

PS LA 1998/1 - Law Administration Practice Statements

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Practice Statement Law Administration

PS LA 1998/1

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FOI status: may be released

This law administration practice statement is issued under the authority of the Commissioner of Taxation. ATO personnel, including non-ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

SUBJECT: Law Administration Practice Statements

PURPOSE: To explain:

- the purpose of Law Administration Practice Statements
 - that it is mandatory for ATO personnel to be aware of and follow Law Administration Practice Statements relevant to the tasks they are performing
 - the different classifications of Law Administration Practice Statements
 - the processes by which Law Administration Practice Statements are developed and approved
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STATEMENT

Purpose of Law Administration Practice Statements

1. Law Administration Practice Statements (LAPS) provide direction and assistance to ATO personnel¹ on the approaches to be taken in performing duties involving the application of the laws administered by the Commissioner – usually referred to as ‘technical’ work. LAPS can supplement public rulings and are not intended to provide interpretative advice, but technical issues may be discussed in LAPS in the course of providing directions to ATO personnel.
2. Directions to ATO personnel on the approaches to be taken in performing duties involving the application of the laws administered by the Commissioner are to be issued in the form of LAPS. Office minutes are not to be prepared for this purpose, except where the issue is of a particularly urgent nature, and where publication or revision of the LAPS will not be able to occur in time to address a particular risk. However, an office minute of this type must indicate its interim nature and be replaced by new or revised LAPS at the earliest opportunity.²
3. The types of issues that may be addressed in LAPS include, but are not limited to:
 - the steps to be taken after a Tribunal or Court decision
 - processes or procedures for identifying and resolving technical issues
 - work practices to be adopted, for example referral processes within a business line
 - practices to be followed in the practical application and administration of the laws administered by the Commissioner.
4. Although LAPS are intended to outline the approaches to be taken in performing duties involving the application of the laws administered by the Commissioner, directions and instructions to ATO personnel on the practices and obligations in the performance of their corporate management duties must be approved and published as a Corporate Management Practice Statement (as outlined in PS CM 2003/01 *Corporate Management Practice Statements*).
5. ATO personnel must be aware that LAPS do not express a precedential ATO view. Law Administration Practice Statement PS LA 2003/3 *Precedential ATO view*, and the *Schedule of documents containing precedential ATO views*, list all documents considered to be precedential ATO views. LAPS are not included in these lists.

¹ ATO personnel includes staff, employees, and officers. ATO personnel also includes contractors where their agreement or contract states that they will comply with ATO policies.

² A similar approach applies in relation to Corporate Management Practice Statements – refer to CMPI 2003/01/14.

Compliance with LAPS

6. It is **mandatory** for ATO personnel to be aware of and follow LAPS relevant to the tasks they are performing. Failure to comply with relevant LAPS can result in disciplinary action (refer to subsections 13(5) and 15(1) of the *Public Service Act 1999*).
7. The only authoritative copy of particular LAPS is the electronic copy of that LAPS contained on ATOLaw or the Legal Database on the external ATO website. ATO personnel must not rely on paper copies of LAPS as these may be outdated.
8. When developing guidelines, work instructions or other tools to support policy outlined in a LAPS, ATO personnel are to ensure that the underlying intent of the LAPS is maintained, and must include a link and reference to the LAPS.
9. Where an officer considers that the application of particular LAPS produces an unintended consequence or considers the particular LAPS incorrect, the officer must escalate the matter using their relevant business line escalation process.

Citing LAPS

10. As stated in paragraph 5 of this practice statement, LAPS do not express a precedential ATO view. Therefore, LAPS should not, as a general rule, be cited as authority for a decision in advice to taxpayers or in other documentation such as reports or submissions. However, where the subject matter of particular LAPS relates to a discretionary issue, for example the remission of penalties or interest, and particular LAPS outline the ATO policy in relation to the exercise of that discretion, then those particular LAPS may be cited. Officers must be careful, however, not to cite LAPS as the authority for their decision. The relevant section of the law which enables a discretion to be exercised is the authority for the exercise of that discretion, and particular LAPS only provide guidelines in relation to exercising that discretion.
11. The Online Resource Centre for Law Administration (ORCLA) outlines more detail about how LAPS should be cited in advice to taxpayers or in other documentation such as reports or submissions. A link to the relevant section of ORCLA (available to ATO personnel only) is available in the 'Other References' section at the conclusion of this practice statement.

Currency of LAPS

12. LAPS are 'owned' by a business line. It is the responsibility of that business line to maintain the currency of their LAPS. A business line owns particular LAPS if the underlying risk that those LAPS are addressing or the process it is outlining is sponsored by the business line.
13. ATO personnel are encouraged to advise TCN Practice Management in Tax Counsel Network (a link to contacts within this Branch is available in the 'Other References' section at the conclusion of this practice statement) of any LAPS that may need to be updated or withdrawn via an email to the email address 'Practice Statements5@ato.gov.au'.
14. TCN Practice Management periodically conducts a process to request business lines review their LAPS to ensure their currency.

15. LAPS that are redundant will be withdrawn but will remain on ATOLaw and the Legal Database on the external website. Withdrawn LAPS will be annotated and dated accordingly. Where appropriate, LAPS or another form of instruction or advice must replace the particular withdrawn LAPS as soon as practicable.
16. Where particular LAPS need to be updated, those LAPS will, depending on the extent of the changes necessary, either be withdrawn and reissued, or suitably annotated. From August 2009, if LAPS are revised, ATOLaw and the Legal Database will present those LAPS using point-in-time functionality. This provides a document amendment history and a link to past versions. Versions published prior to August 2009 can only be obtained from TCN Practice Management.

Availability of LAPS within the ATO

17. Once approved in accordance with the provisions of this practice statement, LAPS will be published on ATOLaw for access by ATO personnel. Details of published LAPS are also available from the Law Administration Practice Statements home page on the Intranet. A link to this page is available in the 'Other References' section at the conclusion of this practice statement.
18. On ATOLaw, ATO personnel may access LAPS through the index, or conduct searches for LAPS. LAPS are cross-referenced, where relevant, by subject references, legislative references, related public rulings, related practice statements and case references.

Availability of LAPS to the public

19. LAPS are written principally for ATO personnel. However, LAPS may also serve to promulgate ATO administrative practices to tax professionals and others. Recognising this, and in the interest of open tax administration, LAPS are available to the public via the Legal Database on the ATO external website.

Level of protection available to taxpayers who rely on LAPS

20. Although LAPS provide direction and assistance to ATO personnel, they are published and approved for taxpayers to rely on them in the same way as other publications that are not rulings. A taxpayer who relies on particular LAPS will remain liable for any tax shortfall if those LAPS are incorrect, or are misleading and the taxpayer makes a mistake as a result. However, they will be protected against any shortfall penalty that would otherwise arise. In addition, they will be protected against interest charges on the shortfall if the particular LAPS were reasonably relied on in good faith.³

Administration of LAPS

21. The LAPS system is administered by TCN Practice Management within the Tax Counsel Network business line. Administration includes:
 - maintaining policy, procedures, templates and forms
 - publishing the LAPS Program (a list of LAPS in progress that is published externally)

³ See Law Administration Practice Statement PS LA 2008/3 *Provision of advice and guidance by the Australian Taxation Office*.

- providing targeted exception reporting on LAPS in progress to key stakeholders
- providing advice on matters of policy, procedure, presentation and style
- circulating draft LAPS for mandatory consultation
- formatting and publishing new and revised LAPS and ensuring these have conformed with the requirements of this practice statement
- initiating periodical reviews of the currency of published LAPS.

Classification of LAPS

22. LAPS are classified into three categories:

- Process LAPS – covering matters of process
- Technical LAPS – covering technical issues
- General administration LAPS – outlining an exercise of the Commissioner's powers of general administration. These LAPS are issued and numbered separately as the General Administration (GA) series.

23. Process LAPS relate to the infrastructure that supports the administration of the law, such as this one. They deal with work practices and procedures which enable the laws administered by the Commissioner to be administered but do not relate to the administration of those laws. For example, LAPS outlining procedures for referring certain types of cases to a particular functional area of the ATO, or outlining the role of a particular advisory panel would fall into the category of process LAPS.

24. Technical LAPS outline work practices or provide guidelines for ATO personnel in relation to the administration of particular provisions of the laws administered by the Commissioner. For example, LAPS outlining guidelines for the exercise of a penalty or interest discretion or outlining how a particular section is administered would fall into the category of technical LAPS. However, as stated in paragraph 1 of this practice statement, they must not provide interpretative advice. If interpretative advice is required, that advice should be contained in a ruling or other advice publication.

25. Some LAPS will necessarily cover a combination of both process and technical matters. In these situations, the LAPS will generally be classified according to the major category of work that is covered, and may follow a form of hybrid approval process. Paragraphs 37 and 40 of this practice statement provide further detail on this.

26. General administration LAPS (LAPS (GA)) provide an explanation of the exercise of the Commissioner's powers of general administration in relation to a particular area of the laws administered by the Commissioner.

27. The general administration series of LAPS began on 15 April 2004. These practice statements derive their authority from the Commissioner's powers of general administration as set out in the various Acts administered by the Commissioner, for example section 8 of the *Income Tax Assessment Act 1936*.

28. LAPS (GA) focus on the practical administration of the tax system. They aim to help reduce compliance costs for taxpayers within a framework that demonstrates the ATO's accountability for its decisions. They are not intended to remedy defects or omissions in the law. They offer practical compliance solutions in situations where a strict interpretation of the law may lead to unsatisfactory compliance outcomes. More information on the Commissioner's powers of general administration, including when it is appropriate to exercise the power, can be found in Law Administration Practice Statement PS LA 2009/4 *Escalating a proposal requiring the exercise of the Commissioner's powers of general administration*.

Application of good work management principles to LAPS

29. The development of LAPS must be managed by applying good work management principles including, where relevant, project management approaches detailed in Corporate Management Practice Statement PS CM 2003/05 *Project and program management*. The approaches require the active involvement of senior officers to identify the need for particular LAPS and monitor the development of those LAPS in accordance with agreed quality expectations and within timeframes. It is the responsibility of the authorising business line to monitor the delivery of expected benefits from the issue of those LAPS.
30. The LAPS Program is published on the external ATO website and includes anticipated publication dates. Every effort must be made to meet these published dates.

Procedures for the development of LAPS

31. The procedure for the development of LAPS will depend on their classification as either a process, technical or LAPS (GA) (refer to paragraphs 22 to 28 of this practice statement).
32. Where doubt exists whether a topic should be addressed in LAPS form, TCN Practice Management can provide advice.
33. The preparation stage of LAPS must include identifying any implementation issues that may result from the eventual publication of those LAPS and which may, if not addressed, delay its release. For all draft LAPS, an implementation strategy should be discussed within the authoring business line and formulated throughout the development of the LAPS.
34. All LAPS must be prepared using the Case Management functionality on Siebel. A link to the procedures for managing the different types of cases is available in the 'Other References' section at the conclusion of this practice statement.

The development and approval of process LAPS

35. Process LAPS may sometimes cover technical matters in the course of addressing their particular subject matter. If the technical matters are only incidental to the issue of process (for example, if they merely provide background information to explain the reason for a particular process) those LAPS should still follow the procedures outlined in paragraphs 36 and 37 of this practice statement. If however, the technical issues form a significant part of the subject matter of those LAPS, those LAPS should be classified as technical LAPS and follow the procedures outlined in paragraphs 39 and 40 of this practice statement.

36. The key steps in the development of process LAPS are set out below.
- The appropriate National Program Manager,⁴ approves a notification form which advises:
 - the details of the topic
 - expected timeframes for completion
 - name of the Senior Executive Service (SES) sponsor.
 - The notification form is forwarded to TCN Practice Management for registration of the LAPS on the LAPS Program.
 - The author consults within the owning business line, and with other relevant stakeholders and sources of expertise.
 - The author produces a draft, with quality assurance support from their SES sponsor.
 - The SES sponsor, once satisfied, clears the draft for internal ATO consultation.
 - TCN Practice Management circulates the draft to compulsory stakeholders. Compulsory stakeholders include TechNet members⁵ and the Charter Review team. TCN Practice Management will also circulate the draft to additional relevant internal stakeholders identified by the author.
 - TechNet members are to forward the draft to all relevant staff within their business line. If possible, the TechNet member should consolidate business line comments. If this is not possible, the TechNet member should advise the author that comments from their business line will be coming to them separately.
 - The author receives and synthesises comments from the stakeholders. If significant changes are made, TCN Practice Management recirculates further drafts as necessary.
 - If external consultation is considered appropriate, the National Program Manager clears the draft for external consultation.
 - The author completes a compendium of comments to enable a response to be given to those who provided comments.
 - The author produces the final draft, with quality assurance support from the SES sponsor.
37. The key steps in the approval of process LAPS are set out below:
- The SES sponsor, once satisfied with the final draft and the feedback to be given to stakeholders who provided comments, clears the draft.
 - The National Program Manager approves the final draft. They may consider it appropriate to refer the final draft to the relevant Group Executive for final approval.
 - The final draft, and approvals, are forwarded to TCN Practice Management.
 - TCN Practice Management arranges for publication.

⁴ The position of National Program Manager may also be referred to as Deputy Commissioner.

⁵ TechNet is a cross business line forum that focuses on improvements to and assurance of the quality of technical decision making.

The development and approval of technical LAPS

38. Technical LAPS will often contain matters of process as part of their subject matter. If technical LAPS have more than an incidental focus on work processes and procedures that enable the law to be administered, then parts of the above procedure for process LAPS are incorporated into their drafting and approval procedure. This is indicated where relevant, in paragraphs 39 and 40 of this practice statement. It would be considered that matters of process would form more than an incidental part of technical LAPS where, for example, the new process infrastructure results in substantial changes to existing work processes and procedures or results in resource shifts.

39. The key steps in the development of technical LAPS are set out below.

- The SES Sponsor approves a notification form which advises:

- the details of the topic
- expected timeframes for completion.

If significant matters of process were involved, approval to register technical LAPS would also be obtained from the National Program Manager.

- The notification form is forwarded to the Work allocation, reporting and monitoring team in Tax Counsel Network. The Work allocation, reporting and monitoring team will assess the topic and if it is considered necessary, will engage required technical officers from Tax Counsel Network to work with the business line to progress the draft and decide the appropriate level of their engagement on the topic.
- If any technical officers in Tax Counsel Network are engaged, expected timeframes for completion will be discussed, and if required, negotiated with the business line.
- The notification form, with agreed timeframes for completion, is forwarded to TCN Practice Management for registration of the topic on the LAPS Program.
- The author consults within the owning business line, and with other relevant stakeholders and sources of expertise.
- The author produces a draft, with quality assurance support from any other members of the authoring team and the SES Sponsor.
- The SES Sponsor, once satisfied, clears the draft for internal consultation.
- TCN Practice Management circulates the draft to compulsory stakeholders. Compulsory stakeholders include TechNet members and the Charter Review team. TCN Practice Management will also circulate the draft to additional relevant stakeholders identified by the author.
- TechNet members are to forward the draft to all relevant staff within their business line. If possible, the TechNet member should arrange for consolidated business line comments. If this is not possible, the TechNet member should advise the author that comments from their business line will be coming to them separately.
- The author receives and synthesises comments from stakeholders. If significant changes are made, TCN Practice Management recirculates further drafts as necessary.

- If external consultation is considered appropriate, the SES Sponsor clears the draft for external consultation. If significant matters of process were involved, approval to circulate the draft externally would also be obtained from the National Program Manager.
 - The author completes a compendium of comments to enable a response to be given to those who provided comments.
 - The author produces the final draft, with quality assurance support from any other members of the authoring team and the SES Sponsor.
40. The key steps in the approval of technical LAPS are set out below.
- Any technical officers from Tax Counsel Network (if engaged), and the SES Sponsor, once satisfied with the final draft and the feedback to be given to stakeholders who provided comments, approve the final draft. If significant matters of process were involved, the relevant National Program Manager would also approve the draft.
 - The final draft and appropriate approvals, along with a Ministers brief if required, are forwarded to TCN Practice Management.
 - TCN Practice Management arranges for publication.

The development and approval of General Administration LAPS

41. The key steps in the development of LAPS (GA) are set out below.
- The business line obtains the Commissioner's in-principle approval for the exercise of the powers of general administration. The process for doing this is set out in PS LA 2009/4. Draft LAPS (GA) will not be included on the LAPS program until the Commissioner has given in-principle approval for its preparation.⁶
 - The SES Sponsor approves a notification form which advises:
 - the details of the topic
 - expected timeframes for completion.

Evidence of the Commissioner's in-principle approval must be included in the notification form.
 - The notification form is forwarded to the Work allocation, reporting and monitoring team in Tax Counsel Network. The Work allocation, reporting and monitoring team will assess the topic and if it is considered necessary,⁷ will engage required technical officers to work with the business line to progress the draft and decide the appropriate level of their engagement on the topic.
 - If any technical officers from Tax Counsel Network are engaged, expected timeframes for completion will be discussed, and if required, negotiated with the business line.
 - The notification form, with agreed timeframes for completion, is forwarded to TCN Practice Management for registration of the topic on the LAPS Program.

⁶ Obtaining the Commissioner's approval is a lengthy process. It may be prudent for the authors of those LAPS (GA) which need to issue in a short time-frame, and which will be sent for external consultation, to escalate the draft LAPS to the Commissioner to obtain approval for external consultation at the same time as obtaining his in-principle approval for the exercise of the powers of general administration.

⁷ Given the nature of LAPS (GA) and the inherent risk involved, it would be usual for an officer from Tax Counsel Network to be allocated.

- The author consults within the owning business line, and with other relevant stakeholders and sources of expertise.
 - The author produces a draft, with quality assurance support from other members of the authoring team and the SES Sponsor.
 - The SES Sponsor, once satisfied, clears the draft for internal consultation.
 - TCN Practice Management circulates the draft to compulsory stakeholders. Compulsory stakeholders include TechNet members and the Charter Review team. TCN Practice Management will also circulate the draft to additional relevant stakeholders identified by the author.
 - TechNet members are to forward the draft to all relevant staff within their business line. If possible, the TechNet member should arrange for consolidated business line comments. If this is not possible, the TechNet member should advise the author that comments from their business line will be coming to them separately.
 - The author receives and synthesises comments from stakeholders. If significant changes are made, TCN Practice Management recirculates further drafts as necessary.
 - If external consultation is considered appropriate, the relevant Deputy Chief Tax Counsel, the relevant National Program Manager, the Second Commissioner (Law) and the Commissioner clear the draft for external consultation.
 - The author completes a compendium of comments to enable a response to be given to those who provided comments.
 - The author produces the final draft, with quality assurance support from other members of the authoring team and the SES Sponsor.
42. The key steps in the approval of LAPS (GA) are set out below.
- Any technical officers from Tax Counsel Network (if engaged), SES Sponsor, DCTC and the National Program Manager once satisfied with the final draft and the feedback to be given to stakeholders who provided comments, clear the final draft.
 - The National Program Manager provides the draft, compendium of comments and a written briefing of the issues and intended solution to the Second Commissioner (Law Design and Practice). The briefing should detail why the LAPS (GA) has been prepared, what consultation processes have been undertaken and how the ATO intends to administer the arrangements into the future. The briefing should include an assurance that the practice outlined in the final draft of the LAPS (GA) maintains the legislative intent and that Tax Counsel Network agrees that the practice is within the Commissioner's powers of general administration (see PS LA 2009/4).
 - Clearance of the draft from the Second Commissioner (Law Design and Practice) is obtained before obtaining approval for the draft from the Commissioner.
 - The final draft and the Commissioner's approval, along with a Ministers brief, if required, are forwarded to TCN Practice Management.
 - TCN Practice Management arranges for publication.

LAPS information kit for authors and sponsors

43. A LAPS information kit is published and maintained by TCN Practice Management, and is available on the intranet. It provides detailed information on the procedures involved in the writing and approval of LAPS and must be followed by authors and sponsors. A link to this document is provided in the 'Other References' section at the conclusion of this practice statement.

Numbering

44. Published LAPS are allocated a unique reference number. This reference number is based on the order of issue during a calendar year. LAPS (GA) are numbered separately and distinguished from other LAPS by the inclusion of the letters (GA) after the allocated number.

Amendment history

Date of amendment	Part	Comment
19 December 2013	Throughout Paragraph 24 Paragraph 37 Paragraphs 36, 39 and 41 Paragraph 42	Removed Law and Practice and replaced with Tax Counsel Network Removed Law (from Practice Management) and replaced with TCN Minor changes to formatting Removed 'staff' and replaced with 'ATO personnel' Updated Sub-plan Executive with Group Executive Replaced Taxpayers' Charter team with Charter Review team Replaced Second Commissioner (Law) with Second Commissioner (Law Design and Practice)
2 May 2013	Paragraph 7 Footnote 6 Throughout	Insert requirement to ensure underlying intent of the LAPS is maintained when ATO personnel are developing guidelines or similar products to support the LAPS Insert instruction to consider packaging GA LAPS documents for Commissioner's approval where the GA LAPS will need to issue in a short timeframe and will be issued for external consultation Minor changes to wording to reflect updates to Branch name, other references
18 October 2012	Throughout Paragraph 2 Paragraph 39	Updated processes to reflect withdrawal of the priority technical issue system Removed requirement to undergo official extension of time process if due dates pass Updated names of relevant areas of responsibility Updated citations and style in accordance with corporate requirements Allowed for interim policy to be distributed via office minute, subject to conditions Removed the active role of the Assistant Commissioner, Law Practice Management Unit in the registration and approval processes of process LAPS
29 November 2011	Various Various	Unified format of headings Formatting of LAPS citations updated

	Paragraph 12 Paragraph 30 Paragraph 42	as per ATO Standards for Citations and References Maintenance & Support team's role in LAPS currency review. Removed reference to former Commissioner Carmody's speech as this link is no longer available DCTC approval of topics being added to the LAPS Program
	Paragraph 39 Various Various Contact details	Assistant Commissioner's details updated to Law Practice Management Unit. PTI & Public Rulings Branch updated to PTI & Public Rulings Unit (PTI & PRU). Tax Office updated to ATO as per the ATO Style Guide. Updated.
27 August 2009	Paragraph 14 Paragraph 37 Paragraphs 39, 42 and 45 Related practice statements Other references	Sentences included to allow for the introduction of point in time functionality Inserted to mandate the use of Siebel in the development of LAPS. All consequent paragraphs renumbered Amended to allow for minor changes to the process due to the introduction of Siebel Hyperlink to PS LA 2009/4 added Hyperlink to Siebel procedures added
21 May 2009	Paragraphs 45 – 46	Amended to incorporate the process outlined in PS LA 2009/4 in relation to obtaining approval for the exercise of the Commissioner's power of general administration
23 September 2008	Contact details	Contact details updated
29 June 2007	Various	Amended to: • update paragraph relating to citation of LAPS • change classification types of LAPS to process, technical and GA • change procedures for the development of LAPS • make adherence to Information Kit for Authors and Sponsors mandatory
31 July 2006	Various	Amended to: • allow for changes in procedures regarding the drafting and approval of all LAPS

		• formalise TechNet role in regard to consultation • include requirement to register significant technical LAPS as a priority technical issue • include clarification of the CMPS/LAPS boundary • improve wording for clarification • update procedure for approval of LAPS (GA) • include new paragraphs 4 and 22 concerning precedential ATO view and level of protection
Also previously amended on 20 December 2002, 4 May 2003 and 9 June 2005.		

Subject references	general administration law administration practice statements practical compliance practice statements
Legislative references	Public Service Act 1999 13(5) Public Service Act 1999 15(1) ITAA 1936 8 AIA 1901 15AA Financial Management and Accountability Act 1997 44
Related public rulings	
Related practice statements	PS LA 2003/3 PS LA 2003/10 PS LA 2008/3 PS LA 2009/4 PS LA 21012/1 PS CM 2003/00 (link available internally only) CMPS 2003/1 (link available internally only) CMPS 2003/03 (link available internally only) CMPS 2003/05 (link available internally only) CMPI 2003/01/14 (link available internally only)
Case references	
Other references	Schedule of documents containing precedential ATO views ORCLA – Write the decision and record the process (link available internally only) TCN Practice Management (link available internally only) Delegations and Authorisations Manual (link available internally only) Law Administration Practice Statements home page (link available internally only) LAPS information kit (link available internally only) Commissioner's powers of general administration (link available internally only) General administration provisions – frequently asked questions (link available internally only) Siebel procedures (link available internally only)
File references	98/117644
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Authorised by	Michael D'Ascenzo
Other Business Lines consulted	All