

## **GUIDANCE NOTE NO 8**

*The Office of Legal Services Coordination (OLSC) 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.*

### **Reporting of legal services expenditure**

Paragraph 11.1(da) of the *Legal Services Directions 2005* requires agencies regulated by the *Financial Management and Accountability Act 1997* (FMA agencies) to report to OLSC on their legal services expenditure in a template approved by OLSC.

Paragraph 12.3A of the Directions extends the legal services expenditure reporting requirements to agencies regulated by the *Commonwealth Authorities and Companies Act 1997* (CAC agencies).

A copy of the template for reporting by both FMA and CAC agencies is attached to this Guidance Note, and is available on the OLSC website at [www.ag.gov.au/olsc](http://www.ag.gov.au/olsc).

### **Why has the obligation been imposed?**

The publication of FMA agencies' legal services expenditure was first required in the 2005 amendments to the Directions. This was to enhance the transparency of legal services expenditure recording and reporting in line with the findings of the Australian National Audit Office in its Report No 52 of 2004/05, *Legal Services Arrangements in the Australian Public Service* (the ANAO Report).

Since the introduction of the publication requirement, there has been two full financial years of reporting – the 2005–06 and 2006–07 years. Response from agencies for those two years has been mixed. Guidance was developed by OLSC to assist agencies with the reporting obligation, suggesting a format for the published information. However, agencies have not consistently reported against this format, limiting the use to which the information could be put.

It was also suggested that agencies notify OLSC when the information was published, and advise where it could be found. However, this was not always done, making it necessary for OLSC to search for the information.

The requirement for agencies to report their legal services expenditure to OLSC in a template approved by OLSC will ensure consistency of reporting across Commonwealth agencies. The extension of the requirement to CAC agencies will provide better information about purchase of legal services across whole of government.

This information will be used to identify possible areas of legal services purchasing where greater efficiency may be achieved. It may also assist in identifying the nature of the initiatives that may be developed in order to achieve those efficiencies.

## **Two stage approach**

The reporting requirements commence on 1 July 2008, so agencies will need to capture the information required in the template available from that date to enable reporting within 60 days after the end of each financial year. The template for the 2008–09 financial year reflects the previously suggested format for reporting, with the addition of a breakdown of professional fees paid to each law firm by an agency, and costs recovered by other parties in litigation. It also requires agencies to report consistently in relation to GST; that is, all figures must be reported as GST inclusive.

The Attorney-General has asked OLSC to do further work with agencies and providers on the issue of categorisation of legal work for reporting purposes with a view to introducing categorisation in reporting for the 2009–2010 financial year.

## **Reporting by CAC agencies**

It is acknowledged that CAC agencies have not previously been required to publish their legal services expenditure, and the introduction of this requirement may present some difficulties for them.

It is noted that under paragraph 13 of the Directions, the Attorney-General may decide that an agency is not required to comply with some or all of the Directions, or is required to comply with modified obligations. CAC agencies may contact OLSC to discuss the the Attorney-General considering an exemption from the requirements.

## **Reporting of internal legal services expenditure**

OLSC requires agencies to follow the Australian National Audit Office Better Practice Guide of August 2006 in costing in-house legal services. In line with the ANAOGuide, the full cost of an in-house legal unit must include:

- direct salary costs
- indirect salary costs (superannuation, leave entitlements)
- direct overhead (costs of desks, computer, stationery)
- indirect overhead (apportioned rent, electricity, etc), and
- legal unit overhead (specialist software licences, cost of law library).

The ANAO Guide worked example is attached to this Guidance Note.

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Date of issue: 1 July 2008

## **Case study – costing legal services**

ANAO noted in Audit Report No.52 2004-2005 that an audited agency costed its internal legal services and developed charge-out rates for its internal lawyers using a model that included salary, a loading for salary-related expenses and variable, or direct, overheads and fixed, or indirect, overheads.

The salary rates reflected the relevant salary points (from the agency's workplace agreement), and levels of staff. This enabled the agency to calculate the full cost, as well as apply an hourly rate, based on a specified level of 'billable' hours per year. The agency included a figure of 1210 billable hours for junior and senior lawyers and 1100 hours for principal lawyers and general counsel for this purpose.

These annual hours reflected the agency's expectation of 5.5 billable hours per day for junior and senior lawyers and 5 hours per day for principal lawyers and general counsel, over 220 working days per year. The result of this approach was that an internal legal resource could be fully costed, as well as the 'marginal cost' per hour/day for work that could be given to external providers. The hourly rate was calculated by dividing the full cost by the number of productive hours.

The salary-related loading was based on 25 per cent of salary for each staff member, to make provision for superannuation and long service leave, etc.

The variable overhead included the provision of IT, professional development and workers' compensation insurance (the agency's average contribution per employee to Comcare).

The fixed overhead included the total estimated cost of the provision and maintenance of the legal unit's law library, administrative support staff, apportioned costs of accommodation and rent, furniture and fittings, communications (phone and facsimile), office expenses (stationery, photocopiers, consumables, etc), travel, and a provision for annual recruitment costs for the legal unit.

The ANAO considered that this costing model represented a comprehensive and appropriate approach to assessment of that agency's internal legal costs.