/her through the 5 steps – [NAME] was happy to proceed to review the T&Cs as indicated in the Standing Advice. 17/6/2016 – [NAME] called back and asked for some clarification advice on [INSERT DESCRIPTION]. I was able to explain [INSERT ADVICE] over the phone/ OR I sent an email explaining [INSERT ADVICE] and this email is saved in IEF16/3801.

- If any supplementary or clarification advice is sought, please ensure a copy is saved to TRIM file IEF16/3801 ‘Standing Legal Advice on Low Risk Supplier Contracts, Agreements and Arrangements’.

PRACTICE DIRECTION

Legal, Audit and Assurance Branch

Topic	Provision of Legal Services to portfolio agencies
Date of Issue	15 June 2016

Purpose

The purpose of this direction is to set out the:

- procedure for undertaking legal and FOI work for portfolio agencies; and
- process for invoicing and reporting to those agencies.

Undertaking work for IP Australia or Geoscience Australia

The Department of Industry, Innovation and Science (DIIS) has entered in arrangements (MOU's) with both IP Australia (IPA) and Geoscience Australia (GA) for the provision of Shared Services. The MOU's set out the details and particular terms applicable to the provision of legal services by DIIS to IPA and GA. References to 'Services' in this document is to that term as contained in the MOU's.

Part A: ISSUES TO CONSIDER

<p>1. Portfolio agency may issue a request for legal services</p>	<ul style="list-style-type: none"> • The portfolio agency may request legal services by email to the s47E(d) @industry.gov.au, containing the following details: <ul style="list-style-type: none"> a) the requested Service/s; and • the timeframe for completion of that work.
<p>2. Response to Request</p> <p>Response should be within 24 hours of the request</p>	<ul style="list-style-type: none"> • If DIIS is in a position to accept the request for legal services it will respond to the email request: <ul style="list-style-type: none"> a) confirming the Services that are sought and advising an indicative timeframe in which they are anticipated to be provided; b) nominating the officer(s) who will work on the Services; and c) providing a quote. • In the case of IPA, the response should always be copied to s47E(d) @ipaaustralia.gov.au. • If DIIS is not in a position to accept the Request, then DIIS will advise the portfolio agency by email. • DIIS may quote: <ul style="list-style-type: none"> a) hourly rates with an estimate of total costs; b) hourly rates with a capped total amount; or c) a fixed amount. <p>See below for example responses.</p>
<p>3. Lawyers working on the matter are to time record in LEX.</p>	<p>The responsible lawyer should have the PMU open a matter in LEX for the requested work and commence time recording on the matter.</p>

	<p>The description in the DIIS LEX database will appear in the invoice and may also appear in the periodic report to the portfolio agency.</p> <p>Where an estimate of the total cost of the work has been provided (rather than a capped or fixed amount), the responsible lawyer should ensure that the work does not exceed with estimate without seeking prior approval from the portfolio agency for any increase in the estimate.</p>
<p>4. Lawyer handing the matter is to generate an invoice</p>	<p>An invoice needs to be issued within 30 days of tendering a final advice on a matter.</p> <p>Following provision of the final advice and confirming with the portfolio agency that there are not no follow up questions, the lawyer will:</p> <ol style="list-style-type: none"> a) Confirm all time is entered in LEX (including the time of the second counsel) and ensure the LEX descriptions are correct; b) Provide a copy of the quote and approval of the quote, a LEX report of the time recording and a calculation of all costs on the matter to their relevant Principal Legal Counsel for review and approval. c) Once approved, this information should be emailed to s47E(d)@industry.gov.au (cc s47E(d)@industry.gov.au) to request an invoice to be generated. d) Any additional time spent on a matter that was not approved by the portfolio agency in the initial (or any subsequent) quote will need to be written off by the responsible Principal Legal Counsel.

Reporting to IPA

DIIS will provide quarterly reports to portfolio agencies detailing:

- Information about matters undertaken including a description of the matter, any outcomes or issues; and
- Costs associated with the matters undertaken.

This report is to be prepared by the **Legal PMU**.

Using LEX

To ensure proper management and reporting of portfolio agency legal matters, lawyers must follow the following LEX protocols.

- Under the “Background” tab, please insert a short description of what the matter is about. This only has to be one to two paragraphs.
- Under the status tab, please include the following information:
 - Date instructions were received.
 - Agreed date for providing the advice.

- A statement of the current status of the matter and key stages of the advice. You may use the file note function for this if you find it helpful.
- The date the advice was finalised.

Example Responses

Accepting work

I refer to your request for legal advice dated [date] seeking [description of services sought]. The Department is in a position to accept a request to provide the Services.

We estimate that the advice will be provided by [date].

[name] will work on the Services.

[Option 1] We propose to charge for the services at hourly rates. We estimate that the work will require about \$#, calculated as follows

- X hours of [name's], Legal Counsel, Legal work @ \$100/hour
- X hours of [name's], Senior Legal Counsel, Legal work @ \$132/hour
- X hours of [name's], Principal Legal Counsel, Legal work @ \$149/hour

[Option 2] We propose to charge for the services at hourly rates, capped at \$#, calculated as follows:

- X hours of [name's], Legal Counsel, Legal work @ \$100/hour
- X hours of [name's], Senior Legal Counsel, Legal work @ \$132/hour
- X hours of [name's], Principal Legal Counsel, Legal work @ \$149/hour

[Option 3] We propose to charge a set price of \$#, calculated as follows:

- X hours of [name's], Legal Counsel, Legal work @ \$100/hour
- X hours of [name's], Senior Legal Counsel, Legal work @ \$132/hour
- X hours of [name's], Principal Legal Counsel, Legal work @ \$149/hour

Not accepting work

I refer to your request for legal advice dated ## seeking [description of services sought]. Unfortunately, the Department is not in a position to assist with this request at this time.

[Optional] You might consider approaching one of the following firms for assistance:

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PRACTICE DIRECTION

Legal, Audit and Assurance Branch

Topic	LANDesk
Date of Issue	8 March 2017
Related:	LANDesk Basic User Guide – Legal Services
Version:	2.0
Next review:	30 March 2018
Last modified by:	s22

Purpose

This direction sets out the standard operating procedure for processing new requests for legal assistance logged in LANDesk, in particular transferring jobs from LANDesk to LEX.

Please *LANDesk Basic User Guide – Legal Services* for general guidance on the use of LANDesk.

Background

The Department of Industry, Innovation and Science (DIIS) has centralised requests for Corporate Network Support through LANDesk. LANDesk functions as a job ticketing and assignment system.

LANDesk categorises matters into either:

- Tier 1 matters, which are simple requests that LANDesk staff respond to using a provided script; or
- Tier 2 matters, which are more complex requests and are forwarded to the responsible area.

Legal Services will continue to use LEX as its matter management tool.

This policy describes the process for closing off jobs in LANDesk to and registering those jobs as matters in LEX.

Workflow

To view the full Legal Services – Ticket Workflow click [here](#).

<p>1) Client requests legal services</p>	<p>a) The client may request legal services by email to the Corporate Support Inbox or through LANDesk.</p> <p>b) Emails sent to Legal Services Inbox will be automatically forwarded to LANDesk.</p> <p>c) For all requests not received through LANDesk or Legal Services Inbox (for example, requests sent to the FOI Inbox or directly to a lawyer), the lawyer may either:</p> <ul style="list-style-type: none"> i) forward the request to Legal Services Inbox; or ii) create a new LANDesk ticket and attach the client’s request for advice. <p>Note: If the lawyer forwards the email to legal services inbox, the PLC still needs to request a lex number within LANDesk using step (4)(c)(i) below. Simply putting the lawyers and second counsel’s name in the email subject will not result in a Lex matter being created.</p>
<p>2) LANDesk team resolves Tier 1 matters</p>	<p><i>Currently no Tier1 matters are resolved by the LANDesk team and all matters are referred to Legal Sevices by default.</i></p> <p><i>Legal Services is working with the LANDesk team to identify simple requests that may be addressed by the LANDesk team.</i></p>

<p>3) The LANDesk team will log the job and assign to the responsible legal team.</p>	<p>a) The LANDesk team monitor the LANDesk inbox. The LANDesk team will identify legal matters and assign the ticket to the legal team responsible for the relevant client area, except for requests relating to:</p> <ul style="list-style-type: none"> i) FOI ii) Employment iii) Legislation and Legal Instruments, <p>which are assigned to the legal team responsible for advising on this function.</p> <p>b) The LANDesk team will also send notice of the request to the responsible PLC.</p>
<p>4) The PLC responsible for the matter will request a Lex matter and assign the matter</p>	<p>a) PLCs will monitor LANDesk. Where a new request is received, the PLC will determine whether a new Lex matter is required.</p> <p>b) If the PGL determines that a new Lex matter is <u>NOT</u> required (e.g. it's an existing matter), the PLC will simply 'Resolve' the matter in LANDesk.</p> <p>c) If the PGL determines that a new Lex matter is required, the PGL needs to do three things:</p> <ul style="list-style-type: none"> i) request a Lex matter by clicking on "Request LEX number" from the Actions menu in LANDesk, which creates a task for PMU to open a Lex matter (see 6) . In the notes to that request for a new Lex matter, the PLC: <ul style="list-style-type: none"> (1) will nominate the lawyer and second counsel (2) may also add additional Lex information, such 'Category' (e.g. Administrative Law); 'Significant' (e.g. low). ii) assign the LANDesk ticket to the legal officer. This is needed so PMU can close the matter. The legal officer does not have to access LANDesk. iii) email the original request for advice to the lawyer actioning the matter. <ul style="list-style-type: none"> (1) For requests that were originally emailed to Legal Services Inbox, the PGL may simply forward the email from Legal Services Inbox. (2) For requests received by directly into LANDesk, the PLC may either: <ul style="list-style-type: none"> (a) Generate a report of the instructions and send this and any attachments to the lawyer actioning the matter; or (b) If time permits, not forward the instructions, in which case the lawyer will wait for the matter to be assigned in Lex.

<p>5) Lawyer handing the matter is to contact the client</p>	<p>a) The responsible lawyer will contact the client within 2 business days of the original request for advice.</p> <p>b) <u>After</u> making contact with the client, the responsible lawyer is to make a file note (in Lex or as agreed with the PLC) of the contact with the client including the date that was agreed for providing advice.</p> <p>c) The PLC is responsible for ensuring that lawyer fulfil their obligation to contact clients.</p>
<p>6) PMU will create a Lex matter and resolve the LANDesk ticket.</p>	<p>a) When a person requests a Lex matter (by clicking on “Request LEX number” from the Actions menu), this will automatically create a task for the PMU to create a Lex matter. PMU will monitor LANDesk for such tasks and will action them as follows:</p> <ul style="list-style-type: none"> i) PMU will create a Lex Matter in the name of the lawyer and second counsel identified in the notes to the request for new lex matter. If no lawyer/second counsel is identified in a Note, PMU will assign the matter to the lawyer who is the current ‘Assigned Analyst’ and make the responsible PLC Second Counsel. ii) PMU will attach to the Lex matter: <ul style="list-style-type: none"> (1) the request for advice (including attachments) to Lex (i.e. moving the information from LANDesk); and (2) where the request is received by email through Legal Services Inbox, PMU will also attach the original email. iii) Once a new LEX matter is created, the PMU will add the LEX number to the LANDesk ticket and ‘resolve’ the ticket, which closes off the LANDesk workflow.

Capturing ad hoc requests for advice

All requests for ad hoc advice should be logged in (LANDesk) to help capture the level of work being performed and so help ensure effective management of resourcing and visibility of legal services.

However, for minor queries (such as referring a person to a template or referring a person to standing legal advice), there is no requirement to open a LEX matter.

For significant matters, there is an expectation that a LEX matter be opened.

You should use your judgement about what is significant or not.