

Legal Services Amendment (Solicitor-General Opinions) Direction 2016

EXPLANATORY STATEMENT

Issued by the Attorney-General
in compliance with section 15G of the *Legislation Act 2003*

INTRODUCTION

Under subsection 55ZF(1)(a) of the *Judiciary Act 1903*, the Attorney-General may issue Legal Services Directions (the Directions) applying generally to Commonwealth legal work (as defined in that section).

The power to issue the Directions was conferred having regard to the Attorney-General's responsibility, as First Law Officer, for matters relating to the performance of Commonwealth legal work by, and on behalf of, the Commonwealth and its agencies.

OUTLINE

Section 55ZF of the *Judiciary Act 1903* empowers the Attorney-General to issue the Directions, which are to apply generally to Commonwealth legal work, or that are to apply to Commonwealth legal work being performed, or to be performed, in relation to a particular matter.

Paragraph 12(b) of the *Law Officers Act 1964* provides that the functions of the Solicitor-General, in addition to acting as counsel, include furnishing opinions to the Attorney-General on questions of law referred by the Attorney-General.

The purpose of this instrument is to amend the Directions to insert new provisions about seeking opinions on questions of law by the Solicitor-General. The new provisions clarify the circumstances in which an opinion on a question of law may be sought from the Solicitor-General pursuant to paragraph 12(b) of the *Law Officers Act 1964* and regularise the process by which referrals to the Solicitor-General for opinions are made.

PROCESS BEFORE THE INSTRUMENT WAS MADE

Regulatory impact analysis

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required as the Directions are machinery in nature and do not change the regulatory burden placed on businesses or the non-profit sector (OBPR ID 20861).

Statement of compatibility with human rights obligations

Before this instrument was made, its impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. It is fully compatible with human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consultation before making

Before this instrument was made, the Attorney-General considered the general obligation to consult imposed by section 17 of the *Legislative Instruments Act 2003*.

Section 55ZF of the *Judiciary Act 1903* empowers the Attorney-General to issue Directions, which are to apply generally to Commonwealth legal work, or that are to apply to Commonwealth legal work being performed, or to be performed, in relation to a particular matter. As the Direction relates to the process for referring a question of law to the Solicitor-General, the Attorney-General has consulted the Solicitor-General.

Statutory preconditions and Parliamentary undertakings relevant to this instrument

There are no other statutory preconditions or Parliamentary undertakings relevant to the making of this instrument.

Further detail is provided in Attachment A.

Section 1 Name of legislative instrument

This section provides for the legislative instrument to be named as the Legal Services Amendment (Solicitor-General Opinions) Direction 2016. The legislative instrument may be cited by that name.

Section 2 Commencement

This section provides for the legislative instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the Act that authorises the making of the legislative instrument as the *Judiciary Act 1903*.

Section 4 Schedule

The schedule outlines the process that will apply to how questions of law are referred to the Solicitor-General for an opinion.

The process will apply to people or bodies referred to in paragraph 12(a) of the *Law Officers Act 1964* which is slightly broader in application than the Directions. This difference is not expected to have any practical impact on the approach to referring questions of law to the Solicitor-General.