

GUIDANCE

GUIDANCE IN RELATION TO THE DEED OF STANDING OFFER FOR
THE PROVISION OF LEGAL SERVICES

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1. Purpose

- 1.1.1. The purpose of the template Deed of Standing Offer (**Deed**) is to be used by:
- a. entities and agencies that are subject to the provisions of the *Commonwealth Authorities and Companies Act 1997* (Cth), excluding government business enterprises and Commonwealth companies within the meaning of that Act; and
 - b. entities and agencies that are subject to the provisions of the *Financial Management and Accountability Act 1997* (Cth) (**Agencies**),
- for setting up legal services panels when they go out to tender using the mandated RFT for the provision of legal services.
- 1.1.2. The Deed is mandated for use by Agencies in setting up a panel for legal services. The Deed is to be entered into with each Service Provider that is part of the legal services panel.
- 1.1.3. The purpose of this guidance is to set out the policy behind the terms and conditions of the Deed and the matters that must be taken into account or addressed by Agencies in entering into the Deed.
- 1.1.4. Unless otherwise indicated in this guidance capitalised terms have the same meaning as they have in the Deed.

2. Structure of the Deed

- 2.1.1. The Deed has been constructed as a piggy back arrangement to enable a Lead Agency and its Portfolio Agencies to order Services. The Lead Agency is the Agency that is responsible for running the RFT process for setting up the panel for legal services. The Deed envisages the Lead Agency being the responsible for entering into the Deed with Service Providers in setting up the panel for legal services.
- 2.1.2. A Portfolio Agency may only be:
- a. an entity or agency that is subject to the provisions of the *Commonwealth Authorities and Companies Act 1997* (Cth), excluding a government business enterprise or a Commonwealth company within the meaning of that Act; or
 - b. an entity or agency that is subject to the provisions of the *Financial Management and Accountability Act 1997* (Cth).
- 2.1.3. Portfolio Agencies may piggy back on to the Deed at the time of its execution and during the term of the Deed (see clause 2.5 of the Deed).

- 2.1.4. The Lead Agency and Portfolio Agencies are each able to establish certain matters that are only applicable to them in relation to the provision of Services through completion of 'Specific Agency Requirements' (see Schedule 2 of the Deed). Specific Agency Requirements will need to be completed for each Agency that is able to order Services under the Deed, whether the Lead Agency or a Portfolio Agency.
- 2.1.5. The Lead Agency, rather than the Portfolio Agencies, is responsible for certain aspects of the Deed. These include:
- a. **identification of the Service Provider:** In entering into the Deed with a Service Provider the Lead Agency must take care to ensure that both the Lead Agency and the Service Provider are correctly identified. In relation to a Service Provider that is a *Corporations Act 2001* (Cth) registered company the Lead Agency must ensure that the Service Provider's ACN or ARBN is specified correctly. The ABN of the Service Provider should be included in addition (and not instead of) the ACN or ARBN. The Lead Agency should check that the name of the Service Provider and its ACN or ARBN exactly match the name in ASIC's National Names Index, which is available at <http://www.search.asic.gov.au/gns001.html>. The Lead Agency can check that an ABN is correct at <http://www.abr.business.gov.au/>. However, the Lead Agency should note that this register may not provide sufficient information to link an ABN to the Service Provider. Where a Service Provider is not a company with an ACN or ARBN the Lead Agency should consider seeking specific legal advice as to how to verify the full and correct identity of the Service Provider and how it should be correctly identified in the Deed;
 - b. **extension of the Term:** The Lead Agency has the ability to extend the Term of the Deed, rather than Portfolio Agencies being able to do so (see clause 2.1.4). In making any decision regarding extension the Lead Agency should consult with any Portfolio Agencies;
 - c. **establishing the period for estimates:** The Lead Agency has the responsibility for setting the period within which estimates must be provided by a Service Provider (see clause 3.2.1 of the Deed);
 - d. **termination for convenience:** The Lead Agency has the ability to terminate the Deed for convenience, rather than Portfolio Agencies being able to do so (see clause 7.1 of the Deed). In making any decision regarding terminating the Deed for convenience the Lead Agency should consult with any Portfolio Agencies;
 - e. **termination for fault:** The Lead Agency has the ability terminate the Deed for fault, rather than Portfolio Agencies being able to do so (see clause 7.2 of the Deed). In making any decision regarding terminating the Deed for fault the Lead Agency should consult with any Portfolio Agencies;

- f. **insurance:** The Lead Agency is responsible for establishing the insurance that the Service Provider is required to maintain under the Deed through completion of Item E of the Deed Details in Schedule 1;
- g. **assignment:** The Lead Agency has the ability to consent to the assignment of rights and obligations by the Service Provider, rather than Portfolio Agencies being able to do so (see clause 9.7 of the Deed). In consenting to any such assignment the Lead Agency should consult with any Portfolio Agencies; and
- h. **execution clause:** The Lead Agency will need to ensure that the appropriate execution clause is used in the Deed for the Service Provider. This will depend on the type of entity that the Service Provider is. The execution clause contained in the Deed for the Service Provider will not be appropriate in all circumstances.

3. **Deed of Standing Offer terms and conditions**

3.1. **Order**

- 3.1.1. Clause 2.2 of the Deed is structured around the issue of an 'Order' for particular services. This means that when an Agency (either the Lead Agency or a Portfolio Agency) wants to order Services it must issue an 'Order' to the Service Provider. The Deed envisages that each Agency is able to determine its own order process through Item I of their Specific Agency Requirements. This process could be anything from a requirement that an Order be the submission of formal written instructions in a particular format to a simple requirement that an Order be in writing in any form.

3.2. **Determining whether to place an Order**

- 3.2.1. It has become prevalent in recent times for Agencies to require panel members to submit competitive quotes, in the form of mini-tenders, for individual matters.
- 3.2.2. The Commonwealth Procurement Guidelines (**CPGs**) require that agreements with panel members identify the process through which legal services will be procured from the panel, and that steps be taken to ensure that those services deliver value for money. However, those obligations do not require Agencies to request that panel members prepare a mini-tender for every matter they send to the panel, even where the expected fees for a particular matter may exceed \$80,000 in the case of an Agency that is subject to the *Financial Management and Accountability Act 1997* (Cth) or \$400,000 in the case of a Agency that is subject to the *Commonwealth Authorities and Companies Act 1997* (Cth). Rather, once a panel is established, these obligations can be satisfied by an Agency approaching one, some or all of the panel members to obtain a quote or estimate, and may also include seeking to refine a quote or estimate with selected panel members. This will generally be a relatively simple process.

- 3.2.3. Requiring that panel members regularly submit mini-tenders for particular matters can be very time consuming for the Agency and panel members, while also increasing the cost of panel members in terms of the work they undertake for the Agency. This will put pressure on panel members in their price offering and may lead to:
- a. larger increases in pricing;
 - b. panel firms implementing strategies to cut costs that may impact on quality;
 - c. a reduction in the number and quality of value-added services offered by panel members; and
 - d. an increase in the Agency's legal risk, as some panel members may not bid for low-value matters, thereby potentially denying the Agency access to the best legal advice.
- 3.2.4. The Department of Finance and Deregulation's Guidance on the Mandatory Procurement Procedures states that a panel arrangement must provide "how the Agency will purchase from the panel, including seeking refined offers". This guidance is not government policy for the purposes of Regulation 9 of the *Financial Management and Accountability Regulations 1997* (Cth) nor does it form part of the CPGs.
- 3.2.5. Clause 2.3.2 of the Deed provides that an Agency will only seek a competitive quote from the suppliers on the Panel if the Agency considers that the value of the particular Services are likely to exceed \$80,000 (including GST). Whether an Agency decides to seek a competitive quote in these circumstances is at the Agency's sole and absolute discretion. In accordance with clause 2.3.3 the Agency is able to determine the basis on which the quote is to be provided, such as on a fixed price basis.
- 3.2.6. Clause 2.3.4 provides that the amount of a quote prepared by the Service Provider must be equal to or less than the amount that would be produced had the quote been calculated in accordance with Item D of Schedule 1, which sets out the fees, allowances and costs applicable to the Deed.

3.3. Rejection of an Order

- 3.3.1. A Service Provider is given the right to reject an Official Order under clause 2.2.5 of the Deed in certain circumstances. These circumstances are:
- a. where the Service Provider would have a conflict of interest;
 - b. where the Agency making the Order has not made payment of fees, allowances or costs to the Service Provider under an existing Contract with the Service Provider in accordance with the terms of that Contract; and
 - c. any other reason accepted in writing by an Agency.

3.4. Estimate of fees, allowances and costs

- 3.4.1. Clause 3.2 provides a process in relation to the provision of estimates by Service Providers. In seeking estimates Agencies that are able to order Services under the Deed should ensure that they comply with the process set out in clause 3.2. There is no restriction as to the circumstances in which an estimate may be sought, for example by reference to the expected value of the particular Services.
- 3.4.2. Clause 3.2.1 enables the Lead Agency to set the time required for estimates to be provided by a Service Provider in relation to routine matters and for complex matters, for example, 1 Business Day for routine matters and 2 Business Days for complex matters. Under clause 3.2.1 any Agency is able to request the basis on which the quote is to be provided, such as on a fixed price basis.
- 3.4.3. Clause 3.2.3 provides that the amount of an estimate prepared by the Service Provider must be equal to or less than the amount that would be produced had the estimate been calculated in accordance with Item D of Schedule 1, which sets out the fees, allowances and costs applicable to the Deed.

3.5. Reporting

- 3.5.1. Clause 4.1.1 of the Deed enables each Agency that is able to order Services under the Deed to establish their own reporting requirements through their Specific Agency Requirements. The reporting required should at a minimum enable each Agency to meet their reporting obligations under the *Legal Services Directions 2005 (Cth) (Legal Services Directions)*.
- 3.5.2. Agencies that are subject to the *Financial Management and Accountability Act 1997 (Cth)* have reporting obligations under the Legal Services Directions in relation to a number of issues including:
- a. significant matters (paragraph 3.1);
 - b. breaches of the Legal Services Directions, including details of remedial action (paragraphs 11.1(d) and 11.2(a) and (b));
 - c. legal services expenditure and the legal work of the Agency for each financial year (paragraph 11.1(da));
 - d. use of persons appointed by the Attorney-General under s 63 of the *Judiciary Act 1903 (Cth)* to receive service in proceedings to which the Commonwealth is a party (paragraph 11.2(ba));
 - e. certification of compliance with the Legal Services Directions within 60 days of the end of each financial year (paragraph 11.2); and
 - f. reporting on the use of counsel (Appendix D, paragraph 16).

3.5.3. Agencies that are subject to the *Commonwealth Authorities and Companies Act 1997* (Cth) have reporting obligations under the Legal Services Directions in relation to a number of issues including:

- a. legal services expenditure and the legal work of the Agency for each financial year (paragraph 11.1(da));
- b. use of persons appointed by the Attorney-General under s 63 of the *Judiciary Act 1903* (Cth) to receive service in proceedings to which the Commonwealth is a party (paragraph 11.2(ba));
- c. details on litigation which gives rise to constitutional issues (paragraph 12.3(a)); and
- d. claims or litigation to be brought against, or involving, another Commonwealth agency (paragraph 12.3(b)).

3.5.4. An Agency will be well served by obtaining regular reports from panel firms in relation to the work being undertaken on its behalf. In terms of additional reports an Agency might require, Agencies should bear in mind that the preparation of reports can be a significant administrative burden that will ultimately impact on panel firms' costs and so the prices offered to Agencies. Therefore, before requesting that a panel firm provide a regular report, Agencies need to carefully consider what information they need and how regularly it is required.

3.5.5. Generally speaking, panel firms ought to be able to provide regular reports that detail the costs incurred for particular matters. This information is useful in tracking the overall costs incurred in matters against allocated budgets, and monitoring the level of activity in matters. Obtaining these reports monthly from each panel firm is likely to provide a good tool for managing overall legal spend. Other matters that could be reporting on include:

- a. any complaints in respect of the Ordered Services, and the handling and/or resolution of complaints;
- b. any security incidents that the Service Provider is aware of; and
- c. details of any Contract with the Agency where the Service Provider has requested a new estimate under clause 3.2 of the Deed, including the amount of the original estimate, the amount of the new estimate and the reasons for the new estimate.

3.5.6. Agencies ought to be wary of requesting highly detailed reports in terms of the reports they request through their Specific Agency Requirements. Such reports would include those requiring comments as to 'how activity in the month added value' or 'summary of activity during the month', as general experience is that these reports:

- a. require a large amount of time to prepare; and

- b. are not utilised, as they are too specific and long to provide genuine management value.

3.5.7. Similarly, requiring reports at short intervals can be unhelpful, as often they:

- a. reflect short periods in which little activity was undertaken; and
- b. can be misleading due to the administrative practices of some panel firms (such as those surrounding the billing cycle).

3.5.8. These reports are also likely to put pressure on the costs of panels firms, creating an incentive for the panel firms to charge for the reports either directly or indirectly.

3.5.9. Under clause 4.1.3 of the Deed the Service Provider is also required to meet the reporting obligations it has to the Office of Legal Services Coordination in the Attorney-General's Department during the Term of the Deed, including the requirements to report at the end of each financial year on:

- a. the total value of work undertaken for the Commonwealth of Australia by the Service Provider during that financial year; and
- b. the amount of pro-bono work undertaken by the Service Provider during that financial year.

3.5.10. Pro-bono work is defined as including:

- a. pro bono legal work according to the definition adopted by the National Pro Bono Resource Centre;
- b. other community or charitable work undertaken under the auspices of the Service Provider, and
- c. pro bono legal work and other community or charitable work undertaken in the Asia/ Pacific Region,

but excludes:

- d. work done by the Service Provider's Personnel on their own initiative; for example, work they may do for their local sporting association.

3.6. **Performance Measures**

3.6.1. Clause 4.2 of the Deed provides that an Agency will monitor the Service Provider's performance in delivering Services by the use of any method of performance assessment from time to time as the Agency deems appropriate. Agencies must undertake some form of performance measurement. An Agency may set out the performance measurement it will undertake in its Specific Agency Requirements. Clause 4.2 also provides that the Service Provider may conduct 1 annual client satisfaction survey in respect of the Services provided to an Agency.

3.7. Termination for fault - Legal Services Directions

- 3.7.1. In circumstances where a Service Provider is responsible for a breach of the Legal Services Directions it is appropriate that the Lead Agency be able to terminate the Deed. This is provided for in clause 7.2.2(a) of the Deed. In making any decision regarding terminating the Deed for fault the Lead Agency should consult with any Portfolio Agencies as discussed in clause 2.1.5.e of this guidance.
- 3.7.2. Similarly clause 11.2.2(a) of the Contract terms and conditions in Schedule 4 of the Deed, enable an Agency to terminate a Contract where the Service Provider is responsible for a breach of the Legal Services Directions.

3.8. Insurance

- 3.8.1. Clause 9.1 of the Deed provides that the Service Provider agrees to effect and maintain the insurance specified in Item E of the Deed Details in Schedule 1. The Lead Agency is responsible for establishing the insurance that the Service Provider is required to maintain in Item E.
- 3.8.2. Clause 9.1 also provides that on request by an Agency the Service Provider is to provide proof of insurance acceptable to the Agency. Such evidence will often be a certificate of currency. However, in some circumstances it may be advisable to request a copy of the insurance policy, particularly where it is uncertain from the certificate of currency what the insurance covers.

3.9. Co-operation

- 3.9.1. Clause 9.3 of the Deed provides that the parties intend to conduct themselves for the purposes of performance of the Deed and each Contract in the spirit of co-operation and good faith.

3.10. Applicable Law

- 3.10.1. Clause 9.10 provides that there will be a governing law applicable to the Deed but that each Agency that a Deed is applicable will be able to specify the governing law that they want to be applicable to Contracts entered into by them under the Deed through their Specific Agency Requirements.

4. Schedule 1 - Deed Details

4.1. Services

- 4.1.1. When the Deed is included as an attachment to the RFT for the provision of legal services, the detailed description of the Services is set out in the RFT for the purposes of the approach to the market. For the purposes of executing the Deed with a Service Provider the Lead Agency should set out the detailed description of the Services from the RFT in Item A of the Deed Details in

Schedule 1 of the Deed. Where the Lead Agency is considering 'Panels' under the RFT process, the scope of the different Panels should be clearly delineated and for the purposes of executing the Deed with a Service Provider Item A of the Deed Details should only contain the Panels to which that Service Provider has been appointed. Similarly, if a Lead Agency accepts a 'part tender' under the RFT process, Item A of the Deed Details should reflect the 'part' that is relevant to the Service Provider.

4.2. Timeframe

4.2.1. The Lead Agency needs to consider the term of the panel in light of:

- a. the significant cost of tendering, both for Agencies and tenderers. For large tenders the costs can be many hundreds of thousands of dollars for each party. These costs are indirectly met by Agencies through the prices offered by tenderers;
- b. the likely legal needs of the Lead Agency and Portfolio Agencies into the future;
- c. the ability to utilise options for extension (this is provided for in clause 2.1.4 of the Deed); and
- d. the non-exclusivity of legal panels, allowing expertise to be obtained outside the panel arrangements (this is provided for in clause 2.4.1 of the Deed).

4.2.2. Lead Agencies also needs to consider that – particularly for new panel members – Service Providers will take some time to fully understand the needs of the Lead Agency and Portfolio Agencies and modify their systems and work practices to best meet the Agencies needs. Accordingly, Services are likely to be provided more efficiently and represent better value for money a while after the commencement of the panel term.

4.2.3. In the absence of exceptional circumstances, a panel term should be a minimum of three years with option(s) for extension. The recommended term is three years with an option to extend for a further period or periods up to a maximum of two years. Depending on the particular circumstances of the Agency a longer period may be appropriate, bearing in mind that the *Financial Management and Accountability Act 1997* (Cth) requires certain approvals for terms greater than five years.

4.2.4. In terms of the Extension Date Agencies should note that any decision to extend a Panel arrangement requires consideration as to whether such an extension represents value for money in accordance with the CPGs. In making any decision regarding extension the Lead Agency should consult with any Portfolio Agencies.

4.3. Fees

- 4.3.1. The fee structure that is applicable to an Agency is to be set out in Item D.1 of the Deed Details. The fees must be included here in order to comply with paragraph 8.67 of the CPGs which provides that panel arrangements “must contain minimum requirements, including an indicative or set price or rate as appropriate for the property or services to be procured in the period of the panel arrangement”.
- 4.3.2. In some situations, fees may differ between different Agencies that are covered by the same Deed. If this is the case, Item D.1 should refer to the Specific Agency Requirements for each Agency.

4.4. Fee Variation

- 4.4.1. Item D.2 allows an Agency to set out how the fees can be varied, for example to take into account the increase in Service Providers' costs.
- 4.4.2. The reason for allowing for variation of fees rather than having fixed rates is that if fixed rates are requested for the term of the panel arrangement:
- a. Service Providers will provide rates that include a premium for the early years of the arrangement to accommodate uncertain cost increases and ensure a required profit is achieved over the term of the agreement; and
 - b. Service Providers will make some allowance for the risk of their costs increasing at a greater rate than currently forecast.
- 4.4.3. Allowing for a yearly increase based upon a predetermined formula is more likely to achieve a price regime that reflects the costs of the Service Provider for each year of the panel arrangement. That pricing regime is also more likely to closely match the funding allocations available to Agencies to meet their needs for Services.

5. Schedule 2 - Specific Agency Requirements

- 5.1.1. Schedule 2 sets out the requirements in relation to the provision of Services that are particular to a specific Agency. The details set out in Schedule 2 will need to be completed for each Agency (whether the Lead Agency, or a Portfolio Agency) and included at Schedule 2.

5.2. Invoices and Payment

- 5.2.1. Item B.1 of Schedule 2 sets out an example of the invoicing requirements an Agency may specify. If the invoicing requirements are not appropriate for a particular Agency they should be amended or replaced as appropriate for the particular Agency.

5.3. Confidential Information of the Service Provider

- 5.3.1. Item F of Schedule 2 sets out the information of the Service Provider that is to be treated as Confidential Information under a Contract with an Agency.
- 5.3.2. In considering whether to keep any information confidential under the Deed there is certain information that Agencies should not agree to keep confidential. Such information includes that which will be needed to assist Agencies in meeting their reporting obligations required under paragraph 11.1(da) of the Legal Services Directions.
- 5.3.3. In addition as part of an Agency's obligation to ensure accountability of public money in accordance with the CPGs, the value of a Contract and the name of the Service Provider are required to be disclosed. Agencies should not agree to keep this information confidential. In particular:
- a. in accordance with the Senate Order on Departmental and Agency Contracts, an Agency that is subject to the *Financial Management and Accountability Act 1997* (Cth) is required to list the contracts with a consideration of \$100,000 or more that it entered into during the previous 12 months, or that have not been fully performed, on the Internet with access via the Agency home page. Further information regarding these requirements are specified in *Guidance on the Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)*, Financial Management Guidance No. 8, January 2004; and
 - b. an Agency that is subject to the *Financial Management and Accountability Act 1997* (Cth) is required to publish details of agreements it enters into with an estimated liability of \$10,000 or more on AusTender within 6 weeks of entering into the contract. An Agency that is subject to the *Commonwealth Authorities and Companies Act 1997* (Cth) is required to publish details of agreements (other than for construction) it enters into with an estimated liability of \$400,000 or more on AusTender within 6 weeks of entering into the contract. Further information about this requirement can be found in *Guidance on Procurement Publishing Obligations*, Financial Management Guidance No. 15, July 2007.

6. Schedule 4 - Contract terms and conditions

6.1. Rights in Contract Material

- 6.1.1. Clause 4.2.1 of the Contract terms and conditions vests Intellectual Property in any work done for an Agency in the Agency. However, it does not prohibit the Service Provider from making use of that Intellectual Property. Such a provision would be problematic for Service Providers.
- 6.1.2. Documents and material produced in the course of legal service delivery constitute the 'stock-in-trade' of all legal Service Providers. In most cases documents developed in the course of legal service delivery are based on earlier

examples and may contain material that is useful in later transactions. Legal precedents are constantly recycled and incrementally improved. This practice benefits the purchasers of legal services, as each time they request a product or seek advice on a particular issue the lawyers do not have to start from scratch, and so deliver better value for money. It also leads to the production of higher quality legal services.

6.1.3. It is accepted industry practice that material drafted for one client may be used for precedent purposes for other clients. This principle of ownership is widely accepted across Australian Government agencies and in the private sector. If every document had to be drafted from scratch, the cost of providing services and the risk of inconsistent advice would be increased.

6.1.4. Therefore clause 4.2 of the Contract terms and conditions provides that the Agency owns the Intellectual Property in work performed for the Agency but a licence for use of the Intellectual Property is provided to the Service Provider in acknowledgement of industry practice.

6.1.5. Agencies should note that clause 4.2 does not alter the application of any confidentiality requirements in relation to such Intellectual Property.

6.2. Confidentiality and Privacy

6.2.1. Clause 5 of the Deed, which makes provision in relation to confidentiality of Official Information and other security obligations, and clause 6 of the Deed, which makes provision in relation to privacy, do not require each of the Service Provider's Personnel who perform work for an Agency to sign a confidentiality deed and/or privacy deed. Rather clause 5.2.3 provides that the Service Provider's Personnel will give an Agency a written undertaking in a form acceptable to the Agency relating to the use and non-disclosure of Official Information on request by the Agency.

6.2.2. An example of such an undertaking is set out in Schedule 1.

6.2.3. As a general proposition, it is unnecessary for a confidentiality deed and/or privacy deed to be obtained from the Service Provider's Personnel working on an Agency's matters, because:

- a. the Service Provider takes responsibility in the Deed for ensuring that its Personnel comply with the requirements covered by the Deed (including confidentiality and privacy); and
- b. Personnel who perform work for the Agency are subject to criminal sanction through s70 of the *Crimes Act 1914* (Cth), and must comply with professional rules, which apply to all lawyers, in relation to the disclosure of confidential information.

- 6.2.4. In rare cases, such as highly politically sensitive matters or large commercially sensitive projects, it may be useful to require that such deeds be executed. However, this should be considered on a case by case basis. If deeds are required, Agencies must ensure that they are tailored to apply to natural persons, take into account the obligations placed on their employers and recognise what steps are within their power.
- 6.2.5. If any such deeds are required to be used they ought to not include personal indemnities.
- 6.2.6. The purpose of an indemnity is to provide the indemnified party with financial protection. However, in the case of responding to Commonwealth RFTs it is always a requirement that the tenderer be a substantive, financially viable entity in its own right. Moreover, the Deed requires a Service Provider to provide an indemnity to the Agencies that are able to order Services under the Deed in clause 6.2 that includes actions by the Service Provider's Personnel and would cover the situations contemplated by the personal indemnities.
- 6.2.7. Personal indemnities in confidentiality and privacy deeds do not provide Agencies with any additional financial protection.

6.3. Inquiries

- 6.3.1. Clause 12.2 of the Contract terms and conditions provides that the Service Provider agrees to provide all reasonable assistance requested by the Agency in respect of any inquiry, including any administrative or statutory review, audit or inquiry, any request for information directed to the Agency and any inquiry conducted by Parliament or any Parliamentary committee concerning the Ordered Services. Such assistance is stated to include the preparation of reports, the provision of documents or other Material, and making available relevant Personnel to provide information or answer questions on any matters relevant to or arising from the Contract which might reasonably be expected to be within the knowledge of the Service Provider.

SCHEDULE 1 WRITTEN UNDERTAKING

Date

This Deed of Confidentiality is dated ^day (numeric) month (name) year (numeric) in full^.

Parties

This Deed of Confidentiality is made between the following parties:

1. ^Party 1 Name^ (Agency)
2. ^Insert name of third party gaining access to Official Information^ ^Insert ACN, or if no ACN, the ARBN or ABN^ of ^Insert address of confidant ^ (the Confidant)

Context

- A. ^Insert name of the Service Provider^ (Service Provider) has agreed to supply legal services to the Agency pursuant to a contract entered into pursuant to the deed of standing offer dated ^insert date of deed of standing offer^ relating to ^insert description of services to which the Contract relates^ (Contract).
- B. The Confidant may be engaged by the Service Provider directly or indirectly in connection with the performance of the Contract and may become privy to information developed, received or collected by or on behalf of the Agency (Official Information).

Operative Provisions

The Confidant provides the undertakings set out below in respect of the Official Information to be acquired in connection with the Contract:

1. Non-Disclosure

- 1.1.1. The Confidant will treat as secret and confidential all Official Information to which the Confidant has access or which is otherwise disclosed to the Confidant.
- 1.1.2. If the Agency grants its consent for the Confidant to disclose Official Information, it may impose conditions on that consent. In particular, the Agency may require that the Confidant obtains the execution of a deed in these terms by the person to whom the Confidant proposes to disclose the Official Information.
- 1.1.3. The Confidant's obligations under this Deed will not be taken to have been breached where the Confidant is legally required to disclose the Official Information.

2. Restriction on use

- 2.1.1. The Confidant will use the Official Information only for the purpose of the Confidant's dealings with the Agency (whether directly or indirectly).
- 2.1.2. The Confidant will not copy or reproduce the Official Information without the approval of the Agency, will not allow any other person outside the Agency to access to the Official Information and will take all necessary precautions to prevent unauthorised access to or copying of the Official Information in the Confidant's control.

3. Survival

- 3.1.1. This Deed will survive the termination or expiry of any contract between the Agency and the Service Provider and the Service Provider and the Confidant providing for the performance of services or the provision of goods by the Confidant relevant to the Contract (whether directly or indirectly).

4. Powers of Agency

- 4.1.1. Immediately upon request by the Agency, the Confidant must deliver to the Agency all documents in the Confidant's possession or control containing Official Information.
- 4.1.2. If at the time of such a request the Confidant is aware that documents containing Official Information are beyond the Confidant's possession or control, then the Confidant must provide full details of where the documents containing the Official Information are, and the identity of the person who has control of them.

5. Applicable law

- 5.1.1. This Deed will be governed in accordance with the law that governs the Contract.

EXECUTED as a Deed:

[if a corporation]

Signed, sealed and delivered by
[Full Registered Name]
A.C.N. [No.]
in accordance with its
Constitution
and section 127 of the
Corporation Act
2001(Cth) in the presence
of:

Signature of Director

Full name of Director

*Signature of Director /
Secretary**

*Full name of Director /
Secretary**

* Delete whichever is not applicable.

Signature of witness

Full name of witness

[If an individual]

Signed, Sealed and
Delivered by)

by the Confidant in the
presence of:)

Signature of Confidant

Signature of witness

Full name of witness