Australian Government
Auditing and Assurance Standards Board

Agenda Paper 1.1
AUASB Meeting 176

AUASB DECLARATION OF INTERESTS

As at 12 June 2026

AUASB Member	Professional/Organisational Affiliations	Employment/Other Positions Held	Other Relevant Interests
Mr Doug Niven (Chair)	• Fellow, Chartered Accountants Australia and New Zealand	• Chair of the Auditing and Assurance Standards Board, AUASB Statutory Authority and Office of the AUASB • Member, Australia's Financial Reporting Council • Member, New Zealand Auditing and Assurance Standards Board	• Member, IAASB/IESBA Stakeholder Advisory Council • Member, IAASB Jurisdictional Standard Setters Group
Ms Julie Crisp (Deputy Chair)	• Registered Company Auditor • Fellow, Chartered Accountants Australia and New Zealand • Fellow, CPA Australia • Fellow, Governance Institute of Australia • Fellow, Institute of Public Administration Australia • Graduate, Australian Institute of Company Directors • Certified Internal Auditor, Certified Government Audit Professional, Certification in Risk Management Assurance – Professional Member, Institute of Internal Auditors • Member, Association of Certified Fraud Examiners	• Non-Executive Director, CPA Australia • Member – Performance Statements Audit Expert Advisory Panel, Australian National Audit Office • Former Northern Territory Auditor-General (concluded 12 September 2024)	• Director and Shareholder, Family Trust Company • Director and Shareholder, Asterism Assurance and Advisory Pty Ltd • Board Director and Chair of the Auditing & Risk Committee of Aboriginal Investment NT, a Commonwealth statutory entity regulated by the ACNC • Non-Executive Director, Larrakia Development Corporation • Director, Darwin Hotel Partnership Pty Ltd • Member, Audit & Risk Committee, Charles Darwin University • Member, Audit & Risk Committee, Department of Local Government, Industry Regulation and Safety (a department of the Government of Western Australia)

AUASB Member	Professional/Organisational Affiliations	Employment/Other Positions Held	Other Relevant Interests
Ms Merilyn Gwan	• Fellow, Chartered Accountants Australia and New Zealand	• Partner, Grant Thornton Australia	• Member of Australian Institute of Company Directors Reporting Committee • Member of the Australian Accounting and Assurance Public Policy Committee – Audit Quality Working Group • Member of the Australian Accounting and Assurance Public Policy Committee – ESG Working Group • Director and Shareholder, Family Trust Company(s) • Trustee – personal family trusts
Mr Klynton Hankin	• Member, Chartered Accountants Australia and New Zealand	• Partner, PricewaterhouseCoopers	• Member, Finance, Risk and Audit Committee - Cancer Council Australia
Dr Noel Harding	• Member, CPA Australia	• Professor and Head of School of Accounting, Auditing and Taxation, UNSW Sydney	• Editor, International Journal of Auditing • Deputy Editor, Accounting and Finance • Co-chair of AFAANZ Auditing and Assurance Standards Committee
Mr Terence L Jeyaretnam	• Degree in Environmental Engineering (UWA) • Chartered Professional Engineer • Fellow and Engineering Executive of the Institute of Engineers, Australia	• Director, Foresight Consulting Group Pty Ltd • Clean Energy Regulator Accredited Category 2 Auditor • Associate Professor of Practice at Monash University's Department of Accounting, Faculty of Business and Economics • Formerly APAC Leader and Partner, Climate Change and Sustainability Services, Ernst & Young in Melbourne	• Board member, Australian Conservation Foundation • Chair, Amnesty International Australia • Chair, Global Citizen, Australia • Board member, ProVeg Ltd • Councillor, Royal Society of Victoria
Ms Joanne Lonergan	• Member, Chartered Accountants Australia and New Zealand	• Partner, Ernst & Young	• Director & Shareholder, Family Trust Company

AUASB Member	Professional/Organisational Affiliations	Employment/Other Positions Held	Other Relevant Interests
Mr Graeme Pinfold	• Fellow, Chartered Accountants Australia and New Zealand	• Chair, New Zealand Auditing and Assurance Standards Board	• Board Member and Treasurer, Okawa Rotoiti Timeshare Owners Association • Chair, Sustaining the Audit Profession Working Group • Director, The Auckland Theatre Company
Mr Andrew Porter	• Fellow, Institute of Chartered Accountants in England and Wales • Member, Australian Institute of Company Directors • Fellow, Chartered Accountants Australia and New Zealand	• Chief Financial Officer, Australian Foundation Investment Company Limited • CFO for Djerriwarrh Investments, Mirrabooka Investments and AMCIL Limited	• Director of Australian Investment Company Services Ltd. • Director of a Family Trust Company • Director of the Melbourne Anglican Foundation and trustee of related entities
Ms Jennifer Travers	• Member, Chartered Accountants in Australia and New Zealand	• Partner, KPMG	• Chair of the Australian Accounting and Assurance Public Policy Committee – Audit Quality Working Group • Member of the Australian Accounting and Assurance Public Policy Committee – ESG Working Group • Chair of the Trans-Tasman Audit and Advisory Committee (CA ANZ) • Director and Shareholder, Family Trust Company(s) • Trustee, personal family trusts
Mr Jason Thorne	• Fellow, Institute of Chartered Accountants in England and Wales • Member, Chartered Accountants in Australia and New Zealand • Registered Company Auditor	• Partner, Deloitte Touche Tohmatsu	• Director and Shareholder, family trust company
Mr Chi Mun Woo	• Member, Chartered Accountants Australia and New Zealand • Member, Institute of Chartered Accountants in England and Wales	• Director, Huxley Commons Pty Ltd • Retired Partner, Deloitte Touche Tohmatsu	-

Australian Government
Auditing and Assurance Standards Board

Minutes
1 June 2026 Meeting

Subject:	Minutes of the 175th Meeting of the Auditing and Assurance Standards Board (AUASB)
Venue:	Virtual meeting via Zoom
Date:	Monday, 1 June 2026, 1:00 pm – 2:59 pm

Attendance:

AUASB Members:	Doug Niven (Chair) Julie Crisp (Deputy Chair) Merilyn Gwan Prof Noel Harding Terence Jeyaretnam	Joanne Lonergan (except 2:00pm-2:50pm) Andrew Porter Jason Thorne Jennifer Travers Chi Mun Woo
Observer:	Brenton Newlands	
Office of the AUASB staff:	Anne Waters Rene Herman Marina Michaelides Jeff Muir	Tim Austin Arti Naidu See Wen Ewe Dr Sheryl Huang
Apologies	Klynton Hankin	Graeme Pinfold (NZAuASB Chair)

Minutes

(Agenda Item 1 – Minute 1837) – Welcome and Chair Update

The AUASB Chair welcomed members to the 175th meeting of the AUASB.

Changes to the declarations of interests for one member will be reflected in an updated declaration of interests for the 12 June 2026 meeting.

Four members had approved the minutes for meeting 174 and other members were asked to advise their approval or amendments after the meeting.

The following items were approved out-of-session:

- AUASB response to the IAASB/IESBA Strategy and Work Plan 2028-31 survey; and
- AUASB Consultation Paper on the Proposed International Standard on Review Engagements ISRE 2410 (Revised), *Review of Interim Financial Information Performed by the Independent Auditor of the Entity's Annual Financial Statements*.

The Chair had informed members on relevant matters announced in the Federal Budget 2026-27 out of session.

A virtual roundtable was held on the IAASB's Post Implementation Review of ISA 540 *Auditing Accounting Estimates and Related Disclosures* on 21 May 2026. A draft submission to the IAASB will be presented at the 12 June 2026 AUASB meeting.

(Agenda Item 2 – Minute 1838) Observations from December 2025 listed entity Sustainability Assurance Reports

AUASB members were presented with some observations from Corporations Act sustainability assurance reports of listed entities at 31 December 2025.

Members suggested that guidance be developed on the auditor's work where an entity concludes it has no material risks or opportunities, and examples of two modifications. Members were asked to provide examples of modifications at 31 December 2025.

Members continued to not support developing an illustrative assurance report covering mandatory and voluntary assurance. Members didn't consider guidance was needed on the response to 'disclaimers' in sustainability reports, inherent limitation paragraphs, and approaches to cross-referencing and other information.

(Agenda Item 3 – Minute 1839) Update on revised GS 007 *Audit Implications for the Use of Service Organisations for Investment Management Services* and RSE-related matters

Some changes were suggested to the valuation governance and methodology control objectives in the draft revised GS 007. AUASB members didn't object to proceeding to industry consultation on the draft revised GS 007 and agreed not to split GS 007 into two separate guidance statements for user and service organisation auditors.

Developing separate guidance on RSE-related audit matters was supported. This includes audit work on the valuation of unlisted investments in externally managed MISs. The GS 007 Project Advisory Group will be used, subject to the agreement of its members and the addition of another NZ member. Cooperation with the NZAuASB and XRB will continue.

(Agenda Item 4 – Minute 1840) Revision of ASRE 2405 and ASRE 2415 Australian-specific Standards on Review Engagements – Project Plan

A draft AUASB Project Plan on revising Australian-specific Standards on Review Engagements – ASRE 2405 *Review of Historical Financial Information Other than a Financial Report* and ASRE 2415 *Review of a Financial Report: Company Limited by Guarantee or an Entity Reporting under the ACNC Act or Other Applicable Legislation or Regulation* - was approved. It was agreed to continue to encourage the IAASB to revise ASRE 2400 *Review of a Financial Report Performed by an Assurance Practitioner Who is Not the Auditor of the Entity*.

(Agenda Item 5 – Minute 1841) Private Session

Close of the Meeting

The Chair closed the meeting at 2:59 pm.

Next Meeting

The AUASB will hold its next meeting virtually on 12 June 2026.

Approval

Signed as a true and correct record.

Douglas Niven

Douglas Niven
Chair

Date: 12 June 2026

Australian Government
Auditing and Assurance Standards Board

AUASB Agenda Paper

Title:	IAASB's Post-Implementation of ISA 540	**Date:**	12 June 2026
Office of the AUASB:	Rene Herman	**Agenda Item:**	2.0

Objective of this agenda paper

1. The objective of this agenda item is to seek the views of AUASB members on responses to the IAASB's Post-Implementation of ISA 540 (Revised)[1] as included at Agenda Paper 2.0.

Questions for AUASB members

No.	Question
1	Do AUASB members have any comments on the draft AUASB response to the IAASB's post-implementation survey of ISA 540 as included at Agenda Paper 2.1?

Background

2. In September 2025, the IAASB agreed a plan to perform a post-implementation review (PIR) of ISA 540 (Revised). The IAASB aims to achieve the following:

   (a) Determine whether ISA 540 (Revised) has achieved its intended purpose by identifying:

      (i) Improvements or benefits from applying the revised standard; and

      (ii) Practical challenges or questions regarding its application, including whether it is being consistently understood and implemented; and

   (b) Determine what actions, if any, are needed by the IAASB to address identified matters.

3. To support these objectives, the IAASB is undertaking a formal public consultation survey to gather information from a broad range of stakeholders.

4. Based on the insights from the public consultation survey and other targeted outreach activities, the IAASB will determine appropriate next steps, which may include one or a combination of further information-gathering activities, standard-setting activities, or development of non-authoritative materials. The IAASB may also determine that no further action is needed or that there are opportunities to facilitate or support actions by others.

AUASB outreach

5. Agenda Paper 6.2 in the 25 February 2026 AUASB meeting papers outlined our plan for outreach.

6. The draft response to the IAASB has been informed by feedback from stakeholders at our virtual roundtable on the ISA 540 PIR. The IAASB deadline for responses is 15 June 2026.

Materials presented

Agenda Paper	Description
2.1	Draft response to IAASB ISA 540 PIR Survey

[1] ISA 540 (Revised) *Auditing Accounting Estimates and Related Disclosures*

Agenda Item 2.1
AUASB Meeting 176

ISA 540 (Revised) Post-Implementation Survey

This document includes survey questions for:

- Accounting firms
- Jurisdictional and Other Standard Setters
- Professional Accountancy Organizations (PAOs)
- Regulators and Audit and Assurance Oversight Bodies
- Academia
- Others

!! Not for Submission !!

This document includes the *Word* version of the International Auditing and Assurance Standards Board's (IAASB) public consultation survey for the post-implementation review of International Standard on Auditing (ISA) 540 (Revised), *Auditing Accounting Estimates and Related Disclosures*.

It aims to facilitate *stakeholders' internal outreach or information-gathering activities, and drafting and review of responses prior to completing the online survey.*

Please provide your input by using the online survey.

INTERNATIONAL AUDITING AND ASSURANCE STANDARDS BOARD
529 Fifth Avenue, New York, NY 10017 USA | 1 + (212) 286-9344 | iaasb.org

About this Survey

This public consultation survey includes a series of questions to gather input on the impact of ISA 540 (Revised) as part of the IAASB's post-implementation review (PIR) of the standard. The survey was developed with a broad range of stakeholders in mind, including auditors and audit firms, jurisdictional standard setters, professional accountancy or professional organizations, regulators or audit and assurance oversight bodies, preparers or issuers, those charged with governance, investors and other users of financial statements, and academics. The survey questions have been tailored to reflect the perspectives and experiences of different stakeholder groups, ensuring that each respondent is asked questions relevant to their role and interaction with ISA 540 (Revised) or its outputs.

Request and Related Information

Respondents are asked to complete the online public consultation survey for the PIR of ISA 540 (Revised) by following the link provided on the IAASB website. Access the ISA 540 Post-Implementation Review Survey web page here. **Responses to the public consultation survey are requested by June 15, 2026.**

We encourage stakeholders to further distribute the link to the online survey to their members or constituents, as applicable, within their jurisdictions or organizations, and as part of raising awareness or undertaking further outreach activities with all stakeholders.

You may respond to all questions or only selected questions or matters.

All responses to this survey, whether complete or partial, once submitted will be accepted and considered as input for the work of the IAASB project team in relation to the PIR of ISA 540 (Revised). The responses received will be summarized (in various ways, including, for example by stakeholder group) for purposes of progressing the PIR project, including providing feedback to the IAASB and in developing recommendations for possible further actions.

All responses will be considered a matter of public record and submissions will ultimately be posted on the IAASB website.

Structure of the Survey

The questions for respondents are organized in the following sections.

Section I — Background and Purpose

Section II — About the Respondent

Section III — Overall Questions

Section IV — Perceived Benefits from ISA 540 (Revised)

Section V — Potential Issues or Challenges Related to ISA 540 (Revised)

Section I: Background and Purpose

ISA 540 (Revised), *Auditing Accounting Estimates and Related Disclosures*

1. In June 2018, the IAASB approved ISA 540 (Revised) as a final standard.[1] ISA 540 (Revised) established more robust requirements and appropriately detailed guidance to foster audit quality by driving auditors to perform appropriate procedures in relation to accounting estimates and related disclosures. The standard was effective for audits of financial statements for periods beginning on or after December 15, 2019.

2. ISA 540 (Revised) addressed the following public interest issues:
   (a) Audit risks were evolving due to a more complex business environment;
   (b) Fostering improved exercise of professional skepticism; and
   (c) Realizing public interest benefits through improved communication and transparency.

3. The IAASB made many enhancements to ISA 540 (Revised) to keep pace with the increasingly complex business environment and changes in financial reporting standards. In addition, recurring audit inspection findings criticized the quality of audit work relating to accounting estimates. Therefore, among other enhancements, ISA 540 (Revised) (paragraphs in the standard are indicated in parentheses):
   (a) Introduced the concept of inherent risk factors, including not only estimation uncertainty but also complexity, subjectivity and others (paragraphs 2, 4, 16).
   (b) Enhanced risk assessment procedures relating to obtaining an understanding of the entity and its environment, including the entity's system of internal control (paragraph 13).
   (c) Emphasized the importance of the auditor's decisions about controls relating to accounting estimates by highlighting relevant requirements in ISA 315 (Revised 2019)[2] and ISA 330[3] (paragraphs 19 and 20).[4]
   (d) Introduced objectives-based work effort requirements directed to methods (including specifically when complex modelling is involved), data and assumptions, to design and perform further audit procedures to respond to assessed risks of material misstatement (paragraphs 7, 19, 22-25).
   (e) Enhanced the "stand-back" requirements, by adding an evaluation of the audit evidence obtained regarding the accounting estimates, including both corroborative and contradictory audit evidence (paragraphs 33-35).
   (f) Enhanced the requirements to obtain audit evidence about the disclosures related to accounting estimates and to determine whether the accounting estimates and related disclosures are

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[1] Note that all references to paragraphs and other content of ISA 540 (Revised) is to the latest version of the standard in the 2025 IAASB Handbook.

[2] ISA 315 (Revised 2019), *Identifying and Assessing the Risks of Material Misstatement*

[3] ISA 330, *The Auditor's Responses to Assessed Risks*

[4] The ISA 315 (Revised 2019) and ISA 540 (Revised) Task Forces coordinated closely to minimize the extent of conforming changes to ISA 540 (Revised) as a result of ISA 315 (Revised 2019). The conforming changes to ISA 540 (Revised) were generally limited to aligning concepts and terminology and did not change the performance requirements in ISA 540 (Revised).

reasonable in the context of the applicable financial reporting framework, or are misstated (paragraphs 26(b), 29(b), 31 and 35).

(g) Included a new requirement to consider matters regarding accounting estimates when communicating with those charged with governance (paragraph 38).

4. The IAASB also issued non-authoritative materials to support the adoption and effective implementation of ISA 540 (Revised), including presentations, flowcharts and diagrams, and illustrative examples.[5]

Post-Implementation Review

Objectives and Approach

5. In September 2025, the IAASB agreed a plan to perform a post-implementation review (PIR) of ISA 540 (Revised). As indicated in the PIR for ISA 540 (Revised) Plan, the IAASB aims to achieve the following:

   (a) Determine whether ISA 540 (Revised) has achieved its intended purpose by identifying:

      (i) Improvements or benefits from applying the revised standard; and

      (ii) Practical challenges or questions regarding its application, including whether it is being consistently understood and implemented; and

   (b) Determine what actions, if any, are needed by the IAASB to address identified matters.

6. To support these objectives, the IAASB is undertaking a formal public consultation survey to gather information from a broad range of stakeholders. Additional targeted outreach activities will be undertaken as well to complement the understanding of identified implementation challenges or questions and to augment, as applicable, the public consultation process to ensure input is obtained from all stakeholder groups.

Potential Output

7. Based on the insights from the public consultation survey and other targeted outreach activities, the IAASB will determine appropriate next steps, which may include one or a combination of further information-gathering activities, standard-setting activities, or development of non-authoritative materials.

8. The IAASB may also determine that no further action is needed or that there are opportunities to facilitate or support actions by others.

9. A key consideration will be the nature and extent of any perceived challenges, including whether those challenges are due to lack of clarity or insufficiency of the requirements or application material in the standard.

[5] Please refer to the ISA 540 Implementation webpage for more information on the non-authoritative materials.

Section II: About the Respondent

1. Please provide the following information about your organization (if applicable) and other contact information:

Organization (or leave blank if you are completing the survey in your personal capacity)	Auditing and Assurance Standards Board (AUASB)
Name(s) of contact(s) for this submission	Doug Niven
Job title or role	Chair and CEO
E-mail address(es) of contact(s)	dniven@auasb.gov.au

2. Please select from the following options the stakeholder group to which you or your organization belongs:

Accounting Firm – Global Accounting Firm	
Accounting Firm – Large National or Regional Accounting Firm	
Accounting Firm – Small- or Medium-Sized Accounting Firm	
Accounting Firm – Sole Practitioner	
Accounting Firm – Public Sector Audit Institution	
Jurisdictional Standard Setter (JSS) or Other Standard Setter	X
Professional Accountancy or Professional Organization (PAOs)	
Regulator or Audit and Assurance Oversight Body	
Preparer or Issuer of Financial Statements (Including Public Sector Organizations), or Those Charged with Governance (TCWG)	
Users of Financial Statements (e.g. investor, analyst, lender or other creditor)	
Academia	
Other – Specify	

3. Select from the following options the geographical region that best matches you or your organization:

Africa	
Asia Pacific	X
Europe	
South America	
Middle East	
North America	

Global	

4. Did you undertake outreach activities with other stakeholders outside your organization to inform your responses to this survey?

Yes	X	No	

4A. [If the response to question 4 is yes] Please provide further information about your outreach activities, including:

The manner in which the outreach was undertaken.	Virtual roundtable
The nature and number (or estimate thereof) of stakeholders with whom you engaged.	Private and public sector practitioners, accounting professional bodies. Approximately 10 attendees.

5. You are welcome to provide any additional information you believe may be relevant to clarify the context in which you are completing the survey, or the circumstances or experiences that have informed your views or perspectives (or you can choose to leave this question blank).

Input	

Section III: Overall Questions

This section focuses on whether ISA 540 (Revised) has achieved its intended purposes and objectives.

In revising ISA 540, the IAASB aimed to:

(a) Establish more robust requirements and appropriately detailed guidance to foster audit quality by driving auditors to perform appropriate procedures in relation to accounting estimates and related disclosures. These revisions would also emphasize the importance of the appropriate application of professional skepticism when auditing accounting estimates.

(b) Determine whether non-authoritative guidance and support tools, such as International Auditing Practice Notes, Staff publications, project updates or other materials, should be developed.

The IAASB also issued non-authoritative materials to support the adoption and effective implementation of ISA 540 (Revised), including presentations, flowcharts and diagrams and illustrative examples (refer to the ISA 540 Implementation Webpage).

Additional Information

Please note, the questions in this section are overarching in nature and allow respondents to share overall views without getting into details. The specific questions in **Sections IV** and **V** that follow provide opportunity for respondents to comment in more detail on specific aspects related to auditing of accounting estimates.

6. Please provide overall views about whether ISA 540 (Revised) has achieved its intended purpose and the objectives of the IAASB in developing the revised standard.

Input	

7. Are you aware of the non-authoritative guidance and support tools developed to support the implementation of ISA 540 (Revised)?

Yes	X	No	

7A. [If the response to question 7 is yes] Do you agree that the non-authoritative guidance and support tools developed to support the implementation of ISA 540 (Revised) are useful?

4 – Strongly Agree	**3 – Agree**	**2 – Disagree**	**1 – Strongly Disagree**	**0 – No Response**
	X			

Input	Our outreach has indicated that practitioners are still experiencing difficulties in areas where there is insufficient guidance for example: • Linkages around management's estimates or developing auditors estimates, expected levels of precision, ranges that are multiples of materiality

	• financial instruments particularly guidance for complex models/provisions • knowing when to use an auditor's expert, determining the scope of their work and appropriately testing and challenging their work. Partly overlapping the points above, the Australian securities and audit regulator (ASIC) continues to find issues in this area of audit and, where possible, additional guidance may be necessary. Refer to Q15 and Q23 of this survey for more details. Non-authoritative guidance on the IAASB website, including complex and non-complex estimate examples, was issued several years ago and we recommend that the IAASB provides a reminder on these resources, including their nature and content.

Section IV: Perceived Benefits from ISA 540 (Revised)

This section seeks to understand stakeholders' perspectives on the perceived benefits or improvements resulting from the implementation of ISA 540 (Revised). The purpose is to gather insights on how the revised standard has, for example, contributed to enhanced audit quality by promoting consistency in the approach to auditing accounting estimates, or contributed to enhanced financial reporting quality by fostering greater interaction among the auditor, management and those charged with governance.

Additional Information

Please note, this section deliberately focuses on **perceived benefits or improvements**. To enhance the richness of input from the survey and to facilitate more effective analysis of responses received, please limit your responses to these aspects. The next section, **Section V**, allows you to share your views on any issues or challenges, or certain specific impacts relating to ISA 540 (Revised).

8. For each perceived benefit, indicate the extent to which you agree that ISA 540 (Revised) has led to benefits or improvements.

Benefits of ISA 540 (Revised)	4 – Strongly Agree	3 – Agree	2 – Disagree	1 – Strongly Disagree	0 – No Response
(a) Enhanced exercise of professional skepticism when auditing accounting estimates.		X			
(b) Greater consideration of the skills and competencies of the engagement team, including the need to involve specialists or experts.		X			
(c) Greater attention to understanding management's process for making estimates, including the selection of methods, assumptions and data (and the consistency of selection between periods).	X				
(d) Better or more focused assessments of the risks of material misstatements for accounting estimates.	X				
(e) More focus on understanding and testing controls related to accounting estimates.		X			
(f) Increased auditor attention to disclosures related to accounting estimates, including disclosures about estimation uncertainty.	X				
(g) Enhanced interactions and communications between the auditor and management and those charged with governance related to the audit of accounting estimates.		X			

Benefits of ISA 540 (Revised)	4 – Strongly Agree	3 – Agree	2 – Disagree	1 – Strongly Disagree	0 – No Response
(h) Enhanced quality of financial reporting related to accounting estimates.		X			

9. Are there any additional benefits or positive outcomes arising from the implementation of ISA 540 (Revised) that you would like to highlight?

Yes	X	No	

Input	The stand back requirements of paragraphs 33-36 are beneficial to audit quality in this area.

Section V: Potential Issues or Challenges Relating to ISA 540 (Revised)

A. Scalability and Proportionality

The IAASB acknowledged the importance of a scalable standard for all types of accounting estimates, from those that are relatively simple to those that are complex, and included several elements to address this, including:

- Introducing and emphasizing the concept of a spectrum of inherent risk (paragraph 4). Under the spectrum of inherent risk concept, the assessment of inherent risk depends on the degree to which the inherent risk factors affect the likelihood or magnitude of misstatement, and varies on a scale.
- Specific paragraphs in the application material that demonstrate how ISA 540 (Revised) is scalable in the risk assessment (paragraphs A20-A22) and the responses to the assessed risks of material misstatement (paragraph A84).
- Emphasizing in a requirement that the auditor's further audit procedures need to be responsive to the reasons for the assessment of the risks of material misstatement at the assertion level and that the auditor's further audit procedures shall take into account that the higher the assessed risk of material misstatement, the more persuasive the audit evidence needs to be (paragraph 18).

10. ISA 540 (Revised) was designed to be capable of being applied to all accounting estimates, and for the nature, timing and extent of the risk assessment and further audit procedures to be varied in relation to the estimation uncertainty and the assessment of the risks of material misstatement. Indicate the extent to which you have experienced or observed or are aware of any issues or challenges related to scalability and proportionality.

4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
	X			

11. Briefly describe these or any other issues or challenges you encountered or observed related to scalability and proportionality.

Input	We understand that scalability continues to be a challenge, particularly for smaller entities with simple estimates.

12. In your view, are the observed issues or challenges due to a lack of clarity or insufficiency of the requirements or application material in the standard?

Yes	No	Difficult to Determine	No Response
X			

13. What specific suggestions do you have for how the IAASB can best address the issues or challenges you have identified (e.g., standard-setting, non-authoritative guidance, or other actions)?

Input	The IAASB could consider additional examples to demonstrate the scalability of the standard. The examples need to be complex enough to be helpful - the current examples in ISA 540 are too simplistic.

B. Professional Skepticism

ISA 540 (Revised) includes several key elements that are designed to enhance the auditor's application of professional skepticism, including:

- Use of stronger language, such as "challenge," "question," and "reconsider" to reinforce the importance of exercising professional skepticism (see, for example, paragraphs A60, A95, and A135 of ISA 540 (Revised)).
- A requirement to design and perform further audit procedures in a manner that is not biased towards obtaining audit evidence that may be corroborative or towards excluding audit evidence that may be contradictory (paragraph 18).
- A requirement to "stand back" and evaluate the audit evidence obtained regarding the accounting estimates, including both corroborative and contradictory audit evidence (paragraphs 33–35).

14. Indicate the extent to which you have experienced or observed or are aware of the following issues or challenges in applying or relating to ISA 540 (Revised) with respect the auditor *exercising professional skepticism* when auditing accounting estimates and related disclosures.

Issues or Challenges in Applying ISA 540 (Revised)	4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
(a) Appropriately challenging management's judgments used in making accounting estimates, particularly when they involve complex or subjective inputs.			X		
(b) Identifying and appropriately responding to potential indicators of management bias in the development of accounting estimates.		X			
(c) Appropriately considering all relevant audit evidence obtained, whether corroborative or contradictory.			X		

15. Briefly describe these or any other issues or challenges you encountered or observed related to exercising professional skepticism.

Input	• Where management engages a management's expert, auditors need to be cautious about bias (both auditor's and management's) towards the work of such experts. • Using management's own internal forecasts for impairment calculations has an inherent bias. • The Australian securities and audit regulator (ASIC) has noted through audit inspection findings reports that auditors regularly fail to critically assess indicators of possible management bias when estimates repeatedly turn out to be overly optimistic or consistently favour the company's targets.

16. In your view, are the observed issues or challenges due to a lack of clarity or insufficiency of the requirements or application material in the standard?

Yes	No	Difficult to Determine	No Response
	X		

17. What specific suggestions do you have for how the IAASB can best address the issues or challenges you have identified (e.g., standard-setting, non-authoritative guidance, or other actions)?

Input	The requirements of paragraph 30 of ISA 540 on using the work of a management's expert are not specific enough to facilitate consistency in the audit work required when management has used an expert. In particularly the use of the word 'may' in a requirement, could be facilitating an over-reliance on the use of the work of a management's expert. This may require standard setting action.

C. Risk Assessment Procedures

ISA 540 (Revised) includes an enhanced risk assessment specifically tailored to accounting estimates that builds on the risk assessment required by ISA 315 (Revised 2019). The inherent risk factors of estimation uncertainty, complexity and subjectivity play a central role in the approach to the identification and assessment of the risks of material misstatement related to accounting estimates, and the responses to those assessed risks. ISA 540 (Revised) also notes that there may be other inherent risk factors, including susceptibility to misstatement due to management bias or fraud.

18. Indicate the extent to which you have experienced or observed the following issues or challenges in applying ISA 540 (Revised) with respect to *risk assessment procedures and identifying and assessing the risks of material misstatement related to accounting estimates*.

Issues or Challenges in Applying ISA 540 (Revised)	4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
(a) The consideration of inherent risk factors and the interrelationship between them in identifying and assessing risks of material misstatement related to accounting estimates.				X	
(b) How the understanding of the entity and its environment, and the entity's internal control for accounting estimates, relates to the understanding required by ISA 315 (Revised 2019) (i.e., whether it is clear that the requirements in paragraph 13 of ISA 540 (Revised) relate specifically to accounting estimates and build on the broader requirements in ISA 315 (Revised 2019)).				X	
(c) Reviewing the outcome of previous accounting estimates or, where applicable, their subsequent re-estimation (i.e., the retrospective review of accounting estimates).				X	
(d) Understanding management's process for making accounting estimates, including how management identifies and selects relevant methods, assumptions and data, and how management understands and addresses estimation uncertainty.				X	
(e) The separate assessments of inherent and control risk relating to an accounting estimate.				X	
(f) Whether any of the assessed risks of material misstatement are significant risks.				X	

18A. [If the response to question 18(b) is 4-Significant Issues or Challenges or 3-Moderate Issues or Challenges] Provide additional input, if any, about any issues or challenges regarding the *interaction* *of ISA 540 (Revised) with ISA 315 (Revised 2019)* in relation to risk assessment procedures and the identification and assessment of risks of material misstatement for accounting estimates.

Input	

18B. [If the response to question 18(c) is 4-Significant Issues or Challenges or 3-Moderate Issues or Challenges] Indicate the extent to which you agree with the following statements with respect to *reviewing the outcome of previous accounting estimates or, where applicable, their subsequent re-estimation*.

Statements Related to Retrospective Review	4 – Strongly Agree	3 – Agree	2 – Disagree	1 – Strongly Disagree	0 – No Response
(a) The retrospective review process is difficult due to changes in economic conditions or assumptions that make prior-period estimates less comparable.					
(b) The time and effort required to perform a retrospective review outweigh the perceived benefits for audit risk assessment.					

19. Briefly describe these or any other issues or challenges you encountered or observed related to risk assessment procedures and whether such issues or challenges relate primarily to estimates that have a high degree of estimation uncertainty or complexity.

Input	We understand that there is a challenge in applying the risk assessment at the assertion level where the spectrum of risk is often at a more granular level (e.g. risk may be higher in the cash flows but lower in the discount rate).

20. In your view, are the observed issues or challenges due to a lack of clarity or insufficiency of the requirements or application material in the standard?

Yes	No	Difficult to Determine	No Response
		X	

21. What specific suggestions do you have for how the IAASB can best address the issues or challenges you have identified (e.g., standard-setting, non-authoritative guidance, or other actions)?

Input	

D. Responses to the Assessed Risks of Material Misstatement and Overall Evaluation

The auditor’s responses to assessed risks of material misstatement for accounting estimates include one or more of the following testing strategies:

- Obtaining audit evidence from events occurring up to the date of the auditor's report;
- Testing how management made the accounting estimate; or
- Developing an auditor's point estimate or range.

For these testing strategies, the IAASB introduced objective-based requirements, focused on methods (including models), assumptions and data. The objective-based requirements allow scalability in the nature, timing and extent of the procedures performed, recognizing that the higher the assessed risks of material misstatement, the more persuasive the audit evidence needs to be.

ISA 540 (Revised) requires the auditor to determine whether the accounting estimates and related disclosures are reasonable in the context of the applicable financial reporting framework, or are misstated. In making this determination, the auditor is required to evaluate the effect of uncorrected misstatements on the financial statements. ISA 540 (Revised) provides guidance for that evaluation, consistent with ISA 450, *Evaluation of Misstatements Identified During the Audit*.

22. Indicate the extent to which you have experienced or observed the following issues or challenges in applying ISA 540 (Revised) with respect to *responding to the assessed risks of material misstatement*.

Issues or Challenges in Applying ISA 540 (Revised)	**4 – Significant Issues or Challenges**	**3 – Moderate Issues or Challenges**	**2 – Minor Issues or Challenges**	**1 – No Issues or Challenges**	**0 – No Response**
Responses to the Assessed Risks of Material Misstatement					
(a) Determining the most appropriate response(s) to the assessed risks of material misstatement at the assertion level from among the testing approaches in paragraph 18 of ISA 540 (Revised).				X	
(b) Determining whether to test the operating effectiveness of controls related to an accounting estimate.		X			
(c) Appropriately applying the testing approach of obtaining audit evidence about events occurring up to the date of the auditor's report, either alone or with another testing approach(es).				X	
(d) Testing how management made the accounting estimate.		X			
(e) Developing an auditor's point estimate or range.		X			
Overall Evaluation					

Issues or Challenges in Applying ISA 540 (Revised)	4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
(f) Determining whether the accounting estimates and related disclosures are reasonable in the context of the applicable financial reporting framework, or are misstated.		X			
(g) Evaluating identified misstatements related to accounting estimates, including when the audit evidence supports a point estimate that differs from management's point estimate or a range that does not include management's point estimate, or when the auditor's range is wide (in some cases, multiples of materiality for the financial statements as a whole).		X			

22A. [If the response to question 22(d) is 4-Significant Issues or Challenges or 3-Moderate Issues or Challenges] Indicate the extent to which you have experienced or observed the following issues or challenges in applying ISA 540 (Revised) with respect to *testing how management made the accounting estimates*.

Issues or Challenges in Applying ISA 540 (Revised)	4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
(a) Testing management's selection of the method, significant assumptions, and data used, including whether management's judgments give rise to indicators of possible management bias.		X			
(b) Understanding management's application of the method involving complex modelling and testing complex models, including the integrity and completeness of the data used.		X			
(c) Whether management has taken appropriate steps to understand and address estimation uncertainty, including the selection of an appropriate point		X			

Issues or Challenges in Applying ISA 540 (Revised)	4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
estimate and developing related disclosures about estimation uncertainty.					

22B. [If the response to question 22(e) is 4-Significant Issues or Challenges or 3-Moderate Issues or Challenges] Indicate the extent to which you have experienced or observed the following issues or challenges in applying ISA 540 (Revised) with respect to *developing a point estimate or range*.

Issues or Challenges in Applying ISA 540 (Revised)	4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
(a) Determining when it may be appropriate to develop an auditor's point estimate or range.		X			
(b) Determining that the auditor's range includes only amounts that are supported by sufficient appropriate audit evidence and have been evaluated to be reasonable in the context of the measurement objectives and other requirements of the applicable financial reporting framework.		X			
(c) Maintaining objectivity and independence, for example, when material adjustments are made to management's point estimate based on the auditor's point estimate developed using a model or assumptions that were different from management's models and assumptions.		X			

23. Briefly describe these or any other issues or challenges you encountered or observed related to responding to risks of material misstatement and whether such issues or challenges relate primarily to estimates that have a high degree of estimation uncertainty or complexity.

Input	In relation to **auditor's expert**: • When to use such an expert (i.e. determining when an auditor doesn't have the appropriate skills or knowledge). • How to determine which expert to use, particularly where management has also used an expert and the industry has a limited number of appropriate experts.

	• Clarifying the scoping of the expert's work – particularly who is responsible for testing the underlying data. • Over-reliance on the use of the expert's work (bias), insufficient testing and challenge of the expert's findings. *Where the work of a **management's expert** is used:* • Where management engages their own expert, auditors need to be cautious about bias (both auditors and management) towards the work of such an expert. • Using management's own internal forecasts for impairment calculations has an inherent bias and ASIC has observed a "tick-box" approach where auditors accept management's valuations without independently assessing the inputs or the competence and objectivity of management's valuation experts. *Testing management's estimate / developing auditor's estimate:* • Auditors may be reluctant to develop a point estimate owing to independence considerations as well as concern regarding the expected levels of precision. • Auditor's estimate not matching management's estimate and having ranges that are multiples of materiality. • Offsetting valuation errors in a sample of derivatives in a large population. *Other ASIC inspection findings in this area:* • Auditors often fail to sufficiently test the forecast cash flows, discount rates, growth rates, and other key assumptions in impairment models • Auditors frequently do not adequately challenge the economic scenarios, historical data adjustments, and probability weightings used by management to estimate loan and receivable provisions. • Auditors regularly fall short in reviewing the completeness and appropriateness of data and variables used to calculate complex provisions (e.g. insurance claims, environmental restoration).

24. In your view, are the observed issues or challenges due to a lack of clarity or insufficiency of the requirements or application material in the standard?

Yes	No	Difficult to Determine	No Response
		x	

25. What specific suggestions do you have for how the IAASB can best address the issues or challenges you have identified (e.g., standard-setting, non-authoritative guidance, or other actions)?

Input	Non authoritative guidance could be developed in these areas, such guidance could provide more extensive practical examples.

E. Other Matters – Communications, Specialized Skills or Knowledge and Documentation

ISA 540 (Revised) enhanced the requirements for other aspects of auditing accounting estimates and related disclosures, such as:

- Communication with TCWG, management or other relevant parties;
- Specialized skills or knowledge, including using the work of an auditor's expert; and
- Documentation.

26. Indicate the extent to which you have experienced or observed the following issues or challenges in applying ISA 540 (Revised) with respect to *communication, specialized skills or knowledge, including using the work of an auditor's expert, and documentation*.

Issues or Challenges in Applying ISA 540 (Revised)	4 – Significant Issues or Challenges	3 – Moderate Issues or Challenges	2 – Minor Issues or Challenges	1 – No Issues or Challenges	0 – No Response
Communications					
(a) Determining the matters, if any, to communicate related to accounting estimates, (including about significant qualitative aspects of the entity's accounting practices and significant deficiencies in internal control).				x	
Specialized Skills or Knowledge, Including Using the Work of an Auditor's Expert					
(b) Determining when it is appropriate to involve an auditor's expert(s) (an internal or external expert) and using the work of an auditor's expert(s) in auditing an accounting estimate(s).	x				
Documentation					
(c) Preparing appropriate audit documentation in accordance with the requirements in paragraph 39 of ISA 540 (Revised).			x		

27. Briefly describe these or any other issues or challenges you encountered or observed related to communications, specialized skills or knowledge (including using the work of an auditor's expert) and documentation.

Input	Refer paragraph 23 above.

28. In your view, are the observed issues or challenges due to a lack of clarity or insufficiency of the requirements or application material in the standard?

Yes	No	Difficult to Determine	No Response
		x	

29. What specific suggestions do you have for how the IAASB can best address the issues or challenges you have identified (e.g., standard-setting, non-authoritative guidance, or other actions)?

Input	

Australian Government
Auditing and Assurance Standards Board

AUASB Agenda Paper

Title:	IAASB Papers - Audit Evidence and Risk Response	**Date:**	12 June 2026
Office of the AUASB:	Rene Herman	**Agenda Item:**	3.0

Objective of Agenda Item:

1. To seek AUASB member input on the final read before exposure of proposed ISA 500[1], proposed ISA 330[2] and proposed ISA 520[3] and proposed conforming and consequential amendments.
2. Agenda Paper 2.2 for the March 2026 AUASB meeting provided a high-level summary of the key proposals for the proposed standards; all of which have been discussed with the AUASB at prior meetings.
3. The IAASB is expected to vote to issue the proposed standards as Exposure Drafts at its upcoming June 2026 meeting.
4. Member views may inform Bill Edge in providing his views to the IAASB as a member. Significant issues may also be communicated to the IAASB by the AUASB's IAASB Technical Advisor and/or the AUASB Chair (including through the IAASB/IESBA Stakeholder Advisory Council and Jurisdictional Standard Setters (JSS) arrangements).

Questions for AUASB Members

5. The key questions for the attention of AUASB members are:

No.	Questions
1	*ISA 500 – Technology* Do AUASB members have any further comments on the way technology has been incorporated into proposed ED-500 (see paragraphs 10 and 11 of this paper)?
2	*ISA 500 – Evaluating the reliability of information to be used as audit evidence* • Do AUASB members consider it is sufficiently clear as to how 'significant in the circumstances' is to be applied (paragraph 12 of this paper)? • Do AUASB members support the specific requirement of paragraph 9A as it relates to completeness and accuracy (paragraph 13 of this paper)? • Do AUASB members consider the documentation requirements, particularly as it relates to reliability of information is sufficiently clear (paragraph 14 of this paper)?
3	*ISA 330 – Test of controls alone* Do AUASB members have any comments on the application of the risk-based threshold as it pertains to test of controls alone (see paragraph 15 of this paper)?
4	Do AUASB members have any other comments on the Proposed ISA 500, Proposed ISA 330, Proposed ISA 520 and the conforming and consequential amendments?

Background and Previous Discussions on Topic

6. The IAASB is currently undertaking a project to modernise and revise the Audit Evidence and Risk Response Standards:

[1] ISA 500 *Audit Evidence*
[2] ISA 330 *The Auditor's Responses to Assessed Risks*
[3] ISA 520 *Analytical Procedures*

- At its March 2025 meeting, the IAASB discussed stand-back requirements, paragraph 18/ISA 330 Material Classes of Transactions, Account Balances, and Disclosures (COTABDs), test of controls, substantive procedures and professional scepticism.
- At its June 2025 meeting, the IAASB discussed defining test of details, analytical and substantive analytical procedures, using evidence obtained in prior audits, accepting records and documents as genuine.
- At its September 2025 meeting, the IAASB material COTABDs, authenticity, technology, test of controls, substantive procedures alone, results of analytical procedures.
- At its December 2025 meeting, along with discussion of matters previously raised, the IAASB also discussed significant risks.
- At its March 2026 meeting, along with discussion of matters previously raised, the IAASB considered the first full drafts of Proposed ISAs 500, 330 and 520.
- At its May 2026 mid quarter call, further progression of matters.

7. AUASB members discussed the key matters at its March 2025, June 2025, September 2025, December 2025 and March 2026 meetings.

MATTERS FOR THE ATTENTION OF AUASB MEMBERS

8. Agenda Paper 2.3 for the 13 March 2026 AUASB meeting presented a summary of the key proposals to amend ISAs 500, 520 and 330. There were no matters highlighted by AUASB members for consideration by the IAASB.

9. There are several matters for the attention of AUASB members at the 12 June 2026 meeting on ISA 500 and ISA 330. There are no substantive changes to the proposed revised ISA 520 to bring to the attention of the AUASB.

ISA 500 - Technology

10. The requirements of Proposed ISA 500 are principles based with no technology specific requirements. Application material A14 [A14E] clarifies that the auditor may perform audit procedures manually or using technological tools.

11. Extensive technology examples are used throughout the application material. Appendix 3 includes considerations for using technological tools and examples of how these tools may be used when designing and performing audit procedures. The considerations and examples cover:
    - Nature of the Entity's IT Environment and Information
    - The purpose of the audit procedures
    - The nature of the COTABD and the persuasiveness of audit evidence needed
    - The availability of audit firm resources
    - Laws and regulations

ISA 500 - Evaluating the reliability of information to be used as audit evidence

12. In evaluating the reliability of information to be used as audit evidence, Proposed ISA 500 paragraph 11 [9], requires the auditor to consider the attributes of reliability that are of significance in the circumstances to meet the intended purpose(s) of the audit procedures. Application material paragraph A28 [A35A] clarifies that which attributes of reliability are of significance in the circumstances is a matter of professional judgment and that it is unnecessary for the auditor to evaluate all the attributes of reliability. Application material paragraph A43 [AA56Bb] clarifies the interrelationship between the source of the information intended to be used as audit evidence and the attributes of reliability, noting that the source of the information affects the auditor's professional judgment regarding the attributes of reliability

that are of significance in the circumstances. Application material A41- A53[A56B-A56L] provides guidance regarding considerations of the attributes of reliability.

13. Paragraph 12 [9A] contains a conditional requirement in relation to completeness and accuracy where information to be used as audit evidence is from sources internal to the entity.

14. Application material paragraph A65Qb clarifies that there is no requirement for the auditor to document the consideration of each attribute of reliability of the information.

ISA 330 - Tests of control (TOC) alone

15. Proposed ISA 330 explicitly allows for TOC alone. Paragraph 11 [9A] introduces a "risk-based" threshold for when it is appropriate for the auditor to respond to the assessed ROMM at the assertion level through a tests of controls alone approach. This approach is designed to future-proof the standards in view of technological change. Application material paragraph A35 [A25aa] explains that, in some situations, the auditor may have formed an expectation that certain controls address assessed inherent risks at the assertion level to such an extent that the risks of material misstatement at the assertion level are reduced to an acceptably low level. Such expectations are a matter of professional judgment that is affected by the extent to which the controls are sufficiently precise to address inherent risk. Paragraph 15 [11B] prohibits rotation of controls testing where the audit approach is TOC alone.

Conforming and consequential amendments

16. The following are the more substantive conforming and consequential amendments to other standards arising from the Proposed ISAs 500, 330 and 520:

    a. Resources to the engagement in paragraphs 25 of ISA 220 now specifically addresses human, <u>technological and intellectual</u> resources. In other ISAs this has also been widened.

    b. A new stand back in paragraph 11A/ISA 700: The auditor shall conclude whether sufficient appropriate audit evidence has been obtained. In doing so, the auditor shall consider all audit evidence obtained, including audit evidence that is consistent or inconsistent with other audit evidence, and regardless of whether it appears to corroborate or to contradict the assertions in the financial statements.

    c. Currently paragraph 36/ISA 315 requires the auditor to evaluate whether their determination that a material COTABD isn't a significant COTABD remains appropriate. In light of the removal of paragraph 18/ISA 330, there is now a new documentation requirement paragraph 38(e)/ISA 315 to document such an evaluation.

    d. The removal of the sentence 'The auditor may accept records and documents as genuine unless the auditor has reason to believe the contrary.' (paragraph A24 of ISA 200). The proposals are more closely aligned to Proposed ISA 500 and reads: "Proposed ISA 500 (Revised) requires the auditor to evaluate the reliability of information intended to be used as audit evidence, which includes procedures to address the authenticity of such information when the auditor considers that the attribute of authenticity is of significance in the circumstances to meet the intended purpose(s) of the audit procedures. Other than performing audit procedures in relation to authenticity when it is of significance in the circumstances and remaining alert throughout the audit for conditions or indications to the contrary, the auditor may consider information, including records or documents, to be authentic."

NEXT STEPS

23. It is expected that the IAASB will approve the three exposure drafts at its June 2026 meeting for release in early August, for a 130-day exposure period, ending mid December 2026.
24. The AUASB will be asked to vote to expose the three proposed standards in Australia at the August AUASB meeting.

Australian Government
Auditing and Assurance Standards Board

AUASB Agenda Paper

Title:	IAASB Papers – Inventories	**Date:**	12 June 2026
Office of the AUASB:	See Wen Ewe / Rene Herman	**Agenda Paper:**	4.0

Objective of this agenda paper

1. The objective of this agenda item is to seek the views of AUASB members on key directional matters affecting ISA 501[1] being discussed at the upcoming June 2026 IAASB meeting.

2. Member views may inform Bill Edge in providing his views to the IAASB as a member. Significant issues (if any) may also be communicated to the IAASB by the AUASB's IAASB Technical Advisor and/or the AUASB Chair (including through the IAASB/IESBA Stakeholder Advisory Council (SAC) and Jurisdictional Standard Setters (JSS) arrangements).

Questions for AUASB members

No.	Question
1	Do AUASB members have any comments on the IAASB Project Team's proposals to enhance requirements and/or application material to: • recognise how entities' use of technology in inventory management may impact the audit (paragraphs 5-7 of this agenda paper) • provide clarity about attendance at inventory counting (paragraphs 8-10 of this agenda paper) • provide clarity regarding changes in inventory between the count date and the date of the financial statements for inventory at multiple locations (paragraphs 11-14 of this agenda paper)
2	Proposed paragraph 8 of ISA 501 allows the auditor to rely solely on confirmations of inventories from third party custodiancs even where such inventory is a significant account. Proposed application material paragraph A14E notes that an auditor ordinarily performs inspection or other further procedures instead of, or in addition to, such confirmations. Do AUASB members consider it appropriate for an auditor to rely on only a confirmation of inventory by a third party custodian even where such inventory is a significant account (see paragraphs 4(c) and (d) of this paper)?

Background

3. A project proposal to revise audit evidence standards related to inventory in ISA 501 was approved at the March 2026 IAASB meeting.

4. At the March 2026 meeting, the IAASB also discussed selected topics on inventory (see Agenda Item 2.3 of March 2026 AUASB meeting pack) including agreeing to:

   (a) Replace the materiality-based conditionality in ISA 501 with a risk-based conditionality, supported with enhanced application material with stronger linkages to ISA 315;

   (b) Reinforce the linkages in ISA 501 to foundational requirements in ISA 315, proposed ISA 330 and proposed ISA 500, including that auditors need to obtain more persuasive audit evidence the higher the assessment of inherent risk;

   (c) Clarify that the determination whether sole reliance on third-party external confirmation procedures may be appropriate depends not just on the level of

[1] ISA 501, *Audit Evidence—Specific Considerations for Selected Items* – Inventory

assessed risk of material misstatement, but also on other considerations, including the relevance and reliability of information intended to be used as audit evidence; and

(d) Clarify the potential limitations of the sufficiency and appropriateness of audit evidence regarding the existence and condition of inventory held by third parties obtained from performing external confirmation procedures

A. Implications of the Use of Technology by Entities in Managing Inventory and by Auditors in Auditing Inventory

5. The IAASB Project Plan highlights that ISA 501 does not sufficiently reflect the use of new and evolving technologies by entities in inventory management or by auditors in performing audit procedures for inventory. There is a risk that auditors may not adequately address emerging risks or practical challenges arising from the use of technology by both the entity and the auditor.

6. The IAASB project team is considering enhancing application material in ISA 501 in the following areas:

   (a) The impact of using technology on the entity's inventory management and on the audit including relating to:

      (i) Management's instructions and procedures for recording and controlling the results of the entity's physical inventory counting.

      (ii) The accuracy and completeness of the entity's inventory records at the date of the financial statements.

      (iii) The determination of inventory quantities in perpetual inventory systems.

   (b) The auditor's responsibilities regarding the design, implementation and operating effectiveness of relevant controls including:

      (i) Highlighting that when entities use technology in inventory management, the auditor has responsibilities in relation to IT applications and identified GITCs.

      (ii) Emphasising that, in applying ISA 315 and Proposed ISA 330, the auditor may identify IT applications and automated controls, including relevant GITCs, within inventory management processes. These controls may be critical to maintaining the accuracy and completeness of the entity's inventory records. Accordingly, the auditor may need to test the design and operating effectiveness of such controls, particularly when substantive procedures alone cannot provide sufficient appropriate audit evidence.

   (c) The auditor's responsibilities for determining the need for, and use of, an expert including recommending enhancing application material to emphasize that, when management uses technology in inventory management, the auditor may determine that it may be necessary to involve an expert (e.g. an IT expert) to obtain sufficient appropriate audit evidence regarding the existence and condition of inventory.

7. The Office of the AUASB supports all the proposals to enhance application material.

B. Attendance at Inventory Counting

8. The Project Plan highlights a lack of clarity about whether "attendance" at inventory counting (unless impracticable) can include the use of technological tools for remote observations - for example, visual footage from drones, scanners and camera systems. As a result, auditors may be uncertain whether or how such practices meet the relevant requirements of ISA 501.

9. The IAASB project team considers that the current approach in paragraph 4(a) of ISA 501 may be unclear about what the auditor's attendance at the entity's inventory counting (unless impracticable) means and how to apply the requirement depending on how entities

perform inventory counts. Also, retaining the current approach may not reflect how audit evidence can be obtained in practice using technological tools in performing audit procedures. Accordingly, the project team considered the following approaches regarding how attendance at inventory counting could be addressed in revising ISA 501:

(a) Remove the reference to "physical" in the requirement (Option A); or

(b) Retain extant approach but clarify in the application material that remote attendance at inventory counting by using technological tools is an alternative audit procedure that auditors may perform (Option B).

On balance, the project team recommends Option A as this option enhances the flexibility of the requirements in ISA 501 in an environment where technological tools enable auditors to attend inventory counting remotely. Option A also addresses instances where physical attendance is impracticable and where remote attendance could be performed instead.

10. The Office of the AUASB supports Option A, but considers that application material suggested through Option B is still relevant to option A.

C. Sufficiency and Appropriateness of Audit Evidence Obtained for Inventory

11. The IAASB project plan identifies recurring issues in audit procedures on inventory, for example, lack of appropriate audit procedures for testing inventory movements between interim count dates and period-end dates, not evaluating the accuracy and completeness of period-end inventory reports, inadequate audit procedures when the entity performs cycle counts or maintains inventory in multiple locations.

When Management Uses a Perpetual Inventory System Supported by Cycle Counts

12. The project team is recommending enhancing application material to:

(a) Clarify that the principles that apply are the same as when management performs a complete physical inventory count near period end; and

(b) Include practical examples of audit procedures that auditors may perform to obtain audit evidence about whether changes in inventory between the cycle count date(s) and the date of the financial statements are properly recorded.

Inventories in Multiple Locations

13. The project team is recommending enhancing application material to:

(a) Highlight risks associated with inventories at multiple locations, such as:

(i) Inconsistent application of counting procedures or controls across locations.

(ii) Timing differences and cut-off errors arising from goods in transit between locations at period-end.

(iii) Limitations in system integration where multiple IT systems are used, affecting the reliability of consolidated inventory records.

(b) Highlight that auditors may need to:

(i) Observe inventory counts at multiple locations to assess whether procedures are applied consistently.

(ii) Verify whether inventory in transit is recorded in the appropriate location and accounting period.

(iii) Test controls over system interfaces, including completeness and accuracy of data transfers between systems.

14. The Office of the AUASB supports the recommendations of the IAASB project team.

Australian Government
Auditing and Assurance Standards Board

AUASB Agenda Paper

Title:	IAASB Papers - External Confirmations	**Date:**	12 June 2026
Office of the AUASB:	Rene Herman / See Wen Ewe	**Agenda Item:**	5.0

Objective of this agenda paper

1. The objective of this agenda item is to seek the views of AUASB members on key directional matters affecting ISA 505[1] being discussed at the upcoming June 2026 IAASB meeting.

2. Member views may inform Bill Edge in providing his views to the IAASB as a member. Significant issues (if any) may also be communicated to the IAASB by the AUASB's IAASB Technical Advisor and/or the AUASB Chair (including through the IAASB/IESBA Stakeholder Advisory Council (SAC) and Jurisdictional Standard Setters (JSS) arrangements).

Questions for AUASB members

No.	Question
1	Do AUASB members have any comments on any of the IAASB Project Team's proposals as outlined in paragraphs 5 to 16 of this agenda paper?
2	Do AUASB members have any views on whether there is a need to remove, or retain and enhance, the stand-back requirement at paragraph 16 in Proposed ISA 505 (see paragraphs 17 to 19 of this paper)?

Background

3. A project proposal to revise audit evidence standards related to external confirmations in ISA 505 was approved at the March 2026 IAASB meeting.

4. At the March 2026 meeting, the IAASB also discussed selected topics on external confirmations (see Agenda Item 2.3 of March 2026 AUASB meeting papers) including agreeing:
   (a) Continuing to allow the use of negative confirmation requests when all specified preconditions are met, and only when performed in combination with other substantive procedures.
   (b) Requiring auditors to consider whether to perform external confirmations procedures for certain account balances.
   (c) To include an example when the use of negative confirmations are appropriate and provide examples of other substantive procedures that can be performed in combination with negative confirmation requests.

Discussion at the upcoming June IAASB meeting

A. Implications of Using Technology and Third-Party Intermediaries in External Confirmations

5. The project plan noted that ISA 505 does not sufficiently address the use of technology in external confirmation procedures, for example, when using firm-acquired or developed technological tools and third-party intermediaries, including its impact on the auditor's ability to maintain control over external confirmation requests.

6. The project team is proposing to address the implications of using technology and third-party intermediaries in external confirmations in Proposed ISA 505 (Revised) by:
   (a) Adding a requirement for auditors to evaluate the implications on the reliability of confirmation requests and responses when using an intermediary in the external confirmation process.

[1] ISA 505, *External Confirmations*

(b) Enhancing application material by clarifying that the auditor or confirming party may engage an intermediary in the external confirmation process and by emphasising that using an intermediary does not diminish the auditor's responsibility to maintain control over the external confirmation process.

(c) Enhancing application material by clarifying that intermediaries are considered service providers under ISQM 1[2].

(d) Enhancing application material by providing examples of audit procedures the auditor may perform when evaluating the reliability of external confirmation requests and confirmation responses.

(e) Enhancing application material by clarifying that direct access to information maintained by a knowledgeable external source could in certain circumstances constitute an appropriate means of obtaining relevant and reliable audit evidence.

(f) Emphasising the auditor's responsibility to maintain control over the confirmation process by clarifying that the auditor is responsible for selecting the items to be confirmed, sending the confirmation requests and obtaining the confirmation responses.

7. The Office of the AUASB supports these proposals.

B. Assertions Addressed by External Confirmations

8. The project plan noted that there is a lack of clarity about whether external confirmation procedures, on their own, may in some circumstances be appropriate or sufficient as audit evidence for all, or for certain, assertions about a class of transactions, account balance or disclosure.

9. The project team is recommending enhancing application material by clarifying which assertions may or may not be addressed in certain circumstances by external confirmation procedures. This will improve the auditors' understanding of both the strengths and limitations of external confirmation procedures, and, therefore, will improve consistency in practice.

10. The Office of the AUASB supports these proposals.

C. Reliability of Responses to External Confirmation Requests

11. The project plan noted that in practice, addressing the reliability of responses to external confirmation requests has become more complex due to several factors, for example, reliance on electronic or automated confirmation systems that may lack sufficient authentication mechanisms, and potential interception or manipulation of confirmation requests or responses.

12. Stakeholders noted that ISA 505 may be interpreted as requiring further audit evidence only when doubts arise, rather than requiring a broader, ongoing evaluation of the reliability of information intended to be used as audit evidence in accordance with paragraph 9 of Proposed ISA 500 (Revised). Therefore, the project team is recommending a new requirement for the auditor to consider any information about matters that the auditor becomes aware of that:

(a) Impairs the credibility of the selected confirming party.

(b) Indicates that the confirmation request or confirmation response may have been intercepted or altered.

Resolving Doubts About the Reliability of Confirmation Responses

13. The project team is also recommending aligning paragraph 10 of ISA 505 with paragraph 12(b) of Proposed ISA 500 (Revised) such that, if the auditor has doubts about the reliability of a response to a confirmation request, the auditor is required to "determine what modifications to external confirmation procedures, or what other audit procedures, are necessary to resolve those doubts." By aligning, the project team seeks to emphasise that evaluating the reliability of confirmation responses is not a standalone exercise, but rather

[2] International Standard on Quality Management (ISQM) 1, *Quality Management for Firms That Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*.

part of the broader, iterative process of evaluating the reliability of information intended to be used as audit evidence.

14. The Office of the AUASB supports these proposals.

D. Non-Responses and Exceptions in External Confirmation Procedures

15. The project plan notes that there are identified recurring challenges in how auditors address non-responses and exceptions in external confirmation procedures. Accordingly, the project team is recommending:

 (a) Enhancing the requirement on addressing non-responses by clarifying that in the case of each non-response, the auditor is required to perform alternative procedures "for the selected item".

 (b) Enhancing the application material by emphasising that the auditor needs to perform alternative audit procedures that provide relevant and reliable audit evidence for the assertions addressed by the external confirmation procedures and that the auditor may determine that a combination of alternative audit procedures is necessary to obtain relevant and reliable audit evidence.

 (c) Enhancing the application material by highlighting factors that may affect the nature, timing and extent of alternative procedures

 (d) Expanding the current requirement in paragraph 14 of ISA 505 by explicitly highlighting that:

  (i) A misstatement resulting from an exception may also be indicative of fraud; or

  (ii) Exceptions may also be indicative of deficiencies in the entity's system of internal control.

16. The Office of the AUASB supports these proposals.

E. The Need for a Stand-Back Requirement

17. Paragraph 16 of ISA 505 is a subject matter-specific stand-back requirement. It reads "*The auditor shall evaluate whether the results of the external confirmation procedures provide relevant and reliable audit evidence, or whether further audit evidence is necessary*." It addresses a specific consideration while being interconnected to the core stand-back requirement in paragraph 25A of Proposed ISA 330 (Revised)[3], which requires the auditor to evaluate whether the audit evidence obtained from further audit procedures is sufficient and appropriate in responding to the assessed risks of material misstatement.

18. The project team considered the following alternaive:

 (a) Removing the stand-back requirement in Proposed ISA 505 (Revised) because it would be covered by the stand-back requirement in Proposed ISA 330 (Revised). However, this may be perceived as resulting in a less rigorous standard than extant ISA 505.

 (b) Retaining the stand-back requirement in Proposed ISA 505 (Revised) because of the specific considerations relating to external confirmations in ISA 505 and given high-profile corporate failures linked to external confirmations.

 (c) Retaining the stand-back requirement in paragraph 16 of ISA 505 and aligning it with the stand-back requirement paragraph 25A of Proposed ISA 330 (Revised).

19. The Office of the AUASB does not have a strong view on removing the requirement of paragraph 16 of ISA 505.

3 Proposed ISA 330 (Revised), *The Auditor's Responses to Assessed Risks*.

Australian Government
Auditing and Assurance Standards Board

AUASB Agenda Paper

Title:	Legal advice - Illustrative Corporations Act sustainability assurance reports	**Date:**	12 June 2026
Office of AUASB:	Doug Niven	**Agenda Item:**	6.0

Objective of Agenda Item

1. The objectives of this agenda item are:
   (a) To ensure that AUASB member comments on the draft legal briefing on the opinions/conclusions in the Illustrative Corporations Act Sustainability Reports have been reflected in Agenda Paper 6.1.
   (b) To seek member views on the legal counsel to be engaged.

Questions for AUASB Members

No.	Question
1	Do AUASB members have any further comments on the revised draft briefing (see agenda paper 6.1)?
2	Do AUASB members have a view as to whether the Office of the AUASB should seek legal advice from AGS, a barrister or a law firm?

Background

2. The draft brief has been updated for the comments provided by two Board members (see attached marked up version).
3. Further views are sought on the choice of legal adviser:
   (a) Four members indicated that we should use a legal adviser other than AGS;
   (b) Subject to meeting the requirements of the PGPA Act and the Legal Services Directions 2025, options are:
      (i) Choosing a law firm from a government panel;
      (ii) Engaging junior counsel, subject to seeking quotes from several counsel and the cost being under a limit; and
      (iii) Using the Australian Government Solicitor (AGS).
   (c) For information, Treasury has a strong preference to use AGS. This is the lowest cost option. AGS would resolve the matter if Treasury did not agree with our legal adviser's views.

Materials presented

Agenda Paper	Description
6.1	Draft legal briefing
6.2	Legal Services Direction 2025 (for information only)

Brief

Advice sought

1 Counsel is asked to advise on the interaction between the *Corporations Act 2001* (the Act) and a standard issued by the Auditing and Assurance Standards Board (AUASB) which is a legislative instrument.

2 The advice will inform the form and content of auditor's reports on information in sustainability reports under Chapter 2M of the Act.

3 The appendix to this Brief contains extracts from the paragraphs of the Act and AUASB standards referred to below.

Publication

4 The Office of the AUASB will provide the draft and final versions of Counsel's advice to The Treasury and the Australian Securities and Investments Commission. Under the *Legal Services Direction 2025*, Treasury will also have an opportunity to question the draft advice.

5 The AUASB intends to publish the final advice or a summary of the final advice.

Background

6 The AUASB is an independent standard-setting board established by section 227A of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Office of the AUASB a non-corporate Government entity that provides support to the AUASB.

7 The functions of the AUASB are set out in section 227B of the ASIC Act and include making auditing standards under section 336 of the Corporations Act for the purposes of the Corporations legislation.

8 The standards made in accordance with section 336 of the Act are delegated legislative instruments and are registered on the Federal Register of Legislation. Subsection 336(1) of the Act provides standards made by the AUASB for the purposes of the Act or the ASIC Act must not be inconsistent with the Act.

9 The standards issued by the AUASB are based on standards issued by the International Auditing and Assurance Standards Board (IAASB).

10 The AUASB's Standard on Sustainability Assurance ASSA 5000 *General Requirements for Sustainability Assurance Engagements* (ASSA 5000) is based on the IAASB's ISSA 5000 *General Requirements for Sustainability Assurance Engagements*.

11 ASSA 5000 contains requirements for the audit and review of information in sustainability reports prepared pursuant to Chapter 2M of the Act and for assurance over sustainability information prepared for other purposes. A 'reasonable assurance engagement' under ASSA 5000 is an 'audit' under the Act, and a 'limited assurance engagement' is a 'review'. The auditor's report on a sustainability report conveys the auditor's 'conclusion' for a 'review' and the auditor's 'opinion' for an 'audit'.

12 For a transitional period, section 1707F in Chapter 10 of the Act applies for reporting of the auditor's conclusion/opinion on sustainability information rather than s309A of the Act.

13 Division 1 of Part 2M.3 of the Act requires an entity's Sustainability Report to comply with Australian Sustainability Reporting Standard S2 *Climate-related Disclosures*, which requires a fair presentation (paragraph 13) with disclosures being subject to materiality (paragraph 17).

14 Paragraph 190(c)(vi) of ASSA 5000 requires the auditor's conclusion/opinion to convey whether the sustainability information is 'presented fairly, in all material respects' in accordance with AASB S2. Paragraph 190(c)(vi)b also requires the auditor's report to convey a conclusion expressed in a form 'based on the procedures performed and evidence obtained'.

15 In November 2025, the AUASB issued for public comment Exposure Draft ED 03/25 Proposed Australian Standard on Sustainability Assurance ASSA 2025-11 *Amendments to ASSA 5000 General Requirements for Sustainability Assurance Engagements* to obtain feedback from stakeholders on draft illustrative review and audit reports.

16 The illustrative reports exposed for public comment in ED 03/25, contained conclusions/opinions that combined the wording in s1707F(2) and s309A(2) of the Act with the wording required by paragraph 190(c)(vi) of ASSA 5000.

17 The words 'present fairly, in all material respects' do not appear in s1707F(2) and s309A. The words 'based on the procedures performed and evidence obtained' do not appear in s1707F(2). The words 'in the course of our review' in s1707F(2) do not appear in ASSA 5000.190(c)(vi)b.. We also draw your attention to paragraph 84 of ASSA 5000, s1707(4) and 309A(3).

18 The majority of stakeholders that responded to the consultation (audit firms and accounting bodies) and AUASB members preferred the combined wording.

19 The Australian Securities and Investments Commission informed the AUASB that in their view the conclusions/opinions in the Illustrative Reports should use the Corporations Act wording only.

Questions on which advice is sought

20 We seek Counsel's advice on the following questions:

(a) Would the auditor's report on a Sustainability Report under the Act be inconsistent with subsection 1707F(2) if it included a conclusion in the form of:

> Based on the procedures we have performed and the evidence we have obtained, we have not become aware of any matters in the course of the review that makes us believe that the Sustainability Report is not presented fairly, in all material respects, in accordance ~~does not comply~~ with Division 1 of Part 2M.3 of the *Corporations Act 2001*~~,~~ including ~~not fairly presenting, in all material respects information as required by~~ Australian Sustainability Reporting Standard S2 *Climate-related Disclosures* issued by the Australian Accounting Standards Board.

(b) Would the auditor's report on a Sustainability Report under the Act be inconsistent with section 309A if it included an opinion in the form of:

> In our opinion, the Sustainability Report is presented fairly, in all material respects in accordance with Division 1 of Part 2M.3 of the *Corporations Act 2001,* including:

(a) Subsection 296A(2) (contents of climate statements); and

(b) Section 296C (~~presenting fairly, in all material respects, information in accordance~~ compliance with Australian Sustainability Reporting Standard S2 *Climate-related Disclosures* issued by the Australian Accounting Standards Board~~,~~ and ~~complying with~~ any Ministerial legislative instrument); and

(c) Section 296D (climate statement disclosures).

APPENDIX

CORPORATIONS ACT EXTRACTS

Review conclusion wording

1707F – Review of sustainability report before 1 July 2030

(1) …

(2) An auditor who reviews the sustainability report must report to members in accordance with subsections (3), (4) and (5) of this section on whether the auditor became aware of any matter in the course of the review that makes the auditor believe that the sustainability report, to the extent that it is required to be reviewed by the auditing standards, does not comply with Division 1 of Part 2M.3.

(3) A report under subsection (2) must:

(a) describe any matter referred to in subsection (2); and

(b) say why that matter makes the auditor believe that the sustainability report, to the extent that it is required to be reviewed by the auditing standards, does not comply with Division 1 of Part 2M.3.

(4) The auditor's report must include any statements or disclosures required by the auditing standards for the purposes of this section. …

Audit opinion wording

309A – Auditor's report on sustainability report

Audit of sustainability report

(1) An auditor who audits the sustainability report for a financial year must report to members in accordance with subsections (2), (3), (4) and (5) on whether the auditor is of the opinion that the sustainability report is in accordance with this Act, including:

(a) subsection 296A(2) or 296B(1) (contents of climate statements); and

(b) section 296C (compliance with sustainability standards etc.); and

(c) section 296D (climate statement disclosures).

If the auditor is not of that opinion, the auditor's report must say why.

(2) The auditor's report must describe:

(a) any defect or irregularity in the sustainability report; and

(b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307AA(b).

Requirements for report

(3) The auditor's report must include any statements or disclosures required by the auditing standards.

(4) If the sustainability report includes additional information under paragraph 296A(3)(c), the auditor's report must also include a statement of the auditor's opinion on whether the inclusion of that additional information was necessary to make the disclosures required by section 296D…

Consistency of standards with the Act

336 Auditing standards *AUASB's power to make auditing standards* (1) The AUASB may, by legislative instrument, make auditing standards for the purposes of this Act or the ASIC Act. The standards must not be inconsistent with this Act, the ASIC Act or the regulations. *[Subsections 336(3) to (5) indicate that auditing standards include standards relating to both financial reports and sustainability reports.]*

ASSA 5000 EXTRACTS

ASSA 5000.190(c)(vi) – Wording for conclusions/opinions

190. The assurance report shall include at a minimum the following basic elements: … (c) The practitioner's conclusion in the first section of the assurance report, which: … (vi) Expresses a conclusion, which: (Ref: Para. A545L–A547) a. For reasonable assurance, shall be expressed in a positive form, that the sustainability information is prepared or fairly presented, in all material respects, in accordance with the applicable criteria; or b. For limited assurance, shall be expressed in a form that conveys whether, based on the procedures performed and evidence obtained, a matter(s) has come to the practitioner's attention to cause the practitioner to believe that the sustainability information is not prepared or not fairly presented, in all material respects, in accordance with the applicable criteria; …

ASSA 5000.84 – Wording in law that is different from ASSA 5000.190(c)(vi)

Assurance Report Prescribed by Law or Regulation 84. If law or regulation prescribes the layout or wording of the assurance report that is different from the requirements of the ASSAs, the practitioner shall evaluate: (a) Whether intended users may misunderstand the practitioner's conclusion; and (b) If so, whether additional explanation in the assurance report can mitigate the possible misunderstanding. If the practitioner concludes that additional explanation in the assurance report cannot mitigate the possible misunderstanding, the practitioner shall not accept the assurance engagement, unless required by law or regulation to do so. An assurance engagement conducted in accordance with such law or regulation does not comply with this ASSA. Accordingly, the practitioner shall not include any reference in the assurance report to the assurance engagement having been conducted in accordance with this Act.

ASSA 5000.18 – Definition – 'Fair presentation framework'

Definitions

18. For the purposes of this Standard on Sustainability Assurance, the following terms have the meanings attributed below: …

Criteria	The benchmarks used to measure or evaluate the sustainability matters. Criteria comprise either framework criteria, entity-developed criteria or both. Framework criteria are either fair presentation criteria or compliance criteria. (Ref: Para. A20, A195) The term "fair presentation criteria" is used to refer to a sustainability reporting framework that requires compliance with the requirements of the framework and: (Ref: Para. A528–A529) (a) Acknowledges explicitly or implicitly that, to achieve fair presentation of the sustainability information, it may be necessary for management to provide information beyond that specifically required by the framework; or (b) Acknowledges explicitly that it may be necessary for management to depart from a requirement of the framework to achieve fair presentation of the sustainability information. Such departures are expected to be necessary only in extremely rare circumstances. The term "compliance criteria" is used to refer to a sustainability reporting framework that requires compliance with the requirements of the framework but does not contain the acknowledgments in (a) or (b) above.

Legal Services Directions 2025

I, Michelle Rowland, Attorney-General, make the following directions.

Dated 15 December 2025

Michelle Rowland
Attorney-General

Contents

Part 1—Preliminary

Division 1—General

1 Name

This instrument is the *Legal Services Directions 2025*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	2 March 2026.	2 March 2026

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 55ZF of the *Judiciary Act 1903*.

4 Dictionary

Note: A number of expressions used in these Directions are defined in the Act, including the following:
(a) legal practitioner;
(b) Commonwealth legal work.

In these Directions:

accountable authority has the meaning given by subsection 12(2) of the *Public Governance, Performance and Accountability Act 2013.*

Act means the *Judiciary Act 1903*.

administering entity has the meaning given by section 23.

AGS has the meaning given by section 2 of the Act.

claim means the assertion of a legal right or entitlement by or against the Commonwealth or an entity.

Commonwealth agency means a non-corporate Commonwealth entity, a corporate Commonwealth entity or a Commonwealth company.

Commonwealth company has the meaning given by subsection 89(1) of the *Public Governance, Performance and Accountability Act 2013.*

Commonwealth entity has the meaning given by section 10 of the *Public Governance, Performance and Accountability Act 2013.*

Commonwealth Procurement Rules means the Commonwealth Procurement Rules in force under subsection 105B(1) of the *Public Governance, Performance and Accountability Act 2013*.

corporate Commonwealth entity has the meaning given by paragraph 11(a) of the *Public Governance, Performance and Accountability Act 2013,* but does not include a person or body that is taken to be a non-corporate Commonwealth entity for the purposes of the finance law.

counsel:

(a) includes a legal practitioner who is engaged as counsel to provide legal services; and

(b) does not include a legal practitioner who is engaged in any other capacity to provide legal services.

Note: Each jurisdiction has laws limiting who is entitled to engage in legal practice. In some jurisdictions, for instance, a person may be admitted as a barrister and solicitor, and may practise as both.

A reference to ***counsel*** extends to a legal practitioner who, although not from the bar, is engaged *as counsel* to conduct or advise on litigation, or to provide advice. It does not extend, for example, to a legal practitioner who is engaged to provide advice in their capacity as a solicitor.

engaging entity has the meaning given by section 70.

entity means the following:

(a) a non-corporate Commonwealth entity;

(b) the Australian Human Rights Commission;

(c) the Australian Pesticides and Veterinary Medicines Authority;

(d) the Independent Health and Aged Care Pricing Authority;

(e) the Murray-Darling Basin Authority;

(f) the National Offshore Petroleum Safety and Environmental Management Authority.

external legal services provider means a legal services provider external to the person or body to which the legal services are to be provided, but does not include counsel or a government legal services provider.

finance law has the meaning given by section 8 of the *Public Governance, Performance and Accountability Act 2013.*

GBE means a government business enterprise within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

government legal services provider means:

(a) AGS; or
(b) an entity or part thereof that provides legal services to other entities.

legal services expenditure, in relation to an entity, means the entity's internal and external legal services expenditure, including:
(a) expenditure on counsel; and
(b) expenditure on legal services obtained from a government legal services provider.

litigation, unless otherwise indicated, includes proceedings before courts, tribunals, inquiries, in arbitration and other alternative dispute resolution processes, and the preparation for such proceedings.

model litigant obligation has the meaning given by section 40.

non-corporate Commonwealth entity has the meaning given by paragraph 11(b) of the *Public Governance, Performance and Accountability Act 2013,* and includes a person or body that is taken to be a non-corporate Commonwealth entity for the purposes of the finance law.

OLSC means the Office of Legal Services Coordination in the Attorney-General's Department, or any person within the Department on whom the Secretary confers the function of administering these Directions.

pro bono legal work has the meaning given by section 83.

requesting entity has the meaning given by section 23.

routine, in relation to a matter, has the meaning given by subsection 26(1).

settlement means the consensual resolution of a claim or litigation.

Note: This includes the following:
(a) settlements that are facilitated by a mediator;
(b) settlements that, though consensual, will be the subject of further consideration or orders by a court, tribunal, or other person or body – for instance, where the settlement must be approved by a court. This includes class action settlements, agreeing to seek consent orders, and agreeing to joint party submissions on relief.

tied provider has the meaning given by section 12.

tied work has the meaning given by section 12.

General notes

Lawful expenditure

1 In addition to the requirements in these Directions, Commonwealth agencies must comply with the finance law when making arrangements for the provision of legal services. For example, under section 15 of the *Public Governance, Performance and Accountability Act 2013*, the accountable authority of a non-corporate Commonwealth entity has a duty to promote the proper use of public resources (that is, the efficient, effective, economical and ethical use of public resources) by the entity. Further, under section 21 of that Act, the accountable authority of a non-corporate Commonwealth entity must govern the entity in a way that is not inconsistent with the policy of the Australian Government. These duties will apply in relation to arrangements for the provision of legal services to the entity.

Who can institute proceedings in the name of the Commonwealth

2 If a non-corporate Commonwealth entity that is not a body corporate wishes to institute proceedings in the name of the Commonwealth, the proceedings will need to be instituted by the Attorney-General or a person appointed by the Attorney-General under section 61 of the Act. In these circumstances, if a relevant appointment is not in place, the details should be forwarded to OLSC to enable the issue of an appointment under section 61 to be referred for decision by the Attorney-General.

The Attorney-General can appoint the accountable authority of an entity as a person who may institute relevant proceedings under section 61 of the Act.

Who can receive service in proceedings to which the Commonwealth is a party

3 Section 63 of the Act provides that, where the Commonwealth is a party to a suit, all process in the suit required to be served upon it shall be served upon the Attorney-General, or upon some person appointed by the Attorney-General to receive service. The Attorney-General may, for that purpose, appoint a lawyer who provides legal services to the Commonwealth or a Commonwealth agency.

Other relevant rules and policies

4 In addition to these Directions, other rules and policies are relevant to the provision of legal services, including the following:

(a) the policy on giving indemnities and guarantees by the Commonwealth and Commonwealth agencies;

(b) the policy on insurance and handling of liability claims by Commonwealth agencies that operate under the Commonwealth's self-managed fund for insurable risks, Comcover;

(c) the *Parliamentary Business Resources Regulations 2017,* which deal with the provision of assistance to Ministers for legal proceedings;

(d) section 63 of the Act, which deals with service of process when the Commonwealth or a State is a party to a suit.

In 2025, information about the policy referred to in paragraphs (a) and (b) could be obtained from the Department of Finance's website (https://www.finance.gov.au).

Co-ordinated procurement arrangements

5 The Commonwealth Procurement Rules also contain requirements that affect the procurement of legal services. In particular, certain bodies must, or may, use whole-of-government arrangements for procuring goods and services (***co-ordinated procurement arrangements***). At the time these Directions were made, there was a co-ordinated procurement arrangement for legal services, known as the Whole of Australian Government Legal Services Panel.

Information about that Panel could, in 2025, be viewed on the Attorney-General's Department's website (https://www.ag.gov.au). OLSC guidance material on the arrangement could be viewed on the same website.

5 Schedules

(1) Schedule 1 to this instrument has effect.

(2) Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

6 Simplified outline of these Directions

These Directions are a binding set of rules about Commonwealth legal work, issued by the Attorney-General under section 55ZF of the Act.

These Directions set out important rules to manage, in a whole-of-government manner, legal, financial and reputational risks to the Commonwealth's interests. They give entities the discretion to manage their particular risks, which entities are in the best position to judge, while providing a supportive framework of good practice.

Arrangements made by an entity for the provision of legal services are to ensure the delivery of efficient and effective services.

Part 1 deals with a range of preliminary matters, including the application of these Directions. In particular, section 7 sets out the persons and bodies to whom these Directions apply.

The application of this instrument is also summarised in Schedule 1, and in the simplified outlines to certain Parts and Divisions. However, these summaries are for general information, and are not a complete statement of the persons and bodies to whom particular directions are capable of applying.

Part 2 deals with tied areas of Commonwealth legal work. Broadly speaking, it requires that certain kinds of legal work can only be done by tied providers (subject to certain exceptions).

Part 3 deals with the sharing of advice within Government; in particular, the circumstances in which certain entities must consult with each other about requests for advice.

Part 4 sets out certain entities' obligations to report on significant issues, and to seek the Attorney-General's approval before settling claims or litigation involving significant issues.

Part 5 deals with various aspects of how the Commonwealth, and certain Commonwealth entities, are to handle claims and conduct litigation. Part 6 sets out requirements that apply to the settlement of monetary claims by or against the Commonwealth and certain entities.

Part 7 deals with the engagement of counsel.

Part 8 sets out rules regarding the procurement of external legal services providers.

Part 9 deals with the provision of assistance to eligible individuals in legal proceedings.

Part 10 sets out various responsibilities that apply to accountable authorities of certain Commonwealth entities, including reporting obligations. It also sets out some obligations that apply to entities themselves. Amongst other things, the Part deals with responding to non-compliance with these Directions.

Part 11 sets out the obligations of persons who are appointed under section 63 of the Act to receive service on behalf of the Commonwealth.

Part 12 sets out certain application, transitional and savings provisions.

Division 2—Application of these Directions

7 Who is required to comply with these Directions?

(1) A direction set out in this instrument applies to the following:

(a) unless the direction provides otherwise—the following entities:

(i) a non-corporate Commonwealth entity;

(ii) the Australian Human Rights Commission;

(iii) the Australian Pesticides and Veterinary Medicines Authority;

(iv) the Independent Health and Aged Care Pricing Authority;

(v) the Murray-Darling Basin Authority;

(vi) the National Offshore Petroleum Safety and Environmental Management Authority;

(b) any other person or body mentioned in subsection 55ZG(1) of the Act:

(i) to which the direction is expressed to apply; or

(ii) which the Attorney-General under this subparagraph, instructs to comply with the direction; or

(iii) subject to subsection (2), that handles claims, or conducts litigation, in the name of or on behalf of the Commonwealth or a Commonwealth agency.

(2) The direction applies to a person or body referred to in subparagraph (1)(b)(iii) only in respect of conduct in which they engage in the course of handling such claims or conducting such litigation.

Note: The simplified outlines to certain Parts and Divisions of this instrument, and Schedule 1, broadly summarise the persons and bodies to which particular Parts or provisions of these Directions apply. However, these are only a general guide, and are not a comprehensive statement of the application of this instrument.

8 The Attorney-General may grant exemptions and modifications

(1) The Attorney-General may:

(a) exempt a person or body from compliance with one or more of these Directions; or

(b) modify the application of these Directions to a person or body.

(2) The Attorney-General may impose conditions on an exemption or modification.

(3) These Directions do not apply to a person or body to the extent set out in the exemption or modification, provided they comply with any conditions imposed under subsection (2).

9 Application—criminal prosecutions and related proceedings

These Directions:

(a) do not apply to Commonwealth legal work carried out by or on behalf of a Commonwealth prosecuting authority that involves instituting and carrying on criminal prosecutions and related proceedings; but

(b) do apply in accordance with their terms to Commonwealth legal work undertaken in the course of responding to or defending criminal prosecutions and related proceedings.

Note: However, Commonwealth prosecuting authorities should nonetheless consult with AGS and the Attorney-General's Department, when appropriate, about any constitutional law issues, or the interpretation of Australia's or another country's obligations under international law, that arise in the course of work mentioned in paragraph (a).

10 Interaction with functions of Commonwealth agencies

These Directions are not intended to override any legislative requirement or authority concerning a Commonwealth agency's functions (in particular, the role of the Director of Public Prosecutions).

Part 2—Tied areas of Commonwealth legal work

Division 1—Preliminary

11 Simplified outline—who must comply with this Part?

> The whole of this Part applies to:
>
> (a) a non-corporate Commonwealth entity; and
>
> (b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).
>
> These bodies are referred to as ***entities*** below.
>
> Subsection 15(2) also applies to corporate Commonwealth entities and Commonwealth companies.
>
> Further, this Part applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

12 Meaning of *tied work*

(1) The following are ***tied work***:

- (a) Cabinet work;
- (b) constitutional law work;
- (c) national security legal work;
- (d) public international law work;
- (e) tied drafting work.

(2) In this Part:

Cabinet work means legal advice that is:

- (a) either:
  - (i) to be considered by Cabinet or relied on in preparing a Cabinet submission or memorandum; or
  - (ii) on a legislative proposal (other than a proposal for subordinate legislation) to be considered for adoption by government, or on draft legislation (other than subordinate legislation) for introduction into Parliament; and
- (b) for paragraph (a)(i)—is intended, at the time the advice is obtained, to be considered by Cabinet or relied on in preparing a Cabinet submission or memorandum.

constitutional law work:

- (a) means the interpretation and application of the Constitution and constitutional principles, including:

(i) the interpretation and application of those principles that define or limit the functions, privileges, powers and structures of the 3 branches of the Commonwealth government; and

(ii) the interpretation and application of the constitutions of the States; and

(b) includes:

(i) interpreting statutes or instruments by reference to the Constitution; and

(ii) determining whether the Commonwealth is bound by a State or Territory law.

national security legal work means any Commonwealth legal work of which national security interests form a material aspect, including where national security interests:

(a) substantively inform the work's legal analysis; or

(b) materially impact legal or factual issues relating to the work.

public international law work means any of the following:

(a) international litigation and arbitration;

(b) advice involving Australia's or another country's obligations under international law;

(c) advice on treaty negotiation;

(d) advice on implementing a treaty (including bilateral agreements);

(e) domestic litigation involving a significant public international law issue.

Note 1: A reference to a treaty in this definition is intended to include international instruments of less than treaty status (such as memoranda of understanding between Australia and other countries and non-binding declarations and recommendations adopted by international organisations).

Note 2: For example, paragraph (a) of the definition of ***public international law work*** applies to legal work involving proceedings before:

(a) the International Court of Justice; or

(b) a World Trade Organisation dispute panel or appellate body; or

(c) an arbitral tribunal, or some other form of internationally constituted tribunal.

Note 3: For example, paragraph (b) of the definition of ***public international law work*** applies to legal work involving requests concerning:

(a) Australia's or another country's obligations under international law generally or under a particular treaty to which Australia or the country is a party; and

(b) requests for advice under legislation which implements a treaty where the obligations under that treaty are an issue. This covers requests for advice about whether certain conduct by the Commonwealth is permitted by legislation which implements a treaty, where the request gives rise to a question as to whether Australia had met its international law obligations under that treaty.

However, paragraph (b) of the definition does not cover advice on procedural aspects of an exercise of power under the legislation where those procedural aspects are unrelated to a question of Australia's international law obligations.

Note 4: For example, paragraph (c) of the definition of ***public international law work*** applies to legal advice preparatory to, or in the course of, treaty negotiations.

Note 5: For example, paragraph (d) of the definition of ***public international law work*** applies to advice on implementing a treaty (including bilateral agreements), including on changes to legislation and practice necessary to become a party to a treaty.

Note 6: For example, paragraph (e) of the definition of ***public international law work*** applies to legal work involving litigation where a court will or may decide whether Australia or another country has acted in conformity with its international law obligations (including as an incidental or indirect aspect of the case). It is not intended to apply to legal work involving litigation that involves legislation which implements a treaty if it merely involves interpretation of that legislation or of the treaty for the purposes of applying that legislation and it does not raise the question whether Australia has complied with its international obligations.

Note 7: Litigation referred to in paragraph (e) of the definition of ***public international law work*** is still to be referred to OLSC if it raises significant issues as described in section 35.

tied drafting work means Commonwealth legal work that consists of drafting any of the following:

(a) government Bills;

(b) government amendments of Bills;

(c) regulations;

(d) Ordinances and regulations of external Territories and Jervis Bay Territory;

(e) other legislative instruments made or approved by the Governor-General;

(f) proclamations that are commencement instruments within the meaning of the *Legislation Act 2003*.

tied provider, in relation to Commonwealth legal work, means an entity that this Part indicates the work is tied to.

Division 2—Directions about tied work

13 Direction related to tied work

(1) If an entity (including a tied provider) obtains tied work, it must obtain the work in accordance with this Part.

(2) An entity may obtain tied work from:
  (a) a tied provider of that work; or
  (b) a legal services provider who:
    (i) is not a tied provider of that work; but
    (ii) has been approved to undertake the work in accordance with section 18; or
  (c) if the Office of Parliamentary Counsel has arranged for another legal services provider to undertake tied drafting work—that provider.

(3) In addition, a tied provider may, for the work in respect of which it is a tied provider, obtain tied work from a legal services provider briefed in their capacity as counsel or another legal expert.

Note: For subsection (3), the counsel or other legal expert does not need to be approved under section 18.

14 Tied providers: Cabinet work, constitutional law work and national security legal work

(1) The following is tied to AGS and the Attorney-General's Department:
  (a) Cabinet work;
  (b) constitutional law work;
  (c) national security legal work.

(2) Despite paragraph (1)(a), an entity may do the following:
  (a) put forward legal advice to be considered by Cabinet that was not prepared by AGS or the Attorney-General's Department, where the advice was obtained before the entity formed the intention mentioned in paragraph (b) of the definition of ***Cabinet work***;
  (b) obtain support or guidance from its in-house legal area in preparing a Cabinet submission or memorandum, including by obtaining advice from that in-house legal area on legislation administered by the entity where that advice involves no more than the application of a settled interpretation of the law to the facts;
  (c) obtain advice from its in-house legal area as to whether legislation would be required to implement a proposal prepared by that entity for consideration by Cabinet (excluding advice as to whether legislation would be required to authorise expenditure on the proposal).

Note: For paragraph 14(2)(a)—this situation may arise where, for instance, a matter was the subject of litigation before it was brought to Cabinet.

(3) Where an entity relies on subsection (2), it must:
  (a) expressly inform Cabinet:

(i) that the advice was not prepared by AGS or the Attorney-General's Department; and

(ii) of the date of the advice and who provided it; and

(b) otherwise comply with its tied work obligations.

15 Tied providers: public international law work

(1) Public international law work is tied to:

(a) the Attorney-General's Department; and

(b) AGS; and

(c) in relation to paragraphs (a), (b), (c) and (d) of the definition of ***public international law work***—the Department of Foreign Affairs and Trade.

(2) If an entity, a corporate Commonwealth entity or a Commonwealth company requests public international law work from AGS, it must:

(a) notify the Office of International Law (***OIL***); and

(b) give OIL the opportunity to express a view on the matter (whether from a policy or legal perspective).

Note: This requirement is intended to ensure compliance with Australia's international obligations and avoid any risk that Australia might take inconsistent positions on international matters which might arise from portfolio-specific policy approaches.

16 Tied providers: tied drafting work

Tied drafting work must be undertaken or arranged by the Office of Parliamentary Counsel.

17 Briefing counsel and other legal experts

An entity may only brief counsel or another legal expert (such as an academic) on tied work through, and with the agreement of:

(a) AGS; or

(b) the Attorney-General's Department, in respect of areas where the Department undertakes tied work; or

(c) the Department of Foreign Affairs and Trade, in respect of work covered by paragraphs (a) to (d) of the definition of ***public international law work***.

18 Providers other than tied providers may be approved to do tied work

(1) The Attorney-General may approve a particular legal services provider other than a tied provider to undertake tied work.

(2) The approval may be subject to one or more conditions.

Note 1: For example, conditions could be:

(a) that:

(i) any advice prepared by the provider is to be settled in consultation with, and reflect any comments made by, a tied provider; and

(ii) the instructing entity pay the costs of the tied provider to consider and prepare comments about the advice; or

(b) that where one or more entities are instructing on the matter, the approval applies only to that entity or those entities, and that matter.

Note 2: If a tied provider wishes to engage a legal services provider other than a tied provider to undertake tied work, it will need approval to do so (see section 13). However, this does not apply when a tied provider, for the work in respect of which it is a tied provider, briefs counsel or another legal expert (see subsection 13(3)).

19 Categories of work not covered by the tied work rules

This Part does not affect the following:

(a) the in-house work that was, as at the time these Directions were made, undertaken by entities in negotiating standard bilateral treaties (such as double taxation and social security agreements);

(b) in-house legal work undertaken by entities that identifies a tied work issue, or supports the entity's engagement with a tied provider in respect of the issue;

(c) public international law work, where the Attorney-General has approved the use of the agency's in-house legal area in the performance of that work;

(d) the role of the Solicitor-General.

Note: For paragraph (a)—this captures the in-house preparation of bilateral agreements on certain matters in a standard format which had already been the subject of international law advice from OIL, AGS or the Department of Foreign Affairs and Trade.

20 Tied work not performed by tied providers: entities must give copies of advice to OLSC

(1) If:

(a) a legal services provider is approved to undertake tied work under section 18; and

(b) in the course of doing the work, the provider prepares an advice relating to tied work for an entity;

that entity must, upon request, give a copy to OLSC in an electronically searchable form.

(2) OLSC may give the advice to any tied provider of the relevant category of legal work.

Part 3—Sharing advice within Government

Division 1—Preliminary

21 Simplified outline—who must comply with this Part?

The whole of this Part applies to:

(a) a non-corporate Commonwealth entity; and

(b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).

These bodies are referred to as ***entities*** below.

This Part also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

Division 2—Sharing advice within Government

22 Purpose of Part and general policy on consulting and sharing

The purpose of this Part is to promote consultation, collaboration and information-sharing across government on the interpretation of legislation with the aim of reaching, as far as possible, consistency in statutory interpretation across the Commonwealth.

To that end, Commonwealth agencies are encouraged to raise concerns or questions about the meaning of legislation with the administering entity before seeking advice, so as to:

(a) give the administering entity the opportunity to consider whether the policy requires change; and

(b) minimise legal costs by identifying whether the administering entity already has an answer to the question.

There is a general expectation that agencies will consult and share information about Commonwealth legal work with one another, where they consider it appropriate, even where these Directions do not require it.

23 Consultation

If an entity (the ***requesting entity***) proposes to obtain legal advice (whether from counsel, an external or government legal services provider, or its in-house legal area) on the interpretation of legislation administered by another entity (the ***administering entity***), the requesting entity must give the administering entity:

(a) a reasonable opportunity to consult on the proposal; and

(b) a copy of the request for advice; and

(c) a copy of the draft advice (if any); and

(d) the following:

(i) a reasonable opportunity to consult on the matter before any finalised advice is provided;

(ii) if the advice is provided in draft—a reasonable opportunity to consult on the draft advice before it is finalised;

(iii) if the advice is not provided in draft—a reasonable opportunity to consult on the finalised advice;

including consultation with the requesting entity's legal services provider, as required by the administering entity; and

(e) a copy of the finalised advice.

Note 1: The Administrative Arrangements Order sets out which non-corporate Commonwealth entities administer which pieces of legislation.

Note 2: There are various exceptions to these consultation requirements below.

Note 3: The Attorney-General may also grant exemptions from those requirements (and other obligations imposed by these Directions) under section 8.

24 Exception to consultation requirement—urgency

(1) If the requesting entity needs advice of a kind covered by section 23 on an urgent basis, the entity:

(a) need not comply with section 23; and

(b) must instead, as soon as practicable after receiving the advice:

(i) consult with the administering entity; and

(ii) give the administering entity a copy of the request and the advice.

Note: For instance, this section would apply where the requesting entity needs the advice to enable a response to an urgent request by a Minister or a request arising without notice in litigation.

(2) In subsection (1), a reference to advice means:

(a) draft advice, if:

(i) the advice is provided in draft; and

(ii) it is reasonably practicable, in light of the urgency, to comply with subsection (1) before instructing that the advice be finalised; and

(b) otherwise—finalised advice.

25 Exception to consultation requirement—where disclosure inappropriate or unlawful

(1) Section 23 does not apply to a requesting entity where compliance (such as disclosing the request or advice) would result in:

(a) a breach of law; or

(b) the inappropriate disclosure of a Cabinet, law enforcement or national security matter.

(2) In circumstances where section 23 would have applied but for subsection (1), the requesting entity must instead, to the extent that is possible without giving rise to a result mentioned in paragraph (1)(a) or (b):

(a) inform the administering entity that it has requested the advice in question; and

(b) disclose the substance of the advice, once received.

26 Exception to consultation requirement—routine matters

(1) A requesting entity need not comply with section 23 where it considers that the advice sought is likely to involve no more than the application of a settled interpretation of the law to particular facts (a ***routine*** matter).

(2) However, where the entity subsequently discovers that a matter is not routine, it must comply with section 23 (to the extent it is applicable in the circumstances) from that time on.

(3) To avoid doubt, a matter is not routine where:

(a) the advice:

(i) relates to a legislative provision that has not yet been considered by a court, unless the requesting entity considers that the interpretation of the provision is nevertheless well-understood; or

(ii) is inconsistent with existing policy; or
(iii) could raise new policy issues in respect of the legislation; or

(b) the matter could create a precedent; or
(c) the requesting entity has identified a potential weakness in the legislation.

27 Exception to consultation requirement—written agreements

A requesting entity need not comply with section 23 where:

(a) it has a written agreement with the administering entity setting out alternative sharing and consultation arrangements, which is designed to operate in place of section 23; and
(b) OLSC has been notified of that agreement; and
(c) the requesting entity complies with the arrangements.

28 Responsibility of administering entity upon consultation

If an administering entity is consulted in accordance with this Part, it must carefully consider the advice to determine whether it indicates any ambiguity or other issue in the legislation that may require the administering entity to take remedial action (such as proposing a legislative amendment to the responsible Minister).

29 Resolving disagreements about interpretation of legislation

(1) The requesting entity and administering entity must, so far as possible, resolve any disagreement as to the correct interpretation of legislation by negotiation.

(2) If an entity seeks further advice from the Solicitor-General to resolve the matter, it must refer the issue to OLSC.

30 Sharing advice with the Attorney-General

An entity must, upon request and subject to any legislative restriction, give the Attorney-General a copy of any legal advice it has.

Note: Legal professional privilege is not waived by providing advice to the Attorney-General in accordance with these Directions: see subsection 55ZH(4) of the Act.

31 Sharing advice that may be significant to other Commonwealth agencies

Where an entity requests or receives legal advice (whether in draft or final form) that it considers likely to be significant to another Commonwealth agency, it must take such steps as are reasonable in the circumstances to:

(a) notify that agency of the request or advice; and
(b) make the advice available to the agency.

Note 1: In some circumstances, it may be reasonable not to take any steps to notify the agency or share the advice; for instance, in the circumstances mentioned in subsection 25(1) or 26(1).

Note 2: To avoid doubt, this obligation extends to sharing advice with operational and portfolio agencies where the entity considers that the advice is likely to be significant to them.

Division 3—Advice on constitutional law issues

32 Advice on constitutional law issues

(1) An entity that seeks legal advice on a constitutional law issue from AGS, or from counsel briefed by AGS, must:

(a) at the time it makes a written request for the advice—give a copy of the request to the Attorney-General's Department; or

(b) for an oral request—as soon as practicable:

(i) confirm the request in writing; and

(ii) give a copy of the written request to the Attorney-General's Department.

Note: The Attorney-General's Department or AGS may consult with the Solicitor-General about whether the advice should be given by the Solicitor-General or AGS.

(2) Where AGS, or counsel briefed by AGS, provides final legal advice on a constitutional law issue to an entity, AGS must:

(a) provide a copy of the advice to the Attorney-General's Department; and

(b) make that advice available to the Solicitor-General.

Note 1: AGS may make advice available to the Solicitor-General by, for example, including it in a database to which the Solicitor-General has access.

Note 2: Copies of the Solicitor-General's advices will be given to the Attorney-General's Department and AGS.

Part 4—Reporting on significant issues

Division 1—Preliminary

33 Simplified outline—who must comply with this Part?

> The whole of this Part applies to:
>
> (a) a non-corporate Commonwealth entity; and
>
> (b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).
>
> These bodies are referred to as ***entities*** below.
>
> This Part also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

34 Purpose of this Part

> The purpose of this Part is to ensure that entities report legal issues that are significant to the Attorney-General. Reporting gives the Attorney-General (through OLSC) visibility of the most important legal issues affecting the Commonwealth, as a means of ensuring that they are managed consistently, effectively, and in accordance with government policy.

Division 2—Directions about significant issues

35 Reporting on significant issues

(1) Where a significant issue arises in the performance of Commonwealth legal work, the entity for which that work is performed must:

(a) report the issue to the Attorney-General, via OLSC, as soon as practicable after it arises or the entity becomes aware of it; and

(b) update the Attorney-General, via OLSC, on any subsequent developments involving that issue as soon as practicable after they occur or the entity becomes aware of them.

Note: These Directions do not detract from entities' obligations elsewhere at law regarding how they are to handle personal or sensitive information.

(2) Significant issues include the following:

(a) issues where the size of the claim, the identity of the parties or the nature of the matter raises sensitive legal, political or policy issues;

(b) issues in respect of which a significant level of co-ordination between different Commonwealth agencies is required;

(c) the existence of a dispute or disagreement between 2 or more Commonwealth agencies (other than in a matter arising under legislation that contemplates that such agencies may be on different sides in a dispute);

(d) the existence of a dispute or disagreement with a State or Territory, or a body established for a public purpose by or under a law of a State or Territory;

(e) issues involving formal dispute processes under public international law;

(f) the possibility that a court will make a ruling that would have significant precedential consequences for the Commonwealth;

(g) where there is a reasonable prospect that the Commonwealth, or a Minister or officer of the Commonwealth in their official capacity, will be found liable (including by way of vicarious liability) for:

(i) false imprisonment (however described); or

(ii) misfeasance in public office; or

(iii) the tort of malicious prosecution or conspiracy; or

(iv) any other civil or criminal wrong based on malfeasance, fraud, bad faith or unlawful conduct.

36 Settling claims and litigation that give rise to significant issues

Where a significant issue reportable under section 35 arises in the handling of a claim or conduct of litigation, an entity must not settle the claim or litigation without the Attorney-General's approval.

Part 5—Claims and litigation

Division 1—Preliminary

37 Simplified outline of this Part

This Part deals with various aspects of how the Commonwealth, and certain Commonwealth entities, are to handle claims and conduct litigation.

Division 2 deals with the model litigant obligation. This sets out the standards of honesty and fairness that the Commonwealth, and certain Commonwealth entities, must comply with when handling claims and conducting litigation.

Division 3 deals with claims and litigation by or against the Commonwealth and entities. Amongst other things, it requires entities to handle claims and conduct litigation in accordance with legal principle and practice, and in compliance with the Attorney-General's instructions.

Division 4 deals with the obligations of certain corporate Commonwealth entities in respect of claims and litigation, particularly when they become involved in litigation that gives rise to a constitutional issue.

Division 5 sets out when certain Commonwealth entities must obtain the Attorney-General's approval before objecting to the jurisdiction of certain State and Territory courts, or submitting or objecting to the exercise of certain powers by other State and Territory bodies.

Division 6 deals with the circumstances in which entities may use in-house lawyers to conduct court litigation.

Division 7 sets out how the responsibility for making public interest immunity claims is to be distributed amongst relevant Commonwealth entities.

Division 8 sets out when entities must plead limitation defences and oppose applications for the extension of limitation periods.

Division 2—The model litigant obligation

38 Simplified outline—who must comply with this Division?

> This Division applies to the Commonwealth, and Commonwealth entities other than GBEs. It also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

39 Informational note—policy of this Division

> Consistently with the Attorney-General's responsibility for the maintenance of proper standards in litigation, the Commonwealth, and Commonwealth entities other than GBEs, are to behave as model litigants in the handling of claims and the conduct of litigation.

40 The model litigant obligation

The Commonwealth, and a Commonwealth entity other than a GBE:

(a) must handle claims and conduct litigation in accordance with sections 41 to 43 (the ***model litigant obligation***); and

(b) must not start legal proceedings unless satisfied that litigation is the most suitable method of dispute resolution.

41 Nature of the obligation

The Commonwealth, and a Commonwealth entity other than a GBE, must act honestly and fairly in handling claims and litigation brought by or against it by doing the following:

(a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;

(b) making an early assessment of:

  (i) its prospects of success in legal proceedings that may be brought against it; and

  (ii) its potential liability in claims against it;

(c) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;

(d) acting consistently in the handling of claims and litigation;

(e) endeavouring to avoid or prevent legal proceedings wherever possible, or limit their scope, including by:

  (i) giving consideration in all cases to alternative dispute resolution before initiating legal proceedings; and

  (ii) participating in alternative dispute resolution processes where appropriate;

(f) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:

(i) not requiring the other party to prove a matter which it knows to be true; and

(ii) not contesting liability if it knows that the dispute is really about quantum; and

(iii) monitoring the progress of the litigation and using methods that it considers appropriate to resolve the litigation, including settlement offers, payments into court or alternative dispute resolution; and

(iv) ensuring that a person participating in any settlement negotiations on its behalf has the authority to enter into a settlement of the claim or legal proceedings in the course of the negotiations;

(g) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;

(h) not relying on technical defences unless its interests would be prejudiced by the failure to comply with a requirement;

(i) not appealing a decision unless it believes that the appeal:

(i) has reasonable prospects of success; or

(ii) is otherwise justified in the public interest;

(j) apologising where it is aware that it or its lawyers have acted wrongfully or improperly.

Note 1: The obligation applies to litigation (including before courts, tribunals, inquiries, and in arbitration and other alternative dispute resolution processes) involving the Commonwealth and Commonwealth entities such as Departments, as well as Ministers and officers where the Commonwealth provides a full indemnity in respect of an action for damages brought against them personally. Ensuring compliance with the obligation is primarily the responsibility of the Commonwealth or entity which has responsibility for the litigation. In addition, lawyers engaged in such litigation, whether AGS, in-house or external, will need to act in accordance with the obligation, and assist their client agency to do so.

Note 2: In essence, being a model litigant requires that the Commonwealth and Commonwealth entities other than GBEs, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the Commonwealth and entities will act as a model litigant has been recognised by the courts. See, for example, *Melbourne Steamship Co Ltd v Moorehead* [1912] HCA 69; (1912) 15 CLR 333 at 342; *Kenny v State of South Australia* [1987] SASC 9905; (1987) 46 SASR 268 at 273; *Yong v Minister for Immigration and Multicultural Affairs* [1997] FCA 495; (1997) 75 FCR 155.

Note 3: The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

Note 4: The obligation does not prevent the Commonwealth or Commonwealth entities from acting firmly and properly to protect their interests. It therefore does not preclude them from:

(a) taking all legitimate steps to pursue their own claims, and testing or defending claims against them; or

(b) pursuing litigation in order to clarify a significant point of law even if the other party wishes to settle the dispute.

The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the Commonwealth or Commonwealth entity pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable.

In certain circumstances, it will be appropriate for the Commonwealth or Commonwealth entity to pay costs (for example, for a test case in the public interest).

Note 5: The obligation does not prevent the Commonwealth, or a Commonwealth entity other than a GBE, from enforcing costs orders or seeking to recover its costs.

42 Merits review proceedings

(1) The obligation to act as a model litigant extends to merits review proceedings.

(2) The Commonwealth, and a Commonwealth entity other than a GBE, should use its best endeavours to assist the tribunal to make its decision.

Note: The term ***litigation*** is defined in section 4 in terms that encompass merits review before tribunals. There are particular obligations in relation to assisting a tribunal engaged in merits review to arrive at a decision. It is important to pay close attention to the legislation under which a tribunal is established, and any practice directions issued by the tribunal. In the case of the Administrative Review Tribunal, see, in particular, section 56 of the *Administrative Review Tribunal Act 2024*.

43 Alternative dispute resolution

(1) The Commonwealth, or a Commonwealth entity other than a GBE, must not start court proceedings unless they have considered other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations).

(2) When participating in alternative dispute resolution, the Commonwealth, or a Commonwealth entity other than a GBE, must ensure that its representatives:

(a) participate fully and effectively; and

(b) have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.

Division 3—Claims and litigation by or against the Commonwealth or entities

44 Simplified outline—who must comply with this Division?

> This Division applies to:
>
> (a) a non-corporate Commonwealth entity; and
>
> (b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).
>
> These bodies are referred to as ***entities*** below.
>
> This Division also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

45 Entities must comply with instructions from the Attorney-General

(1) An entity must comply with any instructions given by the Attorney-General under this subsection about the handling of claims or the conduct of litigation (whether in general or in a specific matter), including:

(a) instructions to provide information about a particular claim or piece of litigation; or

(b) instructions to provide copies of, or access to, material relating to the claim or litigation; or

(c) instructions regarding the arguments that the entity must put to the court, or the lawyers who must act for the entity, in the claim or litigation.

Note 1: The need to give instructions could arise where, for example, constitutional or whole-of-government issues arise, or where the proposed conduct of a matter might be inconsistent with the Attorney-General's First Law Officer role (for instance, the Attorney-General's responsibility for ensuring that the Commonwealth acts as a model litigant). The entity will be responsible for any costs incurred by it or the lawyers involved in complying with the instruction.

Note 2: Other provisions of these Directions may also be relevant to the handling of a claim by or against the Commonwealth, including the requirements:

(a) to act in accordance with Division 2 (the model litigant obligation); and

(b) to settle monetary claims in accordance with Part 6; and

(c) to engage counsel in accordance with Part 7.

(2) The Attorney-General may issue guidelines about:

(a) the allocation of responsibility for litigation between entities; and

(b) the handling of litigation where more than one entity may be involved.

46 Acting in accordance with legal principle and practice

An entity must handle claims and conduct litigation in accordance with legal principle and practice, taking into account:

(a) the legal rights of the parties; and

(b) the financial risk to the Commonwealth and the entity of pursuing their rights.

Note 1: Some examples of handling claims and conducting litigation in accordance with legal principle and practice are:

(a) acting in the financial interest of the entity and the Commonwealth to defend, fully and firmly, claims where a defence is properly available, subject to the desirability of settling claims wherever possible and appropriate; and

(b) generally enforcing costs orders in favour of the Commonwealth or the entity.

Note 2: In addition to the obligations arising under these Directions, section 11 of the *Public Governance, Performance and Accountability Rule 2014* requires accountable authorities of non-corporate Commonwealth entities to pursue the recovery of debts owing to the Commonwealth.

47 Disclosure of terms of settlement

(1) An entity may only agree that the terms of a settlement are confidential and cannot be disclosed, or seek to include such a condition in a settlement, if the entity:

(a) satisfies itself (including by raising the matter with a party requesting the condition) that such a condition is necessary to protect the Commonwealth's interests; and

(b) seeks to incorporate an exception to enable voluntary disclosure of the settlement (in whole or in part) to the Parliament or to a Parliamentary Committee; and

(c) where practicable, consults the responsible Minister before agreeing to a settlement inhibiting voluntary disclosure to the Parliament or to a Parliamentary Committee.

(2) An entity must tell the other party to a confidential settlement that disclosure of the settlement may nevertheless be required by law, and in particular, to the Parliament or to a Parliamentary Committee which has power to compel disclosure.

Note: For example, it may be in the Commonwealth's interests to agree to a confidential settlement if the Commonwealth seeks to settle a claim against it on the condition that the terms of settlement not be disclosed, with a view to avoiding prejudice in responding to other similar claims against it.

48 Entities to receive written legal advice before starting court proceedings

(1) An entity must not start court proceedings unless:

(a) the entity has received written legal advice from lawyers whom the entity is allowed to use in the proceedings indicating that there are reasonable grounds for starting the proceedings; or

(b) in urgent cases—the entity has received oral legal advice from such lawyers that there are reasonable grounds for starting the proceedings.

(2) Where paragraph (1)(b) applies, the entity must obtain written confirmation of the oral advice at the earliest opportunity.

49 Suppression orders

(1) An entity must not apply for an order to prohibit or restrict the disclosure or publication of evidence or information (a ***suppression order***) in a proceeding unless it considers suppression of the evidence or information to be reasonably necessary to protect the interests of the Commonwealth.

(2) An entity must not apply for a suppression order for the sole purpose of avoiding the disclosure or publication of evidence or information that may be embarrassing to the Commonwealth or a Commonwealth agency.

Note 1: The entity must comply with the relevant rules of court for an application to the court.

Note 2: This section does not prevent an application for a suppression order for evidence or information that may be embarrassing to the Commonwealth or a Commonwealth agency if the application is made in order to protect legitimate Commonwealth interests in accordance with subsection (1).

Division 4—Obligations of corporate Commonwealth entities with respect to claims and litigation

50 Obligations of corporate Commonwealth entities

A corporate Commonwealth entity, other than an entity mentioned in paragraph 7(1)(a) or a GBE, must:

(a) where it becomes involved in litigation (including threatened or proposed litigation) which gives rise to a constitutional issue:

(i) inform the Attorney-General or OLSC of the details of the litigation; and

(ii) comply with instructions given by the Attorney-General under this subparagraph concerning the conduct of that litigation (including as to the choice of lawyers to be used and the arguments to be put on constitutional issues); and

(b) inform the Attorney-General or OLSC of any claim or litigation proposed to be brought against, or involving, another Commonwealth agency.

Division 5—Jurisdiction of State and Territory bodies

51 Simplified outline—who must comply with this Division?

> Section 52 applies to:
>
> (a) a non-corporate Commonwealth entity; and
>
> (b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).
>
> These bodies are referred to as ***entities*** below.
>
> Section 53 applies to Commonwealth agencies.
>
> This Division also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

52 Attorney-General must approve objection to the jurisdiction of State and Territory courts

An entity must not object on behalf of the Commonwealth to the jurisdiction of a State or Territory court on the basis that it is not a court authorised under section 56 of the Act without the approval of the Attorney-General.

Note: The High Court has held that section 56 of the Act does not limit the jurisdiction conferred on State courts by subsection 39(2) of that Act, but enables the Commonwealth to object to a court proceeding which is not authorised under section 56: *Breavington v Godleman* [1988] HCA 40; (1988) 169 CLR 41. An objection is normally only to be taken if the Commonwealth is prejudiced by the plaintiff's choice of court (for example, due to the location of witnesses or differences in applicable law).

53 Attorney-General must approve submission or objection to the powers of certain State and Territory bodies

The Commonwealth, or a Commonwealth agency, must not, without the Attorney-General's approval:

(a) submit or object to the exercise of compulsory powers or decision-making authority by a State or Territory body that is not a court within the meaning of Chapter III of the Constitution; or

(b) agree to submit or object to the exercise of such powers or authority.

Note 1: The purpose of this provision is to ensure that any engagement with relevant State and Territory bodies is consistent with the position of the Commonwealth on the scope and limitations of its constitutional and statutory powers.

Note 2: ***Commonwealth agency*** is defined in section 4 to mean a non-corporate Commonwealth entity, a corporate Commonwealth entity or a Commonwealth company.

Division 6—Use of in-house lawyers for court litigation

54 Simplified outline—who must comply with this Division?

> This Division applies to:
>
> (a) a non-corporate Commonwealth entity; and
>
> (b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).
>
> These bodies are referred to as ***entities*** below.
>
> This Division also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

55 Use of in-house lawyers for court litigation

(1) An entity may only use an in-house lawyer to conduct court litigation as solicitor on the record or as counsel with the Attorney-General's approval.

(2) In deciding whether to grant an approval, the Attorney-General must consider whether the entity:

(a) can demonstrate a capacity to conduct the litigation properly and efficiently; and

(b) can conduct the litigation at a lower cost than using external solicitors, taking into account accrual accounting and, where relevant, competitive neutrality principles; and

(c) has a statutory charter which gives it an operation independent of government.

Note: This subsection does not limit the matters that the Attorney-General may take into account.

(3) The entity must comply with any conditions the Attorney-General imposes on an approval.

Division 7—Public interest immunity

56 Simplified outline—who must comply with this Division?

> This Division applies to a Commonwealth entity other than a GBE. It also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

57 Public interest immunity

(1) If:

(a) a Commonwealth entity other than a GBE that is handling litigation (a ***litigating entity***) receives a request or demand to provide documents or information in the conduct of the litigation; and

(b) that request or demand could give rise to a public interest immunity claim (***PII claim***) for which a non-corporate Commonwealth entity other than the litigating entity has administrative responsibility (the ***PII entity***);

the litigating entity must refer the decision as to whether to make the PII claim to the PII entity or the PII entity's Minister.

Note: The appropriate PII entity or Minister will vary according to the nature of the material, and more than one entity or Minister may need to be involved. The following entities are commonly involved in PII claims:

(a) the Australian Federal Police for some law enforcement matters;

(b) the Attorney-General's Department and the Australian Security Intelligence Organisation for national security matters;

(c) the Department of the Prime Minister and Cabinet for Cabinet matters (see also the Cabinet Handbook);

(d) the Department of Foreign Affairs and Trade for matters relating to relations with foreign countries.

For example, in the course of litigation about a contract with a foreign government agency, a Cabinet document relating to international relations might be identified as relevant to the proceedings. In such a case, the litigating entity must refer the document in question to the Departments of the Prime Minister and Cabinet and Foreign Affairs and Trade for decision about any PII claim that might be made.

(2) If another party in litigation is resisting a PII claim, the PII entity must take responsibility for handling that PII claim after consultation with the litigating entity.

(3) If:

(a) a disagreement arises between the PII entity and the litigating entity as to the handling of the PII claim; and

(b) the entities cannot resolve the disagreement;

either the PII entity or the litigating entity must refer the matter to the Attorney-General or OLSC.

Division 8—Reliance on limitation periods

58 Simplified outline—who must comply with this Division?

> This Division applies to:
>
> (a) a non-corporate Commonwealth entity; and
>
> (b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).
>
> These bodies are referred to as ***entities*** below.
>
> This Division also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

59 Reliance on limitation periods

Entity must generally plead limitation period defences and oppose extensions

(1) An entity must plead a defence based on the expiry of an applicable limitation period unless:
- (a) the Attorney-General gives approval for the entity not to do so; or
- (b) where the entity proposes to settle a claim—the entity:
  - (i) has obtained legal advice recommending settlement, based (among other things) on an assessment of the plaintiff's prospects of success regarding the limitation period issue; and
  - (ii) to the extent that there are perceived to be weaknesses in the plaintiff's position on that issue—takes those weaknesses into account when determining an appropriate discount to the offer of settlement.

Note: For paragraph (a), approval will normally be given only in exceptional circumstances; for example, where the Commonwealth has through its own conduct contributed to the delay in the plaintiff bringing the claim.

(2) An entity must oppose an application for an extension of a limitation period unless the Attorney-General has given approval to consent to the application.

Note: Approval will normally be given only in exceptional circumstances which would justify not pleading a limitation defence, or where it is expected that the application will succeed (in which case not consenting would be likely to result in unnecessary costs and delay).

*Meaning of **limitation period***

(3) In this section, ***limitation period*** means only the initial commencement of court proceedings where the court is exercising original jurisdiction, and not, for example:
- (a) a time limit applicable to a procedural step in litigation (such as time for filing a statement of claim or providing discovery); or
- (b) a period in which to appeal (for example, from a single Judge of the Federal Court to the Full Court of the Federal Court); or

(c) a time limit that applies to the judicial or merits review of an administrative decision.

Part 6—Settling monetary claims

Division 1—Preliminary

60 Simplified outline—who must comply with this Part?

This Part applies to:

(a) a non-corporate Commonwealth entity; and

(b) the corporate Commonwealth entities mentioned in paragraph 7(1)(a).

These bodies are referred to as ***entities*** below.

This Part also applies to accountable authorities of entities, as well as some other persons or bodies in certain circumstances: see Division 2 of Part 1.

61 Purpose of this Part

The purpose of this Part is to set out directions about settling monetary claims. This Part does not confer any power to enter into arrangements or make commitments to spend public money on settling a monetary claim. Rather, it seeks to control the circumstances in which relevant arrangements are entered into or commitments are made.

These directions also work alongside the various statutory duties to which accountable authorities are subject under the *Public Governance, Performance and Accountability Act 2013*, including the duty in paragraph 15(1)(a) to promote the proper use and management of public resources.

62 Claims in respect of which this Part applies

(1) This Part applies in respect of a monetary claim made by or against the Commonwealth or an entity, if the claim is not required to be determined under a legislative or contractual mechanism.

Note: For example, this Part would not apply in respect of the determination and payment of a Comcare benefit, the arbitration of a disputed contractual right, or an action to obtain or enforce a penalty imposed under Commonwealth legislation.

(2) This Part also applies, with appropriate modifications, in respect of a monetary claim made by or against an eligible person within the meaning of Part 9, where a decision-maker grants an approval mentioned in that Part that covers the costs of settling the claim.

Division 2—Directions about settling monetary claims

63 Settling monetary claims involving the Commonwealth or an entity

(1) An entity must not settle a monetary claim involving it or the Commonwealth except in accordance with this Part.

(2) To avoid doubt, this Part applies in addition to, and does not override, section 36 (settling claims and litigation that give rise to significant issues).

Note: Section 36 requires that, where a significant issue arises in the handling of a claim or conduct of litigation, an entity must not settle the claim or litigation without the Attorney-General's approval.

64 Criteria for settling monetary claims against the Commonwealth or an entity

(1) An entity must not settle a monetary claim brought against the Commonwealth or the entity unless the settlement is in accordance with legal principle and practice and either:

- (a) there is at least a meaningful prospect of liability being established against the Commonwealth or the entity; or
- (b) both of the following apply:
  - (i) the entity and the claimant have agreed to the claim being dismissed, discontinued, or otherwise resolved;
  - (ii) neither the Commonwealth nor the entity gives any financial commitments to the claimant, or makes any financial concessions (other than agreeing not to seek a costs order against the claimant).

(2) To avoid doubt, it is not consistent with subsection (1) for an entity to settle a clearly spurious claim merely to avoid the cost of defending it*,* unless paragraph (1)(b) could be relied on.

(3) If there is a meaningful prospect of liability, for the settlement to be in accordance with legal principle and practice, the factors that the entity must take into account in assessing a fair settlement amount include:

- (a) the prospects of the claim succeeding in court; and
- (b) the costs of continuing to defend the claim; and
- (c) any prejudice to the Commonwealth in continuing to defend the claim.

Note: For example, prejudice to the Commonwealth may include risks of disclosing confidential Commonwealth information.

Settlements not exceeding $100,000

(4) If the settlement amount for the claim together with any related claims would not exceed $100,000, the accountable authority, or their delegate, may approve the settlement if the accountable authority (or delegate) is satisfied, on a common-sense basis, that the settlement is in accordance with legal principle and practice.

Settlements exceeding $100,000

(5) If the settlement amount for the claim together with any related claims would exceed $100,000, the accountable authority, or their delegate, may approve the settlement if:

(a) the entity obtains written advice from AGS, an external legal services provider or counsel confirming that the settlement is in accordance with legal principle and practice; and

(b) the accountable authority (or delegate) agrees with the settlement.

65 Criteria for settling monetary claims commenced by the Commonwealth or an entity

(1) If an entity settles a monetary claim brought by the Commonwealth or the entity:

(a) it must do so in accordance with legal principle and practice; and

(b) it must consider that the settlement is in the interests of the Commonwealth.

(2) For the purposes of subsection (1), the factors that the entity must take into account in assessing a fair settlement amount include:

(a) the prospects of the claim succeeding in court; and

(b) the costs of continuing to pursue the claim; and

(c) any prejudice to the Commonwealth in continuing to pursue the claim.

Note: For example, prejudice to the Commonwealth may include risks of disclosing confidential Commonwealth information.

Concessions not exceeding $100,000

(3) If the settlement amount for the claim together with any related claims would involve a concession by the Commonwealth or the entity that does not exceed $100,000, the accountable authority of the entity, or their delegate, may approve the settlement if the accountable authority (or delegate) is satisfied, on a common-sense basis, that the settlement is in accordance with legal principle and practice.

Concessions exceeding $100,000

(4) If the settlement amount for the claim together with any related claims would involve a concession by the Commonwealth or the entity that exceeds $100,000, the accountable authority of the entity, or their delegate, may approve the settlement if:

(a) the entity obtains written advice from AGS, an external legal services provider or counsel confirming that the settlement is in accordance with legal principle and practice; and

(b) the accountable authority (or delegate) agrees with the settlement.

Note: In subsections (3) and (4), the value of a concession by the Commonwealth or an entity refers to the difference between the total settlement sum and the lesser of the following:

(a) the amount claimed by the Commonwealth or entity;

(b) the amount that the Commonwealth or entity’s legal representatives assess would be payable to the Commonwealth or entity if its claim were successful.

66 Exceptional circumstances—referral to OLSC

If an entity considers that a claim raises exceptional circumstances that justify a departure from section 64 or 65, it must refer the matter to OLSC.

67 Release and indemnity

(1) If an entity settles a monetary claim, it must do so on terms that include a condition that the claimant:

(a) signs a suitable release; and

(b) if appropriate—provides an indemnity against any claims by third parties arising from the event that gave rise to the settlement.

(2) Subsection (1) does not apply if:

(a) the claimant is the Commonwealth or an entity; or

(b) the entity is satisfied that exceptional circumstances apply to the monetary claim or settlement that justify settling on terms that do not include a suitable release or an indemnity.

Part 7—Engagement of Counsel

Division 1—Preliminary

68 Simplified outline—who must comply with this Part?

> This Part applies to a Commonwealth entity other than a GBE. It also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

69 Commonwealth policy on selecting and engaging counsel

> The Commonwealth's policy is to seek to rely on its position as a major purchaser of legal services in agreeing the rates payable to counsel engaged by or on behalf of the Commonwealth or a Commonwealth entity other than a GBE.
>
> Engaging entities and their legal services providers, when selecting counsel, are encouraged to consider a broad range of candidates, including:
>
> (a) women counsel; and
>
> (b) counsel who identify as LGBTIQA+; and
>
> (c) counsel who identify as First Nations; and
>
> (d) counsel who identify as culturally and linguistically diverse; and
>
> (e) counsel with disability.
>
> Subject to compliance with this Part, the choice of counsel is a matter for the engaging entity, taking into account any advice from its legal services provider.
>
> Engaging entities or their instructing solicitors should inform OLSC if they have any concerns about the operation of this Part (whether in general, or as it applies to a specific matter).

70 Engagements to which this Part applies

This Part applies to the engagement of counsel by or on behalf of a Commonwealth entity other than a GBE (an ***engaging entity***), including:

(a) engagements in respect of litigation; and

(b) briefs to advise.

Note 1: ***Litigation*** is defined in section 4 to include proceedings before courts, tribunals, inquiries, in arbitration and other alternative dispute resolution processes, and the preparation for such proceedings.

Note 2: See section 4 for the definition of ***counsel***, which:

(a) includes a legal practitioner who is engaged as counsel to provide legal services; and

(b) does not include a legal practitioner who is engaged in any other capacity to provide legal services.

Each jurisdiction has laws limiting who is entitled to engage in legal practice. In some jurisdictions, for instance, a person may be admitted as a barrister and solicitor, and may practise as both.

A reference to ***counsel*** extends to a legal practitioner who, although not from the bar, is engaged *as counsel* to conduct or advise on litigation. It does not extend, for example, to a legal practitioner who is engaged to provide advice in their capacity as a solicitor.

Division 2—Engagement of counsel

71 Content of briefs—model litigant obligation

An engaging entity must ensure that a brief to counsel in a matter to which Division 2 of Part 5 (the model litigant obligation) applies:

(a) encloses a copy of that Division; and

(b) instructs counsel to comply with it.

72 Content of briefs—rates

An engaging entity must either:

(a) mark briefs with an hourly rate up to a maximum daily rate inclusive of conferences, consultations, preparation and other necessary work; or

(b) mark a "fee on brief" (inclusive of preparation time), if it considers this more economical than paying a fee based on counsel's agreed hourly or daily rate.

73 Content of briefs—bankruptcy

(1) An engaging entity must ensure that a brief requires counsel to:

(a) warrant that they have not, at any time, become bankrupt; or

(b) if they have:

(i) inform the entity of the bankruptcy; and

(ii) inform the entity whether a professional body has made an adverse disciplinary finding about the circumstances of that bankruptcy.

(2) The entity must not, except with the Attorney-General's approval, engage counsel where:

(a) that counsel has, at any time, become bankrupt; and

(b) a professional body has made an adverse disciplinary finding about the circumstances of that bankruptcy.

74 Directions about the selection of counsel

(1) An engaging entity must ensure that:

(a) counsel are selected for their skill and competence; and

(b) the entity's process for selecting counsel takes into account the interests of the Commonwealth in securing suitable and expert counsel in a particular case, but not in a manner which results in only a narrow pool of counsel being used for any particular category of Commonwealth legal work; and

(c) the entity considers a broad range of candidates for potential engagement, including, to the extent practicable:

(i) counsel of diverse gender identity, sexual orientation, race or religion; and

(ii) counsel with disability; and

(iii) counsel who identify as First Nations.

(2) An engaging entity must ensure that, in the selection of counsel, all reasonable endeavours are made to:

(a) identify a range of counsel in the relevant practice area; and

(b) genuinely consider engaging such counsel; and

(c) regularly monitor and review its processes for engaging counsel; and

(d) select women counsel with relevant seniority, expertise and experience in the relevant practice area, with a view to women counsel accounting for:

(i) at least 40% of all the entity's briefs; and

(ii) at least 40% of the total value of all the entity's briefs.

Note: Entities are encouraged to publish annually, in a manner that does not disclose the rates paid to individual counsel, information that makes it possible to assess whether the entity is meeting the target in paragraph (2)(d).

75 Daily rates and other fees payable to counsel

Daily rate thresholds

(1) An engaging entity must not, without the Attorney-General's approval:

(a) pay senior counsel a daily rate above $5,000 (inclusive of GST); or

(b) pay junior counsel a daily rate above $3,300 (inclusive of GST);

as indexed in accordance with section 80.

Note: The indexed amounts would be published on the Attorney-General's Department's website (https://www.ag.gov.au).

Cancellation fees

(2) An engaging entity must not:

(a) pay a cancellation fee to counsel other than where:

(i) counsel has been engaged for trial; and

(ii) there are exceptional circumstances that warrant the payment of the fee; or

(b) agree to pay a cancellation fee contrary to paragraph (a).

Note: For example, there might be exceptional circumstances warranting the payment of a cancellation fee where a matter is resolved shortly before a lengthy trial.

(3) Any such fee:

(a) must be agreed at the time counsel is engaged for trial; and

(b) must not, without the Attorney-General's approval, exceed the equivalent of 2 days of counsel's agreed daily rate.

Paying retainers to counsel

(4) An engaging entity must not agree to pay a retainer to counsel concerning their availability for future matters, both new and renewed, unless:

(a) it considers this to be justified in the particular case; and

(b) the Attorney-General has approved the terms of the proposed agreement.

76 Negotiating hourly rates

When agreeing to a daily rate with counsel, an engaging entity must also negotiate an appropriate hourly rate, having regard to:

(a) the nature and complexity of the brief; and

(b) securing value for money for the entity.

77 Other matters regarding counsel fees

(1) An engaging entity must not treat the daily rates mentioned in subsection 75(1) as the standard or starting point for negotiations.

Note: In many cases, the normal market rates of counsel may be less than the threshold rates.

(2) An engaging entity must not pay counsel more than the reasonable costs of accommodation or travel, taking into account the accommodation and travel allowances for Senior Executive Service officers in the Australian Public Service.

78 Entity must give information to OLSC

An engaging entity must, upon request, give OLSC information or access to information about the engagement of all or certain counsel.

79 Seeking approvals regarding counsel rates

(1) If an engaging entity seeks an approval mentioned in section 75, it must:

(a) request that approval as far as possible in advance of the scheduled date for the delivery of a brief to counsel; and

(b) direct the request to OLSC.

(2) In deciding a request to pay counsel above a rate specified in section 75, the following factors will be taken into account:

(a) the special expertise or skill of the counsel who is proposed to be engaged;

(b) the availability of counsel generally to appear in the matter;

(c) the probable total cost of counsel's fees in the matter;

(d) the specific request of an engaging entity that a particular person be engaged and the reasons for that preference;

(e) the importance of the matter, including any special sensitivity;

(f) the normal market daily rate at which the relevant counsel is briefed.

(3) If:

(a) an engaging entity has obtained an approval to pay a daily rate in excess of a limit in subsection 75(1); and

(b) the approval describes that rate as a "one-off" rate;

the entity must, if it seeks to pay that rate to the same counsel in a subsequent case, seek a further approval in accordance with this section.

80 Indexing daily rate thresholds

(1) Starting on 1 July 2027, an amount mentioned in paragraph 75(1)(a) or (b), or such an amount as previously indexed in accordance with this section, is to be indexed on the first day of every second financial year (the ***indexation year***) by:

(a) multiplying the amount by the indexation factor for 1 June in the financial year 2 years before the indexation year; and

(b) multiplying the amount resulting from paragraph (a) by the indexation factor for 1 June in the financial year that immediately preceded the indexation year; and

(c) rounding the result to the nearest $100.

Note: The indexed amounts would be published on the Attorney-General's Department's website (https://www.ag.gov.au).

(2) The indexation factor for 1 June in a financial year is the number worked out as follows:

Method statement			
Step 1.	Add:		
		(a)	the index number for the quarter ending on 31 March in that financial year; and
		(b)	the index numbers for the 3 quarters that immediately preceded that quarter.
Step 2.	Add:		
		(a)	the index number for the quarter ending on 31 March in the immediately preceding financial year; and
		(b)	the index numbers for the 3 quarters that immediately preceded that quarter.
Step 3.	The ***indexation factor*** for 1 June in the financial year is the amount under step 1 divided by the amount under step 2.		

(3) The indexation factor is to be worked out to 3 decimal places, rounding up if the fourth decimal place is 5 or more.

(4) If the indexation factor would be less than 1, it is to be increased to 1.

81 Meaning of *index number*

(1) The ***index number*** for a quarter is the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

(2) Subject to subsection (3), if, at any time before or after the commencement of these Directions:

(a) the Australian Statistician has published or publishes an index number in respect of a quarter; and

(b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;

disregard the publication of the later index number for the purposes of this section.

(3) If, at any time before, upon or after the commencement of these Directions, the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change took place or takes place, have regard only to index numbers published in terms of the new index reference period.

Part 8—Procurement of external legal services providers

Division 1—Preliminary

82 Simplified outline—who must comply with this Part?

This Part applies to a Commonwealth entity other than a GBE. It also applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

83 Meaning of *pro bono legal work*

In these Directions, ***pro bono legal work*** has the same meaning as “pro bono legal services” in the *Australian Pro Bono Manual: A practice guide and resource kit for law firms* developed by the Australian Pro Bono Centre, as it stood at the time this instrument was made.

Note: The *Australian Pro Bono Manual: A practice guide and resource kit for law firms* was, in 2025, available on the Australian Pro Bono Centre’s website (https://www.probonocentre.org.au).

Division 2—Procurement of external legal services providers

84 Pro bono and other matters to be taken into account in selecting external legal services providers

(1) A Commonwealth entity other than a GBE must take the following matters into consideration when determining whether to engage a particular external legal services provider to undertake Commonwealth legal work:

(a) the amount and kind of pro bono legal work the provider has undertaken or will undertake;

(b) whether the provider has signed up to the National Pro Bono Target of the Australian Pro Bono Centre.

Note: Information about the National Pro Bono Target was, in 2025, available on the Australian Pro Bono Centre's website (https://www.probonocentre.org.au).

(2) Subsection (1) does not limit the matters that may be taken into consideration.

85 Obligation to provide assistance, documents and information

A Commonwealth entity other than a GBE must:

(a) provide all reasonable assistance in response to an inquiry from the Attorney-General or the Attorney-General's Department in relation to its procurement of legal services from an external legal services provider; and

(b) without limiting paragraph (a)—comply with any request for a document or information relating to its procurement of legal services from an external legal services provider, where the request is made by the Attorney-General or a person authorised by the Attorney-General for the purposes of subsection 55ZH(2) of the Act.

Part 9—Assistance to eligible Commonwealth employees and officials in legal proceedings etc

Division 1—Preliminary

86 Simplified outline—who must comply with this Part?

This Part applies to the following persons and bodies:

(a) an entity;

(b) the accountable authority of an entity;

(c) a Minister of the Commonwealth.

Entity means a non-corporate Commonwealth entity, and the corporate Commonwealth entities mentioned in paragraph 7(1)(a).

87 Purpose of this Part

This Part deals with the provision of financial assistance to certain individuals who are involved in legal proceedings, inquests or inquiries, or are responding to compulsory notices, arising out of the performance of their official roles.

This Part does not confer the power to spend or grant indemnities

Providing financial assistance will involve approving expenditure, and, potentially, granting indemnities. This Part regulates how these things are to be done, but does not confer the power to do them; that power must be found elsewhere. For instance, for a decision-maker in a non-corporate Commonwealth entity:

(a) section 23 of the *Public Governance, Performance and Accountability Act 2013* may confer the necessary authority to spend; and

(b) section 60 of that Act may confer the authority to grant an indemnity.

The purpose of this Part is to guide decision-makers in the exercise of powers to spend and grant indemnities, including by specifying:

(a) the kinds of circumstances in which they may or must not approve the provision of assistance; and

(b) the kinds of factors they must take into account when doing so; and

(c) the kinds of conditions they must consider placing on approvals.

88 Key terms

In this Part:

compulsory notice means:

(a) a subpoena; or

(b) any other notice, however described, requiring a person to provide information or documents, answer questions, or give evidence.

eligible person: if this Part applies in respect of a request by an individual as a result of section 89, that individual is an ***eligible person***.

entity to which this Part applies, in relation to an individual who makes a request for financial assistance, means:

(a) an entity; or

(b) a Commonwealth agency other than an entity, if that agency (or the part of the agency to which the individual's duties related) had become an entity (or part of thereof) by the time the request for assistance was made.

grant an approval means approve the provision of financial assistance mentioned in section 89.

official has the meaning given by section 13 of the *Public Governance, Performance and Accountability Act 2013.*

proceeding to which this Part applies means:

(a) a civil or criminal proceeding (including a potential proceeding); or

(b) an inquest or inquiry; or

(c) responding to a compulsory notice.

responsible entity means the person or body with responsibility for assistance sought by, or provided to, an eligible person.

Note: In most cases, the responsible entity for an eligible person will be the Commonwealth.

statutory office-holder has the meaning given by subsection 14(3) of the *Public Service Act 1999.*

89 Requests to which this Part applies

This Part applies to a request by an individual for financial assistance if:

(a) the request relates to a proceeding to which this Part applies; and

(b) the individual, at the time of the event or occurrence that gave rise to the proceeding:

(i) was employed by a Minister on behalf of the Commonwealth as a member of the Minister's staff under the *Members of Parliament (Staff) Act 1984*; or

(ii) was employed in an entity to which this Part applies; or

(iii) was an accountable authority or member of an accountable authority of an entity to which this Part applies; or

(iv) was a statutory office-holder who was an official of an entity to which this Part applies; and

(c) the proceeding arose out of, or in connection with, the individual's performance (or non-performance) of the role mentioned in paragraph (b).

Note: For paragraph (c), for a person who is employed by a Minister on behalf of the Commonwealth as a member of the Minister's staff under the *Members of Parliament (Staff) Act 1984,* the person's role refers to their duties assisting the Minister in performing ministerial duties.

90 Matters outside the scope of this Part

Requests under particular legislation or schemes

(1) This Part does not apply to financial assistance under:

(a) section 73 of the *Public Service Act 1999;* or

(b) the Special Circumstances Scheme administered by the Attorney-General's Department; or

(c) other similar schemes.

Note 1: Section 73 of the *Public Service Act 1999* enables the Public Service Minister to authorise the making of payments to a person if the Minister considers it appropriate to do so because of special circumstances that relate to, or arise out of:

(a) the payee's employment by the Commonwealth; or

(b) another person's employment by the Commonwealth.

This may, for example, permit the reimbursement of certain legal costs incurred by employees.

Note 2: The Special Circumstances Scheme deals with the provision of financial assistance to employees for legal costs and related expenses in various circumstances where no other scheme is available. Funding in respect of proceedings brought by or against the employee may be provided, in accordance with the criteria specified in the guidelines for the Scheme. In 2025, information about the scheme was available on the Attorney-General's Department's website (https://www.ag.gov.au).

Types of challenges and proceedings

(2) This Part does not apply to a request for financial assistance in respect of:

(a) an administrative law challenge that does not include a claim for damages; or

(b) a disciplinary proceeding against an eligible person that is initiated by, or on behalf of, the responsible entity.

Note: For paragraph (a), the costs of defending administrative law challenges are paid by the Commonwealth. However, where an administrative law challenge is coupled with a damages claim, this Part may apply in respect of the damages claim.

Division 2—Who is the decision-maker?

91 Decision-maker

Decision-maker needs the power to grant the underlying approvals

(1) The person who decides a request for assistance (the ***decision-maker***) must be a person who holds the power to approve any expenditure and grant any indemnities necessary to provide that assistance.

Note: Providing legal assistance involves approving expenditure, and, in some cases, granting indemnities. It will be necessary to consider who has the power elsewhere at law to do these things in each case.

For a non-corporate Commonwealth entity, the authority to spend may stem from the executive power. This might be exercised by the accountable authority (see, for example, section 23 of the *Public Governance, Performance and Accountability Act 2013*), or, in some instances, a Minister in the relevant portfolio.

For a non-corporate Commonwealth entity, the authority to approve indemnities might be found in section 60 of the *Public Governance, Performance and Accountability Act 2013* (which is held by the Finance Minister, but may be delegated to certain persons under section 107 of that Act).

Decision-maker is usually the accountable authority or Minister

(2) Unless subsection (1) requires otherwise, the decision-maker must be the following person:

(a) for requests involving a current or former employee, or a former statutory office-holder or accountable authority of an entity—the current accountable authority of the relevant entity;

(b) for a current statutory office-holder or accountable authority—a Minister in the relevant portfolio;

(c) for an employee mentioned in subparagraph 89(b)(i)—the Minister with responsibility for the *Members of Parliament (Staff) Act 1984*, subject to the condition that the Minister must consult with the Attorney-General before making a decision.

Substitute when ordinary decision-maker cannot act

(3) If the decision-maker mentioned in subsection (2):

(a) has a conflict of interest; or

(b) would not be an appropriate person to consider a particular request for any other reason; or

(c) does not have the power to approve the relevant expenditure or grant the relevant indemnity (see subsection (1));

the responsible entity must refer the request to a person mentioned in subsection (4).

(4) Where subsection (3) applies, then, subject to subsection (1), the request must be referred to:

(a) a relevant portfolio Minister, if the decision-maker would otherwise have been an accountable authority; or

(b) the Attorney-General or a person chosen by the Attorney-General, if the decision-maker would otherwise have been a Minister.

Note: So far as possible, requests should be considered in a timely and responsive manner. While it may be necessary to seek further information from an applicant or defer a decision on assistance, decision-makers and responsible entities should use their best endeavours to provide certainty to individuals about the status and outcome of requests for assistance.

Division 3—General rules: when approvals must not be granted

92 Cases in which decision-maker must not grant approval

A decision-maker must not grant an approval in respect of the following:

(a) activities undertaken by an individual for a corporate Commonwealth entity or Commonwealth company, to the extent that the individual is indemnified or insured by the entity or company in respect of those activities;

(b) a defamation proceeding commenced by an eligible person;

(c) an action commenced by an eligible person relating to alleged defamation, including assistance to uphold the person's reputation, to challenge comments damaging to their reputation, or to obtain an apology;

(d) a legal proceeding in respect of an event (for instance, a motor vehicle accident) for which an eligible person has, or ought to have had, insurance coverage.

Note: For paragraphs (b) and (c), an approval must not be granted even if the employee offers to pay the responsible entity any damages they may receive.

93 Cases in which decision-maker needs Attorney-General's approval—challenges to validity or conduct of inquiries

A decision-maker must not grant an approval for a challenge to the validity or conduct of an inquiry without the Attorney-General's approval.

Note: Applications for the Attorney-General's approval should, in the first instance, be made to OLSC.

Division 4—General rules: what financial assistance may be granted?

94 Types of costs that may be approved

(1) An approval may only cover costs of the following kinds:

(a) the costs of an eligible person's legal representation in connection with:

(i) the proceedings, inquest or inquiry; or

(ii) responding to the compulsory notice;

(b) other costs (such as travel costs) related to the person's involvement in the proceedings, inquest or inquiry, or to the process of responding to the compulsory notice;

(c) the amount of any award of costs against the person;

(d) an amount payable by the person in settlement of proceedings;

(e) the amount of any damages awarded against, or fines or penalties imposed on, the person.

Note: Of the types of assistance mentioned in this subsection, paragraph (1)(e) is most likely to involve the grant of an indemnity (to which, for a non-corporate Commonwealth entity, section 60 of the *Public Governance, Performance and Accountability Act 2013* may be relevant).

(2) An approval does not apply to an appeal, or consideration of a possible appeal, unless expressly stated in the approval.

95 Amount of assistance that may be approved

(1) For costs mentioned in paragraphs 94(1)(a) to (d), a decision-maker may only grant an approval to pay an amount that is reasonable, having regard to the nature of the proceedings, inquest, inquiry or compulsory notice in question.

(2) When granting an approval that covers the costs of an eligible person's legal representation, the decision-maker must ensure that any costs approved for counsel fees are consistent with Part 7 (engagement of counsel).

Note: For instance, the amount approved must not be premised on counsel being paid a daily rate that would exceed the caps in section 75 without the Attorney-General's approval.

Division 5—The decision-making process: considerations relevant to grant of approvals

96 Granting approvals—the primary consideration

Provision of assistance is of some benefit to the responsible entity

(1) In deciding whether to grant an approval, the decision-maker must take into account, as the primary consideration, that the provision of financial assistance would be of some benefit to the responsible entity.

Circumstances in which there would usually be a relevant benefit

(2) The provision of financial assistance would generally be of some benefit to the responsible entity where it would protect:
- (a) the entity's financial interests (in particular, its interest in avoiding or limiting any vicarious liability); or
- (b) the entity's general interests (in particular, its interest in acting properly as an employer in supporting individuals who have acted reasonably and responsibly).

Circumstances in which there would usually not be a relevant benefit

(3) The provision of financial assistance would generally not be of some benefit to the responsible entity where it is likely that, if an action were to be brought against the entity in relation to the event or occurrence that gave rise to the proceeding to which this Part applies, the entity would seek a contribution or indemnity from the individual in question.

Note: Subsection (3) would be relevant where, for example, the individual's conduct involved serious or wilful misconduct or culpable negligence.

97 Refusing an application where the eligible person failed to give notice in reasonable time

A decision-maker must consider refusing to grant an approval where:
- (a) the eligible person failed to notify the responsible entity of the proceeding, inquest, inquiry or compulsory notice within a reasonable time of becoming aware of it; and
- (b) the delay may prejudice the entity's position.

Division 6—The decision-making process: deferral, conditions and consultation

98 Deferral of approvals

(1) A decision-maker must consider whether it is appropriate, in the circumstances, to defer all or part of a decision to grant an approval.

Note: For instance, deferral may be appropriate where the decision-maker does not have enough information to give the request proper consideration, or to be satisfied that granting an approval would be consistent with this Part, but has reason to believe that the necessary information will become available in due course.

(2) Where a request relates to criminal proceedings, the decision-maker must, unless they consider this inappropriate in the circumstances, defer the decision as to whether to grant an approval to the eligible person for any damages, fines, penalties or costs awarded against them until the proceedings are concluded.

Parties must have separate representation while decision deferred

(3) Where:

(a) a decision is wholly or partly deferred; and

(b) the responsible entity is or becomes a party to the proceedings, inquest, inquiry or the matter giving rise to the compulsory notice in question;

the entity must not, during the deferral period, have the same legal representation as the eligible person.

99 Placing conditions on approvals

(1) A decision-maker must consider whether it is appropriate, in the circumstances, to place conditions on an approval.

Note: This will be subject to the decision-maker having the power elsewhere at law to place such conditions on the approval (for instance, through an agreement with the eligible person entered pursuant to section 23 of the *Public Governance, Performance and Accountability Act 2013,* or as part of a statutory power to grant an indemnity).

Condition relating to consultation

(2) A decision-maker must, where appropriate, place a condition on an approval that requires the eligible person to consult the responsible entity about the disclosure or non-disclosure of official documents or information in relation to the proceeding to which this Part applies.

Conditions relating to compliance with Part 6

(3) A decision-maker must ensure that the conditions of an approval enable the entity to comply with its obligations under Part 6.

Note: Part 6 (settling monetary claims) applies, with modified effect, where a decision-maker grants an approval that covers the costs of settling a claim brought by or against the eligible person (see subsection 62(2)).

Conditions relating to compliance with Part 7

(4) Where a decision-maker proposes to grant an approval that would cover the costs of an eligible person's legal representation, they must consider placing conditions on the approval that would assist the responsible entity to comply with section 106.

Note: Section 106 provides that the responsible entity must use its best endeavours to ensure that counsel for the eligible person are engaged in accordance with Part 7 (engagement of counsel).

100 Conditions on approvals for certain costs—civil proceedings

A decision-maker must not grant an approval that involves agreeing to pay:

(a) any costs or damages payable by an eligible person to another party in civil proceedings; or

(b) the costs of settling a civil claim;

unless the person agrees that:

(c) their defence will be controlled by the responsible entity; and

(d) they will provide all assistance that entity requires them to provide in the conduct of the defence; and

(e) where the entity is or becomes a party to the proceedings—the person will be represented by the same solicitors engaged to represent the entity.

Note: Paragraph (e) is intended to reduce legal costs and assist in the proper conduct of the proceedings. The agreement required under paragraphs (c) and (d) will prevent a conflict of interest from arising.

101 Conditions that must not be placed on approval—criminal proceedings

If a decision-maker grants an approval that involves agreeing to pay:

(a) costs awarded against an eligible person in criminal proceedings; or

(b) any penalty payable by the person as a result of those proceedings;

that approval must not be subject to a condition that the person agree to their defence being controlled by the responsible entity.

Note: This does not affect the other sections of this Part. For instance, the decision-maker may still only grant an approval to pay an amount that is reasonable, in accordance with subsection 95(1), and must, unless they consider this inappropriate in the circumstances, defer the decision as to whether to approve assistance to cover the cost of any damages, fines, penalties or costs awarded against them until the proceedings are concluded (see subsection 98(2)).

102 Consultation with OLSC in sensitive cases

A decision-maker must consult with OLSC before deciding whether to grant an approval where the decision-maker considers that the request in question raises sensitive legal, political or policy issues.

103 Seeking exemption from requirements of this Part—exceptional circumstances

Where a decision-maker considers that a request raises exceptional circumstances that would justify a departure from the requirements of this Part, the decision-maker must refer the matter to OLSC.

Note: OLSC might refer the matter to the Attorney-General to consider whether to grant an exemption under section 8 from one or more provisions of this Part.

Division 7—Obligations where assistance has been approved

104 Entity must monitor costs on an ongoing basis

Where a decision-maker has granted an approval, the responsible entity must monitor the conduct of the matter to ensure that the following remain within reasonable limits:

(a) the costs mentioned in paragraphs 94(1)(a) to (d), so far as they are covered by the approval;

(b) the responsible entity's potential exposure to liability under the approval.

Note: The decision-maker may wish to consider whether it is appropriate to seek legal advice on whether a particular payment would be reasonable.

In particular, this may be desirable to ensure that payments for an eligible person's legal representation are reasonable in the circumstances. Obtaining legal advice in appropriate cases may be consistent with an accountable authority's duty to govern their entity in a way that promotes the proper use and management of public resources (see section 15 of the *Public Governance, Performance and Accountability Act 2013*).

105 Refusing to pay assistance where condition not followed

Where a decision-maker has granted an approval, but the eligible person does not comply with a condition on that approval, the person administering the relevant arrangement with the employee must consider whether to refuse to make further payments under that arrangement.

106 Ensuring that counsel are engaged in accordance with Part 7

Where a decision-maker grants an approval that covers the costs of an eligible person's legal representation, the responsible entity must use its best endeavours to ensure that counsel for the eligible person are engaged in accordance with Part 7 (engagement of counsel).

107 Compliance with model litigant obligation

(1) This section applies where a decision-maker grants an approval that covers:

(a) the costs of an eligible person's legal representation; and

(b) at least one other type of cost that may be approved in accordance with this Part (see subsection 94(1)).

(2) The responsible entity must use its best endeavours to ensure that the relevant claim or litigation is handled in accordance with Division 2 of Part 5 (model litigant obligation) as if the claim or litigation had been brought by or against the entity.

Part 10—Entity responsibility and compliance

Division 1—Responsibilities of accountable authorities

Subdivision 1—Preliminary

108 Simplified outline—who must comply with this Division?

> Sections 109 and 110 apply to:
>
> (a) the accountable authority of a non-corporate Commonwealth entity; and
>
> (b) an accountable authority of a corporate Commonwealth entity mentioned in paragraph 7(1)(a).
>
> These corporate and non-corporate Commonwealth entities are referred to as ***entities*** below. Section 111 applies to the entity itself.
>
> Section 112 applies to the accountable authority of a corporate Commonwealth entity other than a GBE or an entity mentioned in paragraph 7(1)(a).
>
> Further, this Division applies to some other persons or bodies in certain circumstances: see Division 2 of Part 1.

Subdivision 2—Responsibilities of entities and their accountable authorities

109 Responsibilities of accountable authority—compliance with directions and related matters

(1) The accountable authority of an entity must ensure that:

(a) the entity's arrangements for legal services, especially any litigation for which the entity is responsible, are handled efficiently and effectively; and

(b) the entity has appropriate management strategies and practices to achieve compliance with these Directions; and

(c) the entity's legal services expenditure is appropriately recorded and monitored; and

(d) by 30 October each year, the entity makes records of its legal services expenditure for the previous financial year publicly available; and

(e) upon publishing the records mentioned in paragraph (d), the entity notifies OLSC of where it can find that information; and

(f) legal services providers and counsel providing legal services to the entity:

(i) are aware of these Directions; and

(ii) are required to assist in ensuring that the entity complies with them; and

(iii) are—through contractual arrangements, where possible—required to comply with these Directions; and

(g) the entity gives reports as soon as practicable to the Attorney-General or OLSC about any:
   (i) possible, alleged or apparent non-compliance with these Directions by the entity of which it is aware; and
   (ii) corrective steps that have been taken, or are proposed to be taken, by the entity; and
(h) the entity reports to OLSC about the entity's legal services expenditure and legal work, using a template approved by OLSC that specifies the matters to be reported, within 60 days after the end of each financial year; and
(i) the entity promptly raises any matters required to be approved by the Attorney-General; and
(j) the entity promptly notifies the Attorney-General or OLSC of any matters of which they are required to be informed.

Note 1: ***Legal services expenditure*** is defined in section 4 to capture both internal and external legal expenditure. It includes expenditure on counsel, and on legal services obtained from a government legal services provider.

Note 2: The protection that is to be given to classified material is set out in the *Protective Security Policy Framework* (PSPF). It is advisable that the entity's contracts with legal services providers require the providers to maintain an appropriate level of security for classified material (including electronic material) that comes into their possession, as well as material that is subsequently provided by the legal services provider to a third party, in the course of providing services to the entity. Any questions about the requirements of the PSPF can be made using the contact details provided on the Protective Security Policy Framework website, which, in 2025, was https://www.protectivesecurity.gov.au.

(2) The accountable authority must give OLSC, within 60 days after the end of each financial year, a certificate setting out the extent to which the accountable authority believes the entity has complied with these Directions.

(3) A certificate mentioned in subsection (2) should:
(a) give details of any apparent or possible non-compliance with these Directions not previously reported to OLSC; and
(b) give details of actions taken to address the causes of any non-compliance with these Directions during the financial year; and
(c) give details of the following aspects of the entity's use of persons appointed by the Attorney-General under section 63 of the Act to receive service in proceedings to which the Commonwealth is a party:
   (i) the names of appointed persons who have received service;
   (ii) the title of proceedings in which appointed persons have received service;
   (iii) the issues raised in proceedings in which appointed persons have received service;
   (iv) the nature of each document served on an appointed person and the date on which it was served;
   (v) the date on which the entity or OLSC was advised of the receipt of service of each document by the appointed person;
   (vi) any other information requested by OLSC; and
(d) set out any other information relevant to the entity's compliance with these Directions.

110 Responsibilities of accountable authority—pro bono work by legal services providers

Pro bono work by legal services providers

(1) The accountable authority of an entity must ensure that the entity, when selecting and retaining legal services providers, does not adversely discriminate against providers that have acted, or may act, pro bono for clients in legal proceedings against the Commonwealth or Commonwealth agencies.

Matters that raise a conflict of interest

(2) Subsection (1) does not apply if, were a legal services provider to be selected or retained by the entity, an actual conflict of interest would arise between the provider and the entity because of the provider's pro bono work.

(3) For subsection (2), circumstances in which an actual conflict of interest would arise include the following:

- (a) if a legal services provider already acts for the Commonwealth or a Commonwealth agency in legal proceedings and accepts a request to act pro bono in those proceedings for another client;
- (b) if a legal services provider has, because it has previously provided legal services to the Commonwealth or a Commonwealth agency, confidential information about the Commonwealth or a Commonwealth agency that would make it unreasonable for the provider to act pro bono for another client against the Commonwealth or Commonwealth agency.

111 Third parties

(1) An entity, when entering into a contract with a third party that includes a right of subrogation in favour of the third party, must use its best endeavours to ensure that the contract includes a provision requiring the third party and its agents:

- (a) to comply with Division 2 of Part 5 (the model litigant obligation) when undertaking that litigation on behalf of the Commonwealth or the entity; and
- (b) to consult with the entity if any matters relevant to Part 2 (tied areas of Commonwealth legal work) and Division 2 of Part 3 (sharing advice within Government) arise in the course of undertaking that litigation on behalf of the Commonwealth or the entity.

(2) The operation of these Directions extends to any legal services which the entity has the ability to control as a result of an indemnity given to, or an arrangement made with, another body or person.

Subdivision 3—Accountable authorities of certain corporate Commonwealth entities

112 Responsibilities of accountable authority of certain corporate Commonwealth entities

(1) This section applies to the accountable authority of a corporate Commonwealth entity other than a GBE or an entity mentioned in paragraph 7(1)(a) (the ***CCE***).

Responsibilities of accountable authority—pro bono work by legal services providers

(2) The accountable authority must comply with section 110 (pro bono work by legal services providers) in respect of the CCE.

Responsibilities of accountable authority—reporting to OLSC

(3) The accountable authority must ensure that the CCE reports to OLSC about its legal services expenditure and legal work, using a template approved by OLSC that specifies the matters to be reported, within 60 days after the end of each financial year.

(4) The accountable authority must give OLSC, within 60 days after the end of each financial year, a certificate setting out details of the following aspects of the CCE's use of persons appointed by the Attorney-General under section 63 of the Act to receive service in proceedings to which the Commonwealth is a party:

(a) the names of appointed persons who have received service;

(b) the title of proceedings in which appointed persons have received service;

(c) the issues raised in proceedings in which appointed persons have received service;

(d) the nature of each document served on an appointed person and the date on which it was served;

(e) the date on which the CCE or OLSC was advised of the receipt of service of each document by the appointed person; and

(f) any other information requested by OLSC.

Division 2—Addressing non-compliance with these Directions

113 Simplified outline—who must comply with this Division?

> Section 114 applies to a Commonwealth agency. It can also apply to some other persons or bodies in certain circumstances: see Division 2 of Part 1.
>
> Section 115 applies to any person or body.

114 Contractual provisions regarding penalties for non-compliance with these Directions

A Commonwealth agency must ensure that each contract it enters for legal services provides for the imposition of appropriate penalties in the event of a failure to comply with these Directions to which the legal services provider has contributed, including the termination of the contract in an appropriate case.

Note: ***Commonwealth agency*** is defined in section 4 to mean a non-corporate Commonwealth entity, a corporate Commonwealth entity or a Commonwealth company.

115 Issuing instructions in relation to non-compliance

Where a person or body does not comply with these Directions, the person or body must comply with any instructions given by the Attorney-General in relation to that non-compliance.

Part 11—Obligations of persons appointed under section 63 of the Act

116 Obligations of persons appointed under section 63 of the Act to receive service

(1) A person or body who is:

(a) mentioned in section 55ZG(1) of the Act; and

(b) appointed by the Attorney-General under section 63 of the Act to receive service;

must report to the Commonwealth agency responsible for managing the suit mentioned in that section:

(c) by close of business on the next business day after they have received service; and

(d) using a template approved by OLSC that specifies the matters to be reported.

(2) If it is not clear which Commonwealth agency the person must report to under subsection (1) in a particular case, the person must report to OLSC using the template mentioned in paragraph (1)(d).

Note: Section 63 relevantly provides that, where the Commonwealth is a Party to a suit, all process in the suit required to be served upon the Commonwealth shall be served upon the Attorney-General, or upon some person appointed by the Attorney-General to receive service.

Part 12—Application, transitional and savings provisions

117 Decisions and instruments made before commencement

(1) A decision or instrument (however described) that was in force under a provision of the *Legal Services Directions 2017* immediately before the repeal of those directions is to be treated, on and after the commencement of these Directions, as if it were a decision or instrument made under the corresponding provision of these Directions.

(2) Without limiting subsection (1), this section extends to the following things made, issued, given or imposed under the *Legal Services Directions 2017*:

(a) an exemption;

(b) an agreement, approval or permission, and the conditions (if any) upon it;

(c) an instruction;

(d) guidelines.

118 Processes begun before commencement

A process that:

(a) was begun under a provision of the *Legal Services Directions 2017* before its repeal; and

(b) was not completed by the commencement of these Directions;

is to be treated, on and after that commencement, as if it had been begun under the corresponding provision of these Directions.

Note: Examples of such processes include consulting a Minister or entity, or referring a decision to a Minister.

119 Obligations incurred before commencement

If:

(a) before the repeal of the *Legal Services Directions 2017*, something occurred that required action to be taken under a provision of those directions; and

(b) the action had not been taken before the commencement of these Directions;

then the action must be taken under the corresponding provision of these Directions.

Note: Examples of such actions include reporting, giving notice of, or seeking approval of matters.

120 Financial years

Unless indicated otherwise, a reference in these Directions to a financial year is to be treated, on and after the commencement of these Directions, as a reference to any financial year that ends after commencement.

121 Non-compliance with the *Legal Services Directions 2017*

Section 115 applies with appropriate modifications in relation to non-compliance with the *Legal Services Directions 2017* that occurred before the repeal of those directions.

122 References to the *Legal Services Directions 2005* or the *Legal Services Directions 2017*

A reference to the *Legal Services Directions 2005* or the *Legal Services Directions 2017* in an instrument or document that is in force on or after the commencement of these Directions is to be treated, on and after that time, as a reference to these Directions.

Schedule 1—Summary of application of these Directions

Note: This Schedule sets out an overarching summary of how these Directions apply. It is not a complete statement of the persons and bodies who are subject to these Directions: see Division 2 of Part 1. In the case of an inconsistency between this Schedule and a direction mentioned in column 2 of the table below, the direction prevails.

Which persons or bodies are bound by which directions

	Column 1 Person or body	**Column 2** Direction
1	The following: (a) a non-corporate Commonwealth entity; (b) a corporate Commonwealth entity mentioned in paragraph 7(1)(a).	The whole of this instrument, other than: (a) Division 4 of Part 5; and (b) sections 112 and 116.
2	Any other corporate Commonwealth entity that is not a GBE	The following: (a) subsection 15(2); (b) Division 2 of Part 5; (c) Division 4 of Part 5; (d) section 53; (e) Division 7 of Part 5; (f) Part 7; (g) Part 8; (h) sections 112, 114 and 115.
3	A Commonwealth company other than a GBE	The following: (a) subsection 15(2); (b) section 53; (c) sections 114 and 115.
4	A GBE	The following: (a) subsection 15(2); (b) section 53; (c) sections 114 and 115.
5	A person or body who is: (a) mentioned in subsection 55ZG(1) of the Act; and (b) appointed by the Attorney-General under section 63 of the Act to receive service.	Sections 115 and 116.

Note: For items 1 and 2, some of the provisions listed in column 2 apply to the accountable authority of the entity as well as, or instead of, the entity itself.

For example, for item 1, see sections 109 and 110; for item 2, see section 112.

Schedule 2—Repeals

Legal Services Directions 2017

1 The whole of the instrument

Repeal the instrument.