



ATTORNEY-GENERAL

CANBERRA

4 May 2016

Mr Justin Gleeson SC  
Solicitor-General of the Commonwealth of Australia  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

Dear Solicitor-General

A handwritten signature in dark ink, appearing to read 'Justin'.

Thank you for your suggestions regarding amendments to 'Guidance Note 11', concerning the process to be followed in briefing the Solicitor-General.

Please find enclosed a final copy of the revised Guidance Note, which has been prepared having regard, *inter alia*, to your suggestions.

I have also issued an amendment to the *Legal Services Directions 2005*. The amendment will insert a new paragraph 10B, and will take the form of the enclosed document.

Both the revised Guidance Note and the amended Legal Services Directions take effect immediately.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'George Brandis'.

(George Brandis)

Encl: Revised Guidance Note  
Amended Legal Services Directions 2005

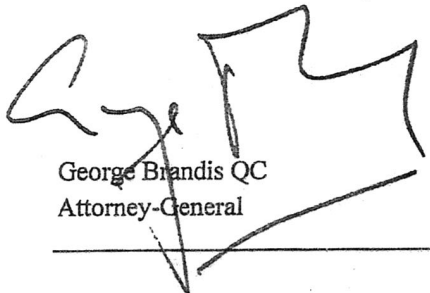


## Legal Services Amendment (Solicitor-General Opinions) Direction 2016

---

I, George Brandis QC, Attorney-General, make the following direction.

Dated *4th May* 2016

  
George Brandis QC  
Attorney-General

---

---

## Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
	<b>Schedule 1—Amendments</b>	<b>2</b>
	<i>Legal Services Directions 2005</i>	2

**1 Name**

This is the *Legal Services Amendment (Solicitor-General Opinions) Direction 2016*.

**2 Commencement**

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

**3 Authority**

This instrument is made under the *Judiciary Act 1903*.

**4 Schedules**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1. Amendments

---

## Schedule 1—Amendments

### *Legal Services Directions 2005*

#### 1 After paragraph 10A of the Schedule

Insert:

#### 10B Opinions on questions of law by the Solicitor-General

- 10B.1 The Solicitor-General will, in accordance with paragraph 12(b) of the *Law Officers Act 1964* (the *Law Officers Act*), furnish his or her opinion to the Attorney-General on questions of law referred to the Solicitor-General by the Attorney-General or with the consent of the Attorney-General.
- 10B.2 The Solicitor-General will furnish an opinion on a question of law only if the Attorney-General has referred, or consented to a referral of, the question of law to the Solicitor-General.
- 10B.3 No person or body referred to in paragraph 12(a) of the *Law Officers Act*, other than the Attorney-General, may refer a question of law to the Solicitor-General except with the consent of the Attorney-General.
- 10B.4 If a person or body referred to in paragraph 12(a) of the *Law Officers Act* forms the view that a question of law should be referred to the Solicitor-General, that person or body must seek, in writing, the Attorney-General's signed consent to the referral of the question to the Solicitor-General. The letter must be copied to OLSC.
- 10B.5 If the Attorney-General's Department or AGS:
- (a) has consulted the Solicitor-General under paragraph 10A.2 of these Directions about whether advice on a question of law should be given by the Solicitor-General in relation to a constitutional law issue; and
  - (b) forms the view that the Solicitor-General's advice should be sought;
- the Attorney-General's Department or AGS must seek, in writing, the Attorney-General's signed consent to the referral of the question to the Solicitor-General. The letter must be copied to OLSC.
- 10B.6 If the Attorney-General consents to a referral of a question of law to the Solicitor-General, the brief to the Solicitor-General to advise on the question shall include a copy of the signed consent of the Attorney-General.
- 10B.7 If the Solicitor-General receives a brief to advise on a question of law that does not include a copy of the signed consent of the Attorney-General, then:
- (a) the Solicitor-General shall notify the Attorney-General's Office of the receipt of the brief; and
  - (b) the Attorney-General shall either:
    - (i) consent, in writing, to the referral of the question of law to the Solicitor-General; or
    - (ii) decline to consent to such referral, in which case the Solicitor-General shall return the brief.
- 10B.8 Nothing in these Directions limits the Attorney-General's discretion to seek legal advice from persons other than the Solicitor-General.
-

- 
- 10B.9 To avoid doubt, this paragraph does not apply in relation to questions of law that arise in the course of a matter in which the Solicitor-General is acting as counsel under paragraph 12(a) of the Law Officers Act.

## **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*.

Explanatory Statement page 1 of 3

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.



## NOTES ON SECTIONS

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.