

GUIDANCE NOTE NO.10

The Office of Legal Services Coordination provides Guidance Notes in order 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.

Advice on constitutional law matters (paragraph 10A of the Legal Services Directions 2005)

Paragraph 10A of the Directions comes into effect on 3 November 2008. It requires FMA agencies to provide a copy of a request for legal advice on a constitutional law issue to the Secretary of the Attorney-General's Department. It also requires the Australian Government Solicitor to give a copy of any final advice it gives on a constitutional law issue to AGD and to the Solicitor-General. This Guidance Note gives further details in relation to these requirements.

The Attorney-General and AGD are responsible for constitutional law under the Administrative Arrangements Order. Paragraph 10A is intended to ensure that AGD is aware of requests for advice, and advice, about constitutional law issues. This will enable AGD to better coordinate requests for advice across agencies where appropriate, avoid unnecessary duplication and ensure the Attorney-General and AGD have up-to-date information about advice on constitutional law issues. It will also ensure that the Solicitor-General is appropriately involved.

A copy of the written request for advice or written confirmation of an oral request is to be sent to the Secretary of AGD by forwarding it to the following e-mail address: AGD.conrequests@ag.gov.au at the same time as the request or written confirmation is sent to AGS. Any final advice on a constitutional issue is to be copied by AGS to AGD and the Solicitor-General by forwarding it to the following e-mail address: AGD.conadvice@ag.gov.au at the same time as the final advice is given.

Where an agency becomes aware that a matter involves a constitutional law issue after advice has been requested, that should be brought to the attention of the Secretary of AGD as soon as possible.

Paragraph 10A.2 provides that AGD or AGS may consult with the Solicitor-General about whether the advice should be given by the Solicitor-General or AGS. The Secretary of AGD may require advice to be provided by the Solicitor-General rather than AGS. Generally, only very complex or otherwise significant requests for advice would be dealt with by the Solicitor-General.

Any action by AGD in relation to a request for advice, including redirection of the advice to the Solicitor-General, will be undertaken as quickly as possible. These requirements are not expected to result in any delays in the provision of advice on constitutional law issues.

The requirements in paragraph 10A reflect existing tied work arrangements and therefore do not affect legal professional privilege in relation to either requests for advice or advice (see also section 55ZH, *Judiciary Act 1903*).

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