

PS LA 1998/1 - Law Administration Practice Statements

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Practice Statement Law Administration

PS LA 1998/1

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation. It must be followed by Tax Office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax Office staff must follow their business line's escalation process.

SUBJECT: Law Administration Practice Statements

PURPOSE: To explain:

- what Law Administration Practice Statements are
 - that it is mandatory for staff to search for and follow Law Administration Practice Statements relevant to the tasks they are performing
 - the different classifications of Law Administration Practice Statements
 - the processes by which Law Administration Practice Statements are developed
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STATEMENT

Purpose of Law Administration Practice Statements

1. Law Administration Practice Statements (LAPS) provide direction and assistance to staff on the approaches to be taken in performing duties involving the application of the laws administered by the Commissioner – usually referred to as ‘technical’ work. LAPS can supplement public rulings and are not intended to provide interpretative advice, but technical issues may be discussed in LAPS in the course of providing directions to staff.
2. For Tax Office staff, LAPS supersede office minutes previously issued for the purpose described in paragraph 1 of this practice statement. Directions to staff on the approaches to be taken in performing duties involving the application of laws administered by the Commissioner should be issued in the form of a LAPS. Office minutes are not to be prepared for this purpose.
3. The types of issues that may be addressed in a LAPS include, but are not limited to:
 - the steps to be taken after a Tribunal or Court decision
 - processes or procedures for identifying and resolving significant issues, including Priority Technical Issues
 - work practices to be adopted, for example referral processes within a business line, and
 - practices to be followed in the practical application and administration of the tax laws.
4. Although LAPS are intended to outline the approaches to be taken in performing duties involving the application of the laws administered by the Commissioner, instructions to staff on how the Tax Office as an entity complies with its own obligations under taxation or other laws must be published as a Corporate Management Practice Statement (as outlined in PS CM 2003/01).
5. Staff should be aware a LAPS does not express a precedential ATO view. Law Administration Practice Statement PS LA 2003/3 and the Schedule of documents containing precedential ATO views list all documents considered to be precedential ATO views. Law administration practice statements are not included in these lists.

Compliance with LAPS

6. It is **mandatory** for staff to search for and follow LAPS relevant to the tasks they are performing. Failure to follow a relevant LAPS can result in disciplinary action (refer to subsections 13(5) and 15(1) of the *Public Service Act 1999*).

7. The only authoritative copy of any particular LAPS is the electronic copy of that LAPS contained on ATOLaw. Staff should not rely on paper copies of LAPS as these may be outdated.
8. Where an officer considers that the application of a particular LAPS produces an unintended consequence or considers it incorrect, the officer must escalate the matter using their relevant business line escalation process.

Citing LAPS

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

Currency of LAPS

11. Each LAPS is 'owned' by a business line. It is the responsibility of that business line to maintain the currency of the LAPS. A business line owns a LAPS if the underlying risk that the LAPS is addressing or the process it is outlining is sponsored by the business line.
12. Tax Office staff are encouraged to advise the Priority and Technical Issues (PTI) and Public Rulings Branch of any LAPS that may need to be updated or withdrawn via an email to the Tax Office email address 'Practice Statements'.
13. LAPS that are redundant will be withdrawn but will remain on ATOLaw. Withdrawn LAPS will be annotated and dated accordingly. Where appropriate, another LAPS or another form of instruction or advice should replace the withdrawn LAPS as soon as practicable.
14. Where a LAPS needs to be updated the LAPS will, depending on the extent of the changes necessary, either be withdrawn and reissued, or suitably annotated.

Freedom of Information (FOI) Status

15. The FOI status of a LAPS (that is, 'may be released' or 'not to be released') is determined at the time the LAPS is issued and is indicated at the top of the document. Most LAPS are expected to be released publicly.

Availability of LAPS within the Tax Office

16. Once cleared in accordance with the provisions of this practice statement, a LAPS will be placed on ATOLaw for access by Tax Office staff. Details of published LAPS are also available from the Law Administration Practice Statements home page on the Intranet.
17. On ATOLaw, Tax Office staff may access LAPS through the index, or conduct searches for LAPS. LAPS are cross-referenced, where relevant, by subject references, legislative references, related public rulings, related practice statements and case references.

Availability of LAPS to the public

18. LAPS are written principally for Tax Office staff. However, LAPS may also serve to promulgate Tax Office administrative practices to tax professionals and others. Recognising this, and in the interest of open tax administration, those LAPS with FOI status 'may be released' are available to the public via the Legal Database on the Tax Office external website – <http://www.ato.gov.au>.

Level of protection available to taxpayers who rely on LAPS

19. Although LAPS provide direction and assistance to tax office staff, they are published and approved for taxpayers to rely on them in the same way as other publications that are not rulings can be relied upon. A taxpayer who relies on a LAPS will remain liable for any tax shortfall if the LAPS is incorrect, or is misleading and the taxpayer makes a mistake as a result. However, they will be protected against any shortfall penalty that would otherwise arise. In addition, they will be protected against interest charges on the shortfall if the LAPS was reasonably relied on in good faith¹.

Administration of LAPS

20. The process for managing LAPS is administered by the PTI and Public Rulings Branch within the Law and Practice business line. Administration includes:
 - reviews, maintenance and publication of the list of LAPS in progress
 - monitoring the progress of the preparation of LAPS
 - provision of educative and editorial support to sponsors and authors
 - quality assurance, including consistency of format, content and style
 - assuring conformance with the requirements of this practice statement
 - arranging for publication of cleared LAPS, and
 - periodically initiating a review by business lines with a view to updating or withdrawing any outdated LAPS.

¹ See Law Administration Practice Statement PS LA 2008/3 Provision of Advice and Guidance by the Tax Office.

Classification of LAPS

21. LAPS are classified into three categories:
 - Process LAPS – covering matters of process
 - Technical LAPS – covering technical issues, and
 - General administration LAPS – outlining an exercise of the Commissioner's powers of general administration. These LAPS are issued and numbered separately as the General Administration (GA) series.
22. Process LAPS are those that relate to the infrastructure that support the administration of the law, such as this one. They deal with work practices and procedures which enable the law to be administered but do not relate to the administration of particular provisions. For example, LAPS outlining procedures for referring certain types of cases to a particular functional area of the Tax Office, or outlining the role of a particular advisory panel would fall into the category of process LAPS.
23. Technical LAPS are those that outline work practices or provide guidelines for staff in relation to the administration of particular provisions of the law. For example, LAPS outlining guidelines for the exercise of a penalty or interest discretion or outlining how a particular section is administered would fall into the category of technical LAPS. However, as stated in paragraph 1 of this practice statement, they should not provide interpretative advice. If interpretative advice is required to resolve a priority technical issue, that advice should be contained in a ruling or other advice publication.
24. Some LAPS will necessarily cover a combination of both process and technical matters. In these situations, the LAPS will generally be classified according to the major category of work that is covered, and may follow a form of hybrid approval process. Paragraphs 40 - 42 of this practice statement provide further detail on this.
25. General Administration LAPS (LAPS (GA)) provide an explanation of the exercise of the Commissioner's powers of general administration in relation to a particular area of the law. Paragraphs 27 to 32 of this practice statement provide more detail on LAPS (GA).
26. A pre-condition for technical LAPS and LAPS (GA) is that they must involve a priority technical issue, as determined by PS LA 2003/10, and have been identified as part of the resolution strategy for that issue.

LAPS (GA)

27. The general administration series of LAPS began on 15 April 2004. These practice statements derive their authority from the Commissioner's powers of general administration as set out in the various Acts administered by him, for example section 8 of the *Income Tax Assessment Act 1936*.
28. LAPS (GA) focus on practical administration of the tax system. They aim to help reduce compliance costs for taxpayers within a framework that demonstrates the Tax Office's accountability for its decisions. They are not intended to remedy defects or omissions in the law. They offer practical compliance solutions in situations where a strict interpretation of the law may lead to unsatisfactory compliance outcomes.

29. The Commissioner's powers of general administration enable the Commissioner to administer the taxation laws as the Parliament intended. The boundaries of the powers of general administration are not constant; they shift depending on the focus of administration at any given time. Judicial discussion of the general administration powers establishes that the courts accept that these provisions reinforce the principle that the Commissioner is authorised to do whatever may be fairly regarded as incidental to, or consequential upon, the things that the Commissioner is authorised to do by the tax laws. However, the powers of general administration do not authorise the Commissioner to administer the taxation laws inconsistently with their purpose or object, whether express or implied, or their plain meaning. More information on the Commissioner's powers of general administration, and the exercise of those powers, can be found in: paragraphs 2.2.9 to 2.2.21 and 2.10.2 to 2.10.9 of the *Delegations and Authorisations Manual*; Appendix B to the Law Administration Practice Statement PS LA 2009/4 Escalating a proposal requiring the exercise of the Commissioner's powers of general administration; and the Administration, Business and Personal Taxes Centre of Expertise (AB&PT CoE) intranet site.
30. When announcing the new series former Commissioner Michael Carmody noted that in an area as expansive as tax law, it was difficult to contemplate fully the practicality of administration for all types of taxpayers, particularly in an environment of prescriptive law. The former Commissioner also noted that he had a responsibility to apply resources in an efficient, effective and ethical way under section 44 of the *Financial Management and Accountability Act 1997*, while taking a purposive approach to interpretation of the law as reflected in section 15AA of the *Acts Interpretation Act 1901*. The full text of the former Commissioner's speech on 15 April 2004 can be accessed through the link provided in the references section at the conclusion of this practice statement. The full text of an additional speech by then Second Commissioner Michael D'Ascenzo² in May 2004 which also discussed general administration practice statements can also be accessed through the link provided in the references section.

When is it appropriate to prepare a LAPS (GA)?

31. In assessing whether a LAPS (GA) is an appropriate response to a particular issue of administration, a number of relevant criteria have been established which demonstrate the balancing of factors that need to be taken into account in achieving sensible administration. These criteria are:
- the compliance approach must be consistent with the achievement of the policy intent of the legislation
 - the approach must achieve substantive compliance at a reduced cost to taxpayers
 - the administrative solution must be concessional in nature
 - the approach should, as far as practicable, reflect industry practice
 - any resulting risks to the revenue must be appropriately managed
 - the approach should not lead to material adverse impacts on third parties, and
 - taxpayers should be able to choose whether to adopt the approach or not.

² Now Commissioner.

32. The fact that a solution meets the above criteria does not mean that a LAPS (GA) is the automatic result. Alternative solutions may better resolve the issue.

Application of good work management principles to LAPS

33. The development of LAPS must be managed applying good work management principles including, where relevant, project management approaches detailed in Corporate Management Practice Statement PS CM 2003/05. The approaches require the active involvement of senior officers to identify the need for a LAPS and monitor the development of the LAPS in accordance with agreed quality expectations and within timeframes. It is the responsibility of the authorising business line to monitor the delivery of expected benefits from the issue of the LAPS. For LAPS which are the resolution strategy for a priority technical issue, this includes preparing a resolution schedule; see PS LA 2003/10.

Procedures for the development of LAPS

34. The procedure for the development of a LAPS will depend on its classification as either a process, technical or LAPS (GA) (refer to paragraphs 22 to 26 of this practice statement).
35. Where doubt exists as to whether a topic should be addressed in the form of a LAPS, the issue should be escalated in accordance with the relevant business line escalation processes. The PTI and Public Rulings Branch can also provide advice as to the suitability of a topic for a LAPS.
36. The preparation stage of the LAPS must include identifying any implementation issues that may result from the eventual publication of the LAPS and which may, if not addressed, delay its release. For all draft LAPS, an implementation strategy should be discussed within the authoring business line and formulated throughout the development of the LAPS. In the case of technical and LAPS (GA), the implementation strategy would form part of the business line risk project.

Process LAPS

37. Process LAPS may sometimes cover technical matters in the course of addressing their particular subject matter. If the technical matters are only incidental to the issue of process (for example, if they merely provide background information to explain the reason for a particular process) the LAPS should still follow the procedures outlined in paragraphs 38 and 39 of this practice statement. If however, the technical issues form a significant part of the subject matter of the LAPS, the LAPS should be classified as a Technical LAPS and follow the procedures outlined in paragraphs 41 and 42 of this practice statement.
38. The key steps in the development of process LAPS are:
- appropriate National Program Manager approves and forwards a notification form to the PTI and Public Rulings Branch, advising:
 - the intention to prepare a LAPS
 - that resources are available to prepare the LAPS
 - the details of the topic

- expected timeframes for completion, and
 - name of Senior Executive Service (SES) sponsor
 - Assistant Commissioner, PTI and Public Rulings Branch, authorises the registration of the LAPS on the LAPS program
 - author consults within the owning business line, and with other relevant stakeholders and sources of expertise (including relevant Centres of Expertise where appropriate)
 - author produces a draft, with quality assurance support from their SES sponsor
 - SES sponsor, once satisfied, clears the draft for internal Tax Office consultation
 - PTI and Public Rulings Branch circulates the draft to compulsory stakeholders. Compulsory stakeholders include TechNet and the Taxpayers' Charter team. PTI and Public Rulings Branch will also circulate the draft to additional relevant internal stakeholders identified by the author
 - TechNet representatives should forward the draft to all relevant staff within their business line. If possible, the TechNet representative should consolidate business line comments. If this is not possible, the TechNet representative should advise the author that comments from their business line will be coming to them separately
 - author receives and synthesises comments from stakeholders. If significant changes are made, PTI and Public Rulings Branch will recirculate further drafts as necessary
 - if external consultation is considered appropriate, National Program Manager and Assistant Commissioner, PTI and Public Rulings Branch clear the draft for external consultation
 - author completes a compendium of comments to enable a response to be given to those who provided comment
 - author produces the final draft, with quality assurance support from the SES sponsor.
39. The key steps in the approval of process LAPS are:
- SES sponsor, once satisfied with the final draft and the feedback to be given to stakeholders who provided comment, approves it to undergo the clearance process
 - National Program Manager approves the final draft. They may consider it appropriate to refer the LAPS to the relevant Sub-plan for approval
 - SES sponsor or author forward the final draft with approvals to PTI and Public Rulings Branch for publication
 - Assistant Commissioner (PTI and Public Rulings Branch), once satisfied with the final draft, clears the LAPS for publication
 - PTI and Public Rulings Branch arranges for publication.

Technical LAPS

40. Technical LAPS will often contain matters of process as part of their subject matter. If a technical LAPS has a more than incidental focus on work processes and procedures that enable the law to be administered then parts of the above procedure for process LAPS are incorporated into their drafting and approval procedure. This is indicated where relevant in paragraphs 41 and 42 of this practice statement. It would be considered that matters of process would form more than an incidental part of the technical LAPS where, for example, the new process infrastructure results in substantial changes to existing work processes and procedures or results in resource shifts.
41. The key steps in the development of technical LAPS are:
- A technical LAPS is determined to be an appropriate resolution strategy for a Priority Technical Issue registered in accordance with PS LA 2003/10
 - PTI Owner, Business Line SES Risk Owner and Deputy Chief Tax Counsel (DCTC) approve and forward a notification form to the PTI and Public Rulings Branch, advising:
 - the intention to prepare a LAPS
 - that resources are available to prepare the LAPS
 - the details of the topic, and
 - expected timeframes for completion.
- If significant matters of process were involved, approval to register the LAPS would also be obtained from the National Program Manager
- author consults within the owning business line, and with other relevant stakeholders and sources of expertise (including relevant Centres of Expertise)
 - author produces a draft, with quality assurance support from the PTI Owner and Business Line SES Risk Owner
 - PTI Owner and Business Line SES Risk Owner, once satisfied, clear the draft for internal consultation
 - PTI and Public Rulings Branch circulates the draft to compulsory stakeholders. Compulsory stakeholders include TechNet and the Taxpayers' Charter team. PTI and Public Rulings Branch will also circulate the draft to additional relevant stakeholders identified by the author
 - TechNet representatives should forward the draft to all relevant staff within their business line. If possible, the TechNet representative should arrange for consolidated business line comments. If this is not possible, the TechNet representative should advise the author that comments from their business line will be coming to them separately
 - author receives and synthesises comments from stakeholders. If significant changes are made, PTI and Public Rulings Branch will re-circulate further drafts as necessary

- if external consultation is considered appropriate, PTI Owner, Business Line SES Risk Owner, and relevant DCTC clear the draft for external consultation. If significant matters of process were involved, approval to circulate the LAPS externally would also be obtained from the National Program Manager
 - author completes compendium of comments to enable a response to be given to those who provided comment
 - author produces the final draft, with quality assurance support from the PTI Owner and Business Line SES Risk Owner.
42. The key steps in the approval of technical LAPS are:
- PTI Owner, Business Line SES Risk Owner and relevant DCTC, once satisfied with the final draft and the feedback to be given to stakeholders who provided comment, approve the final draft. If significant matters of process were involved, the relevant National Program Manager would also approve the draft
 - PTI owner or author forward the final draft and appropriate approvals, along with a Ministers Brief if required, to PTI and Public Rulings Branch for publication
 - PTI and Public Rulings Branch arranges for publication.

General Administration LAPS

43. A practical compliance solution within the business line may recommend the publication of a LAPS (GA).
44. The key steps in the development of LAPS (GA) are:
- the business line obtains the Commissioner's in-principle approval for the exercise of the powers of general administration. The process for doing this is set out in PS LA 2009/4 Escalating a proposal requiring the exercise of the Commissioner's power of general administration. A LAPS (GA) will not be included on the LAPS program until the Commissioner has given in-principle approval for its preparation
 - PTI Owner, Business Line SES Risk Owner and DCTC approve and forward a notification form to the PTI and Public Rulings Branch, advising:
 - the intention to prepare a LAPS
 - that resources are available to prepare the LAPS
 - the details of the topic, and
 - expected timeframes for completion.

The Commissioner's in-principle approval should be included
 - author consults within the owning business line, and with other relevant stakeholders and sources of expertise (including relevant Centres of Expertise)
 - author produces a draft, with quality assurance support from the PTI Owner and Business Line SES Risk Owner
 - PTI Owner and Business Line SES Risk Owner, once satisfied, clear the draft for internal consultation

- PTI and Public Rulings Branch circulates the draft to compulsory stakeholders. Compulsory stakeholders include TechNet and the Taxpayers' Charter team. PTI and Public Rulings Branch will also circulate the draft to additional relevant stakeholders identified by the author
 - TechNet representatives should forward the draft to all relevant staff within their business line. If possible, the TechNet representative should arrange for consolidated business line comments. If this is not possible, the TechNet representative should advise the author that comments from their business line will be coming to them separately
 - author receives and synthesises comments from stakeholders. If significant changes are made, PTI and Public Rulings Branch will re-circulate further drafts as necessary
 - if external consultation is considered appropriate, relevant Deputy Chief Tax Counsel, National Program Manager³, Second Commissioner (Law) and Commissioner clear the draft for external consultation
 - author completes compendium of comments to enable a response to be given to those who provided comment
 - author produces the final draft, with quality assurance support from the PTI Owner and Business Line SES Risk Owner.
45. The key steps in the approval of LAPS (GA) are:
- PTI Owner, Business Line SES Risk Owner, DCTC and National Program Manager once satisfied with the final draft and the feedback to be given to stakeholders who provided comment, approve the final draft
 - National Program Manager provides the draft, compendium of comments and a written briefing of the issues and intended solution to the Second Commissioner (Law). The briefing should detail why the LAPS (GA) has been prepared, what consultation processes have been undertaken and how the Tax Office intends to administer the arrangements into the future. The briefing should include an assurance that the practice outlined in the final draft of the LAPS (GA) maintains the legislative intent and that the Administration, Business and Personal Taxes Centre of Expertise agrees that the practice is within the Commissioner's powers of general administration
 - Approval for the draft from the Second Commissioner (Law) is obtained prior to obtaining approval for the draft from the Commissioner
 - National Program Manager forwards the final draft and Commissioner's approval, along with a Ministers Brief, to PTI and Public Rulings Branch for publication
 - PTI and Public Rulings Branch arranges for publication.

Delays in the preparation of LAPS

46. The LAPS program is published on the external Tax Office website and anticipated publication dates are provided. Every effort must be made to meet

³ The position of National Program Manager may also be referred to as Deputy Commissioner; see also PS LA 2009/4 and Corporate Management Practice Statement 2003/03 Governance.

these published dates. Where it becomes apparent that despite best efforts, the published dates will not be met, the authorising business line must seek an extension to the published date. Procedures for obtaining an extension are outlined in the Information Kit for Authors (refer to paragraph 47 of this practice statement).

Information Kit for Authors and Sponsors

47. An Information Kit for Authors and Sponsors is published by the PTI and Public Rulings Branch and is available internally on the intranet. A link to this document is provided in the Other References section at the conclusion of this practice statement. The Information Kit for Authors and Sponsors provides more detailed information on the procedures involved in the writing and clearance of LAPS. Authors and sponsors must follow the processes and procedures in the Kit.

Numbering

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

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|-----------------------------|---|
| Subject references | <p>general administration</p> <p>law administration practice statements</p> <p>practical compliance</p> <p>practice statements</p> |
| Legislative references | <p>Public Service Act 1999 13(5)</p> <p>Public Service Act 1999 15(1)</p> <p>ITAA 1936 8</p> <p>AIA 1901 15AA</p> <p>Financial Management and Accountability Act 1997 44</p> |
| Related public rulings | |
| Related practice statements | <p>PS LA 2008/3; PS LA 2003/3; PS LA 2003/10; PS LA 2009/4 CMPS 2003/1 (link available internally only); CMPS 2003/03 (link available internally only); CMPS 2003/05 (link available internally only)</p> |
| Case references | |
| Other references | <p>Schedule of documents containing precedential ATO views ORCLA – Citing the authority for decisions (link available internally only) Delegations and Authorisations Manual (link available internally only) Commissioner’s speech on 15 April 2004 Additional speech by then Second Commissioner Michael D’Ascenzo in May 2004 Law Administration Practice Statements home page (link available internally only) Information Kit for Authors and Sponsors (link available internally only) AB&PT CoE intranet site (link available internally only)</p> |
| File references | 98/117644 |
| Date originally issued: | 17 December 1998 |
| Date amended | <p>20 December 2002</p> <p>4 May 2003</p> <p>9 June 2005</p> <p>31 July 2006:</p> <p>Amended to:</p> <ul style="list-style-type: none"> • allow for changes in procedures regarding the drafting and approval of all LAPS • formalise TechNet role in regard to consultation • include requirement to register significant technical LAPS as a priority technical issue • include clarification of the CMPS/LAPS boundary • improve wording for clarification • update procedure for approval of LAPS (GA) • include new paragraphs 4 and 22 concerning precedential ATO view and level of protection <p>29 June 2007</p> <p>Amended to</p> <ul style="list-style-type: none"> • update paragraph relating to citation of LAPS • change classification types of LAPS to process, technical and GA • change procedures for the development of LAPS |

- make adherence to Information Kit for Authors mandatory
- 23 September 2008
Contact officer details updated
21 May 2009
Amended to incorporate the current process as set out in PS LA 2009/4 in relation to escalating a proposal requiring the exercise of the Commissioner's power of general administration

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