



GUIDANCE NOTE 7

Reporting and Settlement of Significant issues

Paragraph 3 of the Legal Services Directions 2017

1. Paragraph 3 of the *Legal Services Directions 2017* (the Directions) requires non-corporate Commonwealth entities and a corporate Commonwealth entity that was an Agency (within the meaning of the *Financial Management and Accountability Act 1997*) on 30 June 2014, to report to OLSC on significant issues that arise in the provision of legal services, including in relation to handling of claims, litigation and involvement in dispute management.
2. Failure to report a significant issue is a breach of the Directions and the Attorney-General may impose sanctions for non-compliance with the Directions.¹
3. Reporting should not be confined to reporting of litigated matters and should include the early reporting of significant legal issues and trends.²
4. A request to brief the Solicitor-General, consultation undertaken with another area within the Attorney-General's Department or a claim submitted to Comcover **does not** satisfy the requirement in paragraph 3 of the Directions to report a significant issue to OLSC.
5. A separate Guidance Note, Guidance Note 11, deals with briefing the Solicitor-General and outlines agencies' responsibilities in relation to briefing the Solicitor-General.
6. This Guidance Note applies unless other arrangements are approved by OLSC in relation to the agency's portfolio or work.

Purpose of reporting significant issues

7. The purpose of paragraph 3 of the Directions is to:
 - promote a greater understanding of the special role and responsibility of the Attorney-General, as First Law Officer, in relation to Commonwealth legal matters
 - ensure that the Attorney-General, as First Law Officer, and the Solicitor-General, as Second Law Officer, are appropriately informed of the most important legal issues affecting the Commonwealth, and
 - protect the whole-of-government interests of the Commonwealth as opposed to an entity working exclusively in its own interests.
8. Our reporting framework is designed to ensure accurate information about significant legal issues can be provided to the Attorney-General in a timely way, and to allow for the consideration of significant legal issues involving the Commonwealth by the Significant Legal Issues Committee. OLSC relies on accurate and timely reporting by entities that are best placed to identify and explain the significance of the matters that they have conduct of to the Attorney-General.

¹ Refer to paragraph 14 of the Directions.

² Entities should report significant legal issues as soon as they emerge, even if a claim has not yet been made.

Issues considered to be significant

9. Entities are responsible for identifying significant issues, and reporting them to OLSC. An issue may be considered significant for one or more reasons and at various stages as a matter progresses. For the purposes of the Directions, an issue will be considered 'significant' in a range of circumstances, including if:
- an entity is considering whether to apply to the High Court for special leave
 - any proceedings that involve an entity have been filed in the High Court (including matters which an entity is monitoring whilst considering intervention)
 - it involves constitutional issues (in which case paragraph 10A of the Directions may also apply)
 - it is large in size or complex, whether this is due to the number of parties or the potential liability or cost to the Commonwealth
 - it has, or potentially has, whole-of-government implications, or may have future implications for another agency and/or the Commonwealth
 - it raises legal, political or policy issues that receive or are likely to receive media attention³ or cause a significant adverse reaction in the community
 - it involves a test case or requires the Commonwealth to intervene in private litigation
 - it involves a dispute or disagreement between the Commonwealth and a Commonwealth agency or between different Commonwealth agencies (other than matters arising under legislation which contemplates that the Commonwealth or Commonwealth agencies may be on different sides in a case), including a dispute between a Commonwealth agency and an agency of a State or Territory government
 - it affects more than one Commonwealth agency, requiring a significant level of coordination or high level consultation between Commonwealth agencies
 - it has the potential to have a significant precedent for the Commonwealth or other Commonwealth agencies could be established, either on a point of law or because of its potential significance for the Commonwealth or other Commonwealth agencies, and
 - the tort of misfeasance in public office is in issue.
10. The above list is not exhaustive and other matters may need to be reported as significant.
11. If an entity is uncertain whether an issue is 'significant' for the purposes of the Directions, the entity should contact the Significant Issues Team within OLSC as soon as possible to discuss the significance of the issue and requirement to report.
12. If an entity has reported a matter as significant, and the entity subsequently considers the matter may no longer be significant, the entity should consult OLSC. An entity should not cease providing regular updates on reported matters without the prior approval of OLSC.

³ 'Likely to receive media attention' includes where an entity has been approached to comment on an issue/matter by a media group or has been notified by a media group that a particular issue/matter is likely to receive media attention.

Significant Issue Reporting Template

13. The significant issue reporting template is the standard reporting template which is to be utilised for all issues or matters, and at all stages of an issue or matter. The template is enclosed at **Attachment A**.

Initial Reporting

14. A significant issue should be reported to OLSC as soon as the significance of the issue becomes apparent. Reporting of a significant issue to OLSC must be done by completing the Significant Issues Reporting Template located on the [OLSC website](#) under the heading 'Reporting of significant issues' in the 'Compliance and reporting' page. When completing the Significant Issues Reporting Template entities must ensure that they have clearly expressed all relevant legal risks and sensitivities.
15. An entity should submit the completed template to OLSC by emailing it to the OLSC mailbox: OLSC@ag.gov.au.
16. Importantly, the content of the Significant Issues Reporting Template should be confined to discussion of the significant issue. Requests for other approvals or exemptions under the Directions should not be contained in the report; and should be raised independently via the OLSC mailbox: OLSC@ag.gov.au.

Ongoing-Reporting

17. Entities are required to update all reported significant issues bi-monthly using the same template as used for the initial reporting of the matter (**Attachment A**). OLSC will contact all entities who have reported significant issues and request updates to be provided by a specified date every two months which aligns with Significant Issues Coordination Committee meetings. OLSC will notify entities when reports are due.

Significant Developments

18. Importantly, if there is a significant development in a matter or an issue between reporting dates, the entity **must** update the report and provide it via email to the OLSC mailbox: OLSC@ag.gov.au as soon as the entity learns of the development. For example, if an entity learns that a judgement is to be delivered in a significant matter, the entity should alert OLSC to the impending judgement date. When the judgement is handed down, the entity should provide OLSC with an updated report outlining the decision, using the standard reporting template, as soon as possible.

More Frequent Reporting

19. OLSC may require more frequent updates from a particular entity in relation to a specific matter or group of matters. When this occurs, OLSC will liaise with the relevant entity to arrange a more frequent reporting schedule for that particular matter.

Reporting High Court Matters in which the Commonwealth is a party

20. Any matter before the High Court, including applications for special leave, will meet the definition of a 'Significant Issue' for the purpose of the Directions. As such, all entities must inform OLSC of any matters in which they are involved (whether as a party, intervener or otherwise) before the High Court, including special leave applications.
21. OLSC monitors matters in which the Commonwealth or an entity is a party before the High Court on a more frequent basis than other significant issues. **If a matter is before the High Court, an entity must provide a further short report to OLSC every fortnight in the following form:**

Matter name [High Court]

Description: [One sentence describing primary issue before court]

Status: [One sentence to describe the status of the matter]

22. Please provide these fortnightly updates via email to the OLSC mailbox:
OLSC@ag.gov.au.

Settlement of Significant Issues

23. Under paragraph 3.2 of the Directions, a claim that has been reported to OLSC by an entity as raising a significant issue must not be settled without the agreement of the Attorney-General or the Attorney-General's delegate.
24. Failure to obtain the Attorney-General's agreement for a settlement is a breach of the Directions and the Attorney-General may impose sanctions for non-compliance with the Directions.
25. Entities are encouraged to engage with OLSC as soon as possible when settlement of a matter which raises significant issues is contemplated. Entities should also ensure that important issues requiring further consideration or consultation by OLSC which may arise in certain settlements are identified with OLSC early. For example, where it is proposed the settlement terms remain confidential, or where the settlement may impact on other entities or similar matters.
26. When requesting agreement for the settlement of a claim that has been reported to OLSC as significant, entities will need to complete the Significant Issues Settlement Request Template enclosed at **Attachment B**. The completed template should be submitted to OLSC by emailing it to the OLSC mailbox: OLSC@ag.gov.au.
27. OLSC will respond as quickly as reasonably practicable to assess settlement proposals. Timely assessment of a request for agreement of a proposed settlement can only occur when relevant and complete information about the matter is provided to OLSC as soon as possible. Consideration of a request for settlement agreement will be facilitated when the application for approval is accompanied by:
- legal advice obtained by the entity that canvasses the possibility of settlement in a matter
 - the completed Significant Issues Settlement Request template outlining any risks to the Commonwealth, effect of the settlement on other Commonwealth agencies or matters, and a clear statement of the settlement proposal the entity is seeking agreement of.

Other Information

28. For further information about reporting significant issues, please contact the Significant Issues Team at OLSC on 02 6141 3642 or via the e-mail at OLSC@ag.gov.au.

Office of Legal Services Coordination

Telephone: 02 6141 3642

E-mail: olsc@ag.gov.au

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Significant Issue Reporting Template

Matter name (As listed on court record) / Issue: (If not a litigated matter)
Entity:
Court and matter number: /Key words (if not a litigated matter)
Parties: /Affected stakeholders or agencies (if not a litigated matter)
Other Relevant Commonwealth Stakeholders: (please specify if Comcover is instructing in this matter)

IMPORTANT NOTE: If a party's identify has been suppressed or is not otherwise to be disclosed, please ensure only pseudonyms are used.

Legal Significance

[Insert brief explanation of the legal significance of the matter for the purpose of Paragraph 3 of the Legal Services Directions. Please note your audience is the Attorney-General, Solicitor-General and high level government officers – please delete instruction before submitting]

Summary of issues

[Insert brief explanation of the substantive legal issues and arguments. Report should be precise, stand-alone briefs that do not contain reference to external material – please delete instruction before submitting]

[Reports should be limited to no more than 1-2 pages and provide a:

- *clear statement of the relevant legislative framework, legal context and relevant facts*
- *comprehensive outline of legal issues and risks*
- *strategic focus on emerging legal issues for the Commonwealth*
- *state whether any s78B notices have been issued*

Please delete instruction before submitting]

Summary of facts

[Insert brief explanation of the relevant facts of the matter – please delete instruction before submitting]

Litigation History (if a litigated matter) / **Timeline** (Please provide a timeline of key events if possible)

[DATE] [EVENT]
[DATE] [EVENT]

[Importantly, the content of the Significant Issues Reporting Template should be confined to discussion of the significant issue. Requests for other approvals or exemptions under the Directions more generally are separate issues, and such requests should be emailed to the OLSC mailbox: OLSC@ag.gov.au – please delete instruction before submitting]

Legal Representatives (if any are instructed):	Entity – Solicitors:	
	Counsel:	
Report prepared by:	Other parties – Solicitors:	
	Counsel:	
Entity Contacts:		Current as at:
Has the Solicitor-General been briefed to advise in this matter: Y/N		



Significant Issue Settlement Request Template

Matter name: (As listed on court record)
Entity:
Court and matter number:
Parties:
Other Relevant Commonwealth Stakeholders: (please specify if Comcover is instructing in this matter)

Agreement Required by:

(Please provide relevant timeframes.)

Background

(Please provide a brief description of the background facts and issues in this matter.)

Outline of Potential Risk to the Commonwealth

(Please provide an outline of any potential risk to the Commonwealth in proceeding with a hearing.)

Reasons advanced for settlement of this claim

(Please provide reasons for settlement, including providing copies of any relevant legal advices on which you have relied in formulating this settlement proposal, as well as a listing any advantages to the Commonwealth if this matter is settled.)

Effects on other agencies within the Commonwealth

(Please list the effects, or potential effect, on other Commonwealth agencies of the proposed settlement, including any potential precedent established (if settlement is not limited to the facts of the claim) or any wider exposure to other claims or proceedings.)

Consultation/ministerial approval

(Please provide a brief description of any consultation you have undertaken, and a brief description of any ministerial approvals you have obtained in relation this matter. Please also note if your Minister has been briefed on the impending settlement.)

Outline of any prior settlement offers/counter offers

(Please provide an outline of any prior settlement offers or counter offers which have been made in relation to this matter.)

Settlement terms

(Please provide a brief description of the settlement you wish to be approved. Please note that we do not require a copy of the deed of settlement, rather we ask that entities provide us with a brief summary of the settlement proposal and figures that make up any offers they intend to make.)

In accordance with Legal Practice and Principle

(Please confirm that you have advice that the offer you have recommended is in accordance with proper legal principle and practice (see paragraph 4.3 of the Directions, and is in accordance with your entities obligations more broadly under the *Legal Services Directions 2017* including in accordance with Appendix C to the Directions (Handling Monetary Claims), if applicable.

Has the Solicitor-General been briefed to advise in this matter: Y/N