

GUIDANCE NOTE NO 11

The Office of Legal Services Coordination provides Guidance Notes to assist Australian Government Departments and Agencies, and legal services providers (as applicable), to comply with the Legal Services Directions, procure legal services, and deal with legal issues in an efficient and effective manner. OLSC welcomes feedback on this Guidance Note.

Briefing the Solicitor-General

The provision of advice by the Solicitor-General, and his advocacy services, are generally a facility reserved for very important and difficult matters or where the Solicitor-General's advice is needed to resolve a dispute between agencies on legal questions. Seeking advice from the Solicitor-General, or requesting him to appear, should not generally be regarded as an alternative means of obtaining legal advice or counsel services needed by agencies on a day to day basis. Such advice and advocacy services must continue to be obtained in accordance with established arrangements and the Directions.

When should the Solicitor-General be briefed?

This Guidance Note applies to proposals that the Solicitor-General be briefed by Australian Government agencies that are subject to the:

- *Financial Management and Accountability Act 1997*, and
- *Commonwealth Authorities and Companies Act 1997* (that is not a Government Business Enterprise).

Requests for advice or to appear should be made to the Solicitor-General if the matter:

- raises novel, difficult and important points of legal principle
- relates to the implementation of Government policy or decisions of the highest importance
- raises issues of the highest political sensitivity
- raises legal issues resulting in conflict between agencies, or
- has significant financial implications or very important whole-of-Government implications.

The Solicitor-General should receive a request to appear in every civil matter where the agency:

- is a party to an appeal before the High Court,
- is a party to an application for leave or special leave to appeal to the High Court, or
- is a party to a proceeding within the original jurisdiction of the High Court, other than proceedings of a kind that are routinely remitted.

As explained in Guidance Note 7, High Court matters, other than those of a kind that are routinely remitted, must be reported to OLSC as a significant issue.

Whether being briefed to advise or to appear, the Solicitor-General should be involved as early in the process as possible. Counsel Assisting the Solicitor-General should be contacted if the agency has concerns regarding timeframes.

What is the process for briefing the Solicitor-General?

Before an agency submits a formal brief it should raise the matter with Counsel Assisting the Solicitor-General. This can be done by telephoning Counsel Assisting the Solicitor-General on 02 6141 4147 or by email to SG_Briefing@ag.gov.au

What needs to be done if the Solicitor-General accepts a request to be briefed?

If the Solicitor-General accepts the request, two copies of the brief should be provided: one to the Solicitor-General in his Sydney chambers, and one to Counsel Assisting the Solicitor-General in the Solicitor-General's Canberra chambers. Briefs must be presented in the same way and to the same

standard as any brief to senior counsel. Briefs would ordinarily be provided by an external legal services provider.

A brief should:

- outline and provide an analysis of the main issues
- describe the facts and the background to the matter
- if it is a brief to advise, set out clearly the legal questions that need to be answered
- summarise and include copies of any previous legal advice
- include and list copies of any relevant documents including correspondence, departmental guidelines, circulars and policy statements
- make reference to relevant legislation, cases or journal articles, and
- provide any other relevant and necessary information.

Canberra	Sydney
Solicitor-General's Chambers 3–5 National Circuit Barton ACT 2600	Solicitor-General's Chambers Level 17, Law Courts Building, Queens Square Sydney NSW 2000

What costs are involved?

The Solicitor-General's services are budget-funded: departments and agencies are not billed for the Solicitor-General's work. If the Solicitor-General requires assistance from AGS or external counsel or solicitors to provide advice or prepare for court, the client department or agency will be required to meet those costs. The client department or agency will be consulted prior to this occurring.

For the purpose of calculating costs in favour of the Australian Government, the daily rate for the Solicitor-General is \$5,000.00.

How is disclosure of the Solicitor-General's opinions treated?

Any advice or opinion sought from the Solicitor-General will be included on the Legal Opinions Database (a resource shared by the Attorney-General's Department and AGS).

Communications between the Solicitor-General and agencies are confidential legal communications. OLSC must be consulted before providing any opinion of the Solicitor-General to a person outside the Australian Government.

Does briefing the Solicitor-General satisfy the requirement to report on significant issues?

No. The requirement in paragraph 3 of the Directions to report on significant issues is *not* satisfied by a request to brief the Solicitor-General. Reports on significant issues should be sent to olsc@ag.gov.au. If there is any uncertainty as to whether a matter raises significant issues, please contact OLSC on (02) 6141 3642 to discuss as soon as possible. Guidance on significant issues is given in Guidance Note 7—Reporting on Significant Issues.

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Date of issue: June 2011