



Program 2 — Legal Services to the Commonwealth

Program objective

To advance and protect the interests of the Commonwealth, its ministers and agencies and other persons and bodies as appropriate, by the provision of sound, constructive and timely legal services.



2.1 Australian Government Solicitor

OVERVIEW

During the year the Australian Government Solicitor operated as a separate administrative unit within the Attorney-General's Department, dedicated to providing legal services to Commonwealth departments and agencies. This was as a precursor to the establishment of the AGS as a statutory authority as recommended by the Logan review of the Attorney-General's Legal Practice. In November 1997 the Attorney-General introduced legislation into the Parliament to create this authority. Apart from assisting the Department to formulate this legislation, the main focus of activity during the year was to prepare the organisation for its new role while continuing to provide high-quality legal services to clients.

Our vision:

The AGS will be the pre-eminent law firm serving the Australian Government. We will deliver excellent value to our shareholders and clients and provide a progressive working environment with appropriate rewards and recognition for our people.

SUB-PROGRAM OBJECTIVE

Achieving the best possible outcome for clients in the conduct of their affairs by providing high-quality legal services at a commercially viable cost.

ROLE

The commercial operations of the AGS include providing a broad mix of legal services including litigation, legal advice and business and commercial assistance to clients.

The commercial operations were undertaken by the Regional Offices of the AGS and the Barton Office. Each of the AGS offices is a Treasury Centre in its own right and is responsible for resource management, revenue collection and developing a business plan that governs the centre's operations.

The national support elements of the AGS comprise three areas:

- Office of the Chief Executive
- Office of the Chief Financial Officer
- Business Development Group

The strategies and performance of each area need to be seen against the backdrop of the move of the AGS outside the core Attorney-General's Department during 1997–1998 as a precursor to its creation as a separate statutory body. The uncertainty created by delay in the passage of essential legislation had an effect on morale and on the capacity of the organisation to implement new strategies. However, this process is likely to be finalised during 1998–99 when the enabling legislation, the Judiciary Amendment Bill 1997, is enacted.

During the year the Office of Chief Executive Officer was established from the Executive elements of the former Legal Practice, and the Office of the Chief Financial Officer was formed from elements of the Department's Resources Group.

To support the national marketing, quality, learning and information technology operations of the AGS, its former Practice Development Group was merged with elements of the Information Technology Group to form a Business Development Group. This group was subsequently split into departmental and AGS elements.

This section of the Annual Report deals only with the AGS elements.

Office of the Chief Executive Officer (CEO)

During the year a selection process was conducted, leading to the appointment of Mr Dale Boucher as the CEO Designate of the organisation pending passage of the legislation.

Resources Summary — 2.1 Australian Government Solicitor

FINANCIAL	1996-97	1997-98	1997-98
	<i>Actual</i> \$(000)	<i>Estimate</i> \$(000)	<i>Actual</i> \$(000)
Adjustments affecting Outlays			
• Revenue			
– Dividend Payment	1,886	–	–
• Trust Account Transactions — Legal Practice			
– Receipts	119,429	100,381	100,381
– Expenditure	115,987	108,906	108,906
TOTAL OUTLAYS	(5,328)	8,525	8,525
STAFFING			
Staff Years	974.3	867.6	867.6

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format.

Funding and staffing levels for the Corporate Services Division are included in this sub-program.

Strategy

To lead the organisation

PERFORMANCE MEASURE

Effective management of the establishment and operation of the AGS.

PERFORMANCE OUTCOME

The AGS has been established as an effective operating entity within the Department and is as ready as possible to commence independent operation when the enabling legislation is passed. Client satisfaction has increased. The AGS is meeting its budget targets.

Corporate planning and governance

A corporate plan for the AGS for 1998–2001 was prepared in the Office of the CEO, in accordance with the requirements of the Government for the governance of government business enterprises and the *Commonwealth Authorities and Companies Act 1997*. The AGS will in future operate under that legislation.

Progress was made in establishing the corporate governance arrangements of the AGS and in developing the relationship between the AGS and the Department. In particular, work to develop a concept for an advisory board to the CEO for the new organisation was undertaken. In the meantime, the AGS Management Committee continued to operate as the main governing and advisory body to the CEO.

The CEO was actively involved in the handling of legal and business matters of the highest importance, as well as high-level client liaison.

Office of the Chief Financial Officer (CFO)

The Office of the CFO operates centrally, and through a national network of business managers in AGS offices.

Strategy

To provide financial management services.

PERFORMANCE MEASURE

To meet the business needs of AGS and to oversee and control the organisation's financial operations.

To provide and maintain strong and effective management information systems and processes.

PERFORMANCE OUTCOME

Significant work was undertaken during the year to ensure that the AGS will have three interfacing corporate systems providing the capability for national practice management:

- A replacement financial management information system, Platinum, was acquired to operate from 1 July 1998.
- The NOMAD personnel system was expected to continue in operation for the first part of 1998-99 until AGS moves to a new human resources management system. In this regard preliminary evaluation work was undertaken and payroll functions were centralised within the CFO area.
- Upgrading commenced to enable the legal practice management system LAW3000 to operate from a single database, replacing the current eight separate databases.

Business Development Group

Business Development is responsible for the development and implementation of the AGS marketing plan, including maintaining effective client service arrangements and related activities.

Business Development also has national responsibility for quality service initiatives in the AGS, including process improvement and other aspects of quality management.

A further function is to ensure that all aspects of AGS activities are supported by the most appropriate and effective information technology systems. This technology includes high-quality voice and data communications networks, departmental computer systems, access to outsourced facilities and video conferencing services.

Strategy

To coordinate marketing activities for the AGS as the pre-eminent law firm serving the Australian Government.

PERFORMANCE MEASURE

Improved performance of the AGS as a legal services provider to the Government.

PERFORMANCE OUTCOME

Business Development hosted many successful events focusing on developing and maintaining key client relationships. The AGS continues a major program of conference and seminar activity, and Business Development was responsible for the organisation of regular Government Lawyer Group meetings and arranging forums for informing clients on key topics of contemporary interest.

Business Development also designed and implemented workshops for national client service groups. These workshops provide an opportunity for client service groups to plan for enhanced business success. An evaluation indicated that the workshops were highly successful in improving teamwork across national networks.

A national legal support staff training program entitled Taking the Next Step: Improving Teamwork to Increase Productivity was commissioned at the end of 1997. The program was piloted and national delivery commenced. The program improves teamwork between legal assistants and lawyers, leading to greater efficiency and increased productivity.

Other strategies to coordinate and support targeted Continuing Legal Education (CLE) for legal practitioners were undertaken.

A wide range of editorial and publishing services was provided. This included client newsletters such as *Legal Briefing*, production of promotional brochures and departmental publications; and the introduction of a new service, *Litigation Notes*.

PERFORMANCE MEASURE

Quality-service strategy focused on the delivery of legal services.

PERFORMANCE OUTCOME

AGS national client service managers continued to promote consistent national service standards and lead quality-improvement initiatives. In addition, quality-improvement teams defined and implemented a set of process improvement initiatives to enhance business performance in the overall delivery of legal services process.

In September 1997 the AGS undertook the first stage towards recognition as a quality committed enterprise by the Australian Quality Council (AQC). This involved an organisational self-assessment against AQC's business excellence principles. A further assessment is expected to be undertaken to establish whether the AGS has improved against the AQC framework during 1998-99.

PERFORMANCE MEASURE

Enhance the competitive position of the AGS by providing relevant, cost-effective, reliable and efficient information technology services.

PERFORMANCE OUTCOME

During the year the separation of the elements of the IT Group into two components, to service the Department and the AGS separately, was accomplished. This was achieved while the area continued to support the commercial operations of the organisation.

Refurbishment of computing infrastructure continued, providing improved reliability and better performance to the AGS and departmental users as well as providing a new platform of enabling technology for the future. The email system was replaced and key elements of communications infrastructure upgraded to provide required levels of performance.

A number of applications were developed and several existing applications redeveloped using intranet technologies. Access to the Internet was increased through the use of a secure gateway environment, which is a whole-of-government secure Internet facility. Computerised litigation support continued to be a key service provided to clients.

Planning and activity to address year 2000 problems continued throughout the year.

A consultancy to review IT services was undertaken by the Melbourne University Business School, and service levels confirmed high levels of performance and service delivered at industry average costs. An analysis of IT costs over the previous five years demonstrated that significant savings were made each year, and that actual performance had been better than the approved IT business plan.

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The development environment was reviewed, and products and methodologies altered where necessary to improve development efficiency. The preferred common user interface is now intranet based.

The AGS Treasury Centres and Regional Offices

The AGS delivers legal services to clients through a national network of offices in each State and Territory capital city and in Townsville. The operations of these are described below.

Barton Office

The Barton Office of the AGS comprises the Chief General Counsel and the following separate specialist legal offices:

- Office of General Counsel
- Office of Litigation
- Business and Commercial

Chief General Counsel

The Chief General Counsel provided advice on a range of important legal issues throughout the year. These included the possibility of a double dissolution, issues relating to the privileges and immunities of Parliament, migration questions, the operation of the superannuation surcharge and superannuation choice legislation, and constitutional aspects of various legislative proposals.

Office of General Counsel

The Office of General Counsel provided advice on a range of major issues, including the formulation of the Government's response to the Wik decision, constitutional aspects of legislation implementing the Wallis inquiry into the financial system, the application of State-type taxes in Commonwealth places, the constitutional aspects of proposed new environmental legislation, privileges and immunities of Parliament, parliamentary entitlements and tax reform issues.

The Office of General Counsel consists of six units — Special Counsel, the General Unit, the Finance Unit, the Government Unit, the Constitutional Policy Unit and the Native Title Unit. In addition, a number of counsel attached to the Office of General Counsel were outposted to various departments.

Office of Litigation

The Office of Litigation conducts and coordinates major litigation, especially appellate cases in superior courts, in which the AGS is involved. The office upholds the public interest in Commonwealth litigation in which the AGS is acting, and is the main point of contact between the Attorney-General and the AGS in relation to litigation involving the Commonwealth and its agencies. It also provides specialist advice on taxation, customs and trade practices matters, and generally on claims and litigation involving the Commonwealth.

The office is made up of three units — the Constitutional and Native Title Unit, the Government and Revenue Unit and the Trade Practices Unit.

Business and Commercial

Business and Commercial is an Australia-wide commercial practice element of the AGS, providing advice, drafting, negotiating and general assistance to protect the Commonwealth's interests in its legal agreements and contracts. Its work includes major procurements and sales, licensing, privatisation and corporatisations, government-to-government agreements, aid and grant agreements, consultancy contracts and commercial disputes, outsourcing, competitive tendering and contracting out, computer software and hardware development, acquisitions and licensing, and systems integration contracts and advice.

Attorney-General's Department

There are four working groups within Business and Commercial in the Barton Office: the Defence and Special Projects Group; the Finance, Property and the Environment Group; the Government Enterprises and Commercialisation Group; and the Information Technology and Intellectual Property Group.

Regional Offices of the Australian Government Solicitor

These offices conduct litigation and handle significant commercial work in property acquisitions and disposals, leasing and contract and advice work.

The AGS Regional Offices have the same wide range of clients encompassing all Commonwealth departments and most Commonwealth agencies. They provide high-quality legal services by focusing on each client's individual requirements, and by using appropriate legal and support staff with relevant experience and knowledge of government and government legal issues. In addition, access to the full range of resources available within the Legal Practice and detailed knowledge of the local legal environment enhance each office's ability to support its clients.

In all offices, efforts continued to promote a culture within the AGS which achieves sustainable commercial viability and in which quality service in achieving optimum outcomes for clients is an entrenched characteristic.

It was agreed with the Director of Public Prosecutions (DPP) that the arrangements under which the AGS acts for the DPP in Darwin and Hobart should come to an end from early in 1998-99. A fresh arrangement under s. 32 of the Director of Public Prosecutions Act will be negotiated.

Strategy

Promote a culture within the AGS which achieves sustainable commercial success and in which quality service is an entrenched characteristic.

PERFORMANCE MEASURE

Achievement of optimum outcomes for our clients in the provision of legal services

PERFORMANCE OUTCOME

Commercial law

Defence matters: The AGS continued to provide legal advice to the Department of Defence in respect of that department's standard form request for tender documentation for the acquisition of major capital equipment in excess of \$20 million (known as DEFPUR 101) through AGS assistance to the DEFPUR 101 Configuration Control Board. The board assesses changes in the law and policy affecting Commonwealth procurement, and submissions from defence and industry users of the documentation, in determining necessary amendments to DEFPUR 101.

Double taxation agreements: Lawyers from the Barton Office assisted the Australian Taxation Office with negotiations and the drafting of double taxation agreements with Mexico, Russia, Turkey and the Netherlands, and in relation to protocols and individual articles with China, Finland, Canada and various other countries. As well they provided advice and drafting in relation to Australia's model double taxation agreement and various issues before OECD fiscal affairs committees.

Government IT contracts: Officers from Business and Commercial were extensively involved in a large-scale revision of the Commonwealth and States platform contract for information technology and telecommunications known as GITC Version 3. They also assisted in having this made available as part of the Commonwealth's electronic commerce initiatives. Officers assisted in large-scale, whole-of-government telecommunications contracts for the Office of Government Information Technology, including the Fedlink arrangements.

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The AGS continued to advise a wide range of Commonwealth clients on innovative solutions to their IT needs. In particular, legal assistance was provided to several agencies on a framework and documentation for leasing of hardware. Quality commercial and contractual documentation was developed by Business and Commercial for software development and enhancement projects of significance to the Commonwealth. Such projects require that up-to-date knowledge about the IT industry and general IT developments is maintained.

The AGS continued to inform and advise clients on all legal aspects of the year 2000 computer problem, and provided clients with contractual and liability solutions for their protection. A series of presentations was developed and individual client contact was undertaken to alert clients to the potential difficulties of this complex problem and the solutions available.

Competitive tendering and contracting: AGS officers were extensively involved in a number of competitive tendering, contracting out and IT outsourcing projects. These involved subject matter ranging from large-scale IT outsourcing to the contracting out of corporate services functions, such as internal audit functions and printing services. They involved service level agreements, relational contracts and strategic alliances.

New technologies: Officers of Business and Commercial were significantly involved in large and important projects dealing with Smartcard technologies, electronic commerce and electronic publishing for a variety of clients, including Centrelink, the Department of Immigration and Multicultural Affairs, AusIndustry and the Australian Taxation Office.

World Trade Organisation (WTO): Advice was given on WTO dispute settlement to the Department of Primary Industries and Energy, and to Customs on implementation of WTO agreements.

Workplace agreements: The AGS assisted more than 20 Commonwealth departments and agencies in drafting Australian Workplace Agreements and Certified Agreements in accordance with the *Workplace Relations Act 1996*, and Remuneration Packaging Services Agreements in accordance with the *Financial Management and Accountability Act 1997*. The expertise developed in relation to the new areas of employment law brought about by the Workplace Relations Act is likely to be an area where the AGS will continue to provide strong assistance to clients.

Disposal of Commonwealth properties in the ACT: Advice was required regarding statutory requirements affecting the grant of Crown leases and planning controls for the purpose of selling various buildings, including the RG Casey Building, the Melbourne, Chandler, Fishburn, Alexander and Albemarle Buildings, Discovery House and Acton House. Crown leases for grant to buyers of the buildings were also prepared.

Sydney aircraft noise: AGS Sydney acted on aspects of the Sydney Airport aircraft noise insulation program. This involved the coordination of the acquisition of approximately 160 properties, together with the insulation of 4000 noise-affected residential properties, nursing homes, schools and hospitals.

Phase Two airport sales: This involved the sale by long term (99-year lease) of the airports at Darwin, Alice Springs, Tennant Creek, Mount Isa, Townsville, Coolangatta, Archerfield, Canberra, Moorabbin, Hobart, Launceston, Adelaide, Parafield and Jandakot. Teams from the Sydney, Canberra and Melbourne AGS offices worked on the project. The AGS received the NSW Law Society's award for excellence in government legal service on 29 July 1998 for this work.

Housing Loans Insurance Corporation (HLIC): AGS Sydney was instructed on the corporatisation and privatisation of the HLIC. This involved the transfer of HLIC assets to a Commonwealth-owned company and the subsequent transfer of shares worth \$240 million to a subsidiary of General Electric Limited.

Litigation

Removal of Aboriginal children: The Office of Litigation, together with the Northern Territory Regional Office, represented the Commonwealth in a large number of claims arising from the removal of Aboriginal children from their families pursuant to the repealed Aboriginals Ordinance 1918 (NT), Welfare Ordinance 1953 (NT) and the Child Welfare Ordinance 1958 (NT). These relate to the period when the Northern Territory was administered by the Commonwealth.

Attorney-General's Department

Project Blue Sky Inc & Ors v Australian Broadcasting Authority (ABA): Proceedings under the *Administrative Decisions (Judicial Review) Act 1977* were instituted by a number of New Zealand film and television production companies together with a peak body representing their interests. The applicants sought review of a decision by ABA relating to the required Australian content standard under the *Broadcasting Services Act 1992*. It was argued that the content standards were prohibiting the sale of overseas products to Australia and were thus inconsistent with Australia's obligations under the Australia New Zealand Closer Economic Relations trade agreement. On appeal from a Full Federal Court decision in favour of the ABA, the High Court substituted the orders of the Federal Court with a declaration that parts of the Australian Content Standard were made unlawfully. The reasons given were significant as they dealt with the effect of the Closer Economic Relations agreement in Australian law and set a new approach to statutory interpretation, rejecting the traditional distinction between mandatory and directory provisions of statutes.

Attorney-General for the Commonwealth v Tse: This matter involved the first challenge to the inclusion of Hong Kong as an extradition country for the purposes of the *Extradition Act 1988*. The High Court held that, despite the fact China did not have extradition arrangements with Australia, it was permissible for Hong Kong, being a territory for the international relations of which China was responsible, to be validly proclaimed as an extradition country under the Act, therefore upholding the extradition arrangements between the two countries.

Australis Media: The Office of Litigation's Trade Practices Unit acted on behalf of the Australian Competition and Consumer Commission in proceedings in the Federal Court against News Corporation, Telstra and Australis Media seeking to restrain the merger of the Australis and Foxtel pay TV businesses as being in contravention of s. 50 of the *Trade Practices Act 1974*. The AGS was assisted in this matter by solicitors from the law firm Gilbert & Tobin. This engagement of Gilbert & Tobin lawyers to act for the AGS's client was the subject of comment by the House of Representatives Standing Committee on Financial Institutions and Public Administration. The Government responded to the committee's report.

Ban on tobacco advertising: The Office of Litigation and the Melbourne AGS Office acted on behalf of the Department of Health and Family Services in defending a challenge by Philip Morris Ltd to the constitutional validity of *Tobacco Advertising Prohibition Act 1992*. In response to court orders, the AGS produced a detailed statement of what the Commonwealth claimed to be the health effects of tobacco consumption; created a database specifically for the discovery of documents from 6000 client files held in Canberra; and commenced the discovery exercise with a team of 13 solicitors, paralegals and legal assistants. The proceeding was discontinued prior to the completion of the discovery exercise.

Creutzfeldt-Jacob disease: The Melbourne AGS Office acted on behalf of the Department of Health and Family Services and CSL Limited in relation to claims for damages for nervous shock by recipients of human growth hormones who were in fear of contracting Creutzfeldt-Jacob disease. The matter was a large litigation that involved unique issues of law and complex medical issues.

Constitutional litigation: The Office of Litigation was involved in a number of cases involving constitutional issues, including cases concerned with the application of State mining laws to land owned or held under lease by the Commonwealth for defence training purposes; the validity of the *Hindmarsh Island Bridge Act 1997*; the application of NSW workers compensation legislation to employees of Commonwealth bodies; and the validity of provisions of the *Superannuation (Resolution of Complaints) Act 1993* dealing with aspects of the powers of the Superannuation Complaints Tribunal.

Native title determination: The Office of Litigation has carriage of native title determination and compensation applications, made under the *Native Title Act 1993*, to which the Commonwealth is a party in the National Native Title Tribunal. The office represented the Commonwealth in native title cases in the Federal Court, including the Croker Island case which was the first Federal Court case to deal with the question of whether native title can, as a matter of law, exist in relation to the sea.

Silverton: The long-running proceedings involving the Silverton Centre were heard in the ACT Supreme Court. The Commonwealth obtained judgment in its favour.

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York Park, ACT: Proceedings in respect of construction of Stage I of the RG Casey Building for the Department of Foreign Affairs and Trade were settled after mediation. The matter was handled jointly by the Canberra and Sydney AGS offices.

Software AG: Proceedings for breach of copyright and licence agreement for use of computer software were settled at mediation. The settlement resulted in new licences being issued to the Commonwealth on the payment of a specified sum, and the discharge and extinguishment of all causes of action relating to previous breaches of copyright and software licence agreements.

Royal Canberra Hospital implosion: The ACT Office provided assistance to Major-General Neville Smethurst who constituted a Board of Inquiry under the ACT Inquiries Act for the purpose of investigating the decision to demolish the former hospital by implosion. The Board is in recess pending resolution of the coronial inquiry.

Emanuele & Ors v Commonwealth & Ors: This is a complex action in which \$250 million in damages is claimed by Mr Emanuele and two of his companies, arising from a prosecution commencing in 1985 for bribing a Commonwealth officer. Two writs were issued claiming in excess of 20 different torts against 25 defendants, including past and present Directors of Public Prosecutions and Commissioners of the Australian Federal Police. Motions by the Commonwealth respondents for summary dismissal were successful. Applications lodged in August 1997 resulted in orders in the Commonwealth's favour for indemnity costs to be paid not only by the plaintiffs but personally by a non-party liquidator of a plaintiff company. Appeals against all decisions are pending.

Strategy

Alignment of staff to our business vision and continuing to increase their skills and knowledge base.

PERFORMANCE MEASURE

Staff development and training targeted in accordance with agreed individual development plans.

PERFORMANCE OUTCOME

Staff were involved in projects to identify the preferred culture of the new organisation in anticipation of its separation from the Department, and in workshops to develop business plans and to improve commitment to the new organisation.

PERFORMANCE MEASURE

High staff morale and satisfaction with remuneration and conditions as indicated in staff survey.

PERFORMANCE OUTCOME

A staff survey was not conducted in 1997-98, but significant work to assess staff attitudes and the culture of the AGS was undertaken by the Hay Group in the context of advising on new employment arrangements for the organisation.

As part of the survey of staff conducted by the Hay Group to assist the AGS in developing its people management framework, valuable information was provided on the morale of the organisation and attitudes to remuneration.

The Hay Group found a high level of consistency with the target organisational culture of both staff and senior managers in the AGS.

In relation to remuneration, the Hay Group identified a new job classification system. It found that although the AGS is required to operate in competition with the public sector, some salaries lag significantly behind private sector remuneration levels for the most responsible positions. The AGS will address this finding through its new employment framework.

Attorney-General's Department

Strategy

Continuing efficiency in the use of human and physical resources.

PERFORMANCE MEASURE

Achievement of business plan targets, including consumption of physical resources comparable with industry best practice.

PERFORMANCE OUTCOME

In order to match staffing levels to revenue projections, two voluntary redundancy programs were undertaken. Overall, these programs will result in a reduction in staff of the AGS from about 855 to 620.

Strategy

Improve the effectiveness of billing arrangements and debt minimisation processes while ensuring these remain acceptable to clients.

PERFORMANCE MEASURE

Achievement of business plan targets relating to payment of debt.

PERFORMANCE OUTCOME

During 1997-98 there was a slight increase in debt levels compared to the figure at June 1997, though figures remained within industry norms. This increase was in part caused by changes in the process for billing a major client. This process was not fully implemented before 30 June 1998. Following that implementation, it is expected that debt levels will fall.

During the year ongoing liaison with clients improved billing arrangements with the consequential outcome of improving debt levels generally. The AGS is continuously seeking to improve and streamline billing procedures for clients through the use of technology based on the Law3000 system.

