PS LA 2002/3 (Withdrawn) - Engaging external legal providers

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This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9

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ATO Practice Statement Law Administration

PS LA 2002/3

This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9.

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: **Engaging external legal providers**

PURPOSE: **To ensure staff are aware of the correct procedures to be followed when engaging an external legal provider.**

STATEMENT

1. The ATOLP is the central point of reference in respect of all legal work undertaken for the ATO by external legal providers. The purpose of this is to ensure:

   (i) instructions are clear, comprehensive and cover all aspects of the matter to ensure that the desired outcomes are achieved;

   (ii) the ATO is monitoring the quality and timeliness of the advice received;

   (iii) the ATO is not paying for the same advice already requested by another BSL or officer within the ATO;

   (iv) the ATO has a central reporting system detailing the legal work which is undertaken by external legal providers on its behalf so that we

   - know and understand the nature of all legal services provided;
   - have data on the frequency of use of external legal providers;
   - have information on fees payable; and
   - have a list of subject matter experts.

2. The ATO Legal Practice (ATOLP) must authorise all requests to engage the services of an external legal provider, including the Australian Government Solicitor (AGS). The ATO Solicitor, the Legal Practice Managers (LPMs) and the Principal Litigators in the ATOLP are the only staff who are authorised to approve the use of an external legal provider.

3. The responsibilities of the ATOLP vary depending on whether the ATOLP is

   - to instruct the external legal provider on behalf of the BSLs; or

- to provide a gateway function only.

EXPLANATION

Instructing function

4. In those circumstances where the ATOLP instructs an external legal provider on behalf of the BSLs, the ATOLP will follow all Commonwealth, ATO and ATO Legal Practice policies and guidelines. See ATOLP Instruction No. 99/02. The ATOLP will also follow the provisions of the Service Agreements that the ATOLP has with the BSLs. In these instances the ATOLP will be responsible for approving invoices provided by the external legal provider, although the BSL can have access to the invoices if they require.

Gateway function

5. The primary aspect of the gateway function is to ensure that the ATO has a central point of reference in respect of all legal work where the ATO is using external legal providers. The gateway function is part of the managerial role of the regional Legal Practice Managers (LPMs).

6. Where the ATOLP is acting as a gateway to external legal providers, the responsibilities of the ATOLP are:

   - to authorise all requests to refer a matter to an external legal provider, including AGS.

     All requests to seek the services of an external legal provider must be forwarded to your regional LPM. Your request can only be authorised by your LPM or a Principal Litigator in your regional team of the ATOLP. Authorisation should follow within 24 hours from time of receipt of request to use external legal providers unless further information is required by the ATOLP prior to giving approval. The ATO*legals* system must be used.

   - to capture data on all matters referred to an external legal provider.

     The BSLs will be asked to complete a data capture input form to be referred to the ATOLP. The data will then be entered into the ATOLP case management system.

   - to monitor the progress of matters.

     The ATOLP will undertake this function in a variety of ways, e.g., use of an exception report, liaison meetings, data capture of critical dates and the identification of sensitive / contentious matters.

   - to monitor service levels.

     The BSL case officer will be asked to complete an exit survey form which will document the standard of service received from the external legal provider. The form should be completed and forwarded to the ATOLP at the same time as the data input sheet which provides information of the finalisation of the matter.

- to compile details of all legal costs.

  The details will form part of the data capture input form on the finalisation of a matter.

- to obtain copies of all opinions / advice from external legal providers to be input to ATO*law*.

  The ATOLP will require a copy of all legal opinions / advice in respect of legal issues received from external legal parties to be forwarded to them. These should be in electronic format (refer ATO Legal Practice Instruction No. 4). The advice will be placed on ATO*law* for access by all authorised ATO staff where required. Where the ATO has agreements / contracts with external parties and that external party receives advice for or on behalf of the ATO, and the relevant agreement / contract does not exclude the ATO from receiving a copy of that advice, then a copy of that advice should also be forwarded to the ATOLP.

  Commercial and Staff-in-Confidence matters are excluded.

- to provide advice in choosing an external legal provider.

  The ATOLP will be able to assist the BSLs in determining the most appropriate external legal provider to approach for legal service provision for a range of matters.

Gateway procedures

7. The LPMs have put in place the appropriate procedures to allow the ATOLP to capture all relevant data. These mainly involve the business line:

   - referring details of a matter on a standard data capture sheet to their regional LPM or officer delegated by the LPM within 5 working days of the matter first being referred to the external legal provider;

   - advising the ATOLP of critical dates – e.g., hearing date, date of decision and decision;

   - referring details of the outcomes on a standard data capture sheet to their regional LPM or officer delegated by the LPM within 5 working days of the decision or finalisation of the matter; and

   - providing the ATOLP with updates on a two monthly basis.

8. The gateway role of the ATOLP does not impact on the broader role of the ATOLP providing general legal advice in respect of matters which might otherwise be referred to an external legal provider.

Related matters

9. All legal opinions received from counsel, external legal providers and ATOLP are now to be included on ATO*law* and used as another source of reference material when staff undertake legal research. See ATOLP Instruction No. 99/04.

10. ATOLP staff will at all times act in accordance with the Commonwealth's Model Litigant guidelines. These must be attached to all briefs to counsel and other external legal providers (except AGS). See ATOLP Instruction No. 99/08.

11. All briefs to counsel are to be prepared in accordance with the details provided in ATO Legal Practice Instruction No. 99/12.

12. All staff have access to the ATO*legals* system and this may be obtained by going into AppSetup and selecting Legals.

Payment of accounts

13. Payment of all accounts from counsel or other external legal service providers must be within 30 days in accordance with standard Commonwealth Government Policy or, in circumstances where the ATO has a specific contract, in accordance with the terms and conditions of that contract.

14. Where counsel has been directly briefed by the ATO, the record of engagement must be recorded on ATO*legals* and the accounts will be paid by the BSLs through the normal processes of accounting for public monies. Where the ATOLP is acting as a gateway only, the business line is responsible for approving the invoice. In all other circumstances, the ATOLP will be responsible for approving the invoice.

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