

PS LA 1998/1 - Law Administration Practice Statements

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Practice Statement Law Administration

PS LA 1998/1

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FOI status: may be released

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

SUBJECT: Law Administration Practice Statements

PURPOSE: To explain:

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

Purpose of Law Administration Practice Statements

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

Compliance with LAPS

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

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

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

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

Citing LAPS

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

Currency of LAPS

11. LAPS are 'owned' by a business line. It is the responsibility of that business line to maintain the currency of their LAPS. A business line owns particular LAPS if the underlying risk that those LAPS are addressing or the process it is outlining is sponsored by the business line.
12. ATO personnel are encouraged to advise the Law Practice Management Unit in Law and Practice (a link to contacts within this Branch is available in the 'Other References' section at the conclusion of this practice statement) of any LAPS that may need to be updated or withdrawn via an email to the email address 'Practice Statements5@ato.gov.au'.
13. The Law Practice Management Unit periodically conducts a process to request business lines review their LAPS to ensure their currency.
14. LAPS that are redundant will be withdrawn but will remain on ATOLaw and the Legal Database on the external website. Withdrawn LAPS will be annotated and dated accordingly. Where appropriate, LAPS or another form of instruction or advice must replace the particular withdrawn LAPS as soon as practicable.
15. Where particular LAPS need to be updated, those LAPS will, depending on the extent of the changes necessary, either be withdrawn and reissued, or suitably annotated. From August 2009, if LAPS are revised, ATOLaw and the Legal Database will present those LAPS using point-in-time functionality. This provides a document amendment history and a link to past versions. Versions published prior to August 2009 can only be obtained from the Law Practice Management Unit.

Availability of LAPS within the ATO

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

Availability of LAPS to the public

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

Level of protection available to taxpayers who rely on LAPS

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

Administration of LAPS

20. The LAPS system is administered by the Law Practice Management Unit within the Law and Practice business line. Administration includes:
 - maintaining policy, procedures templates and forms
 - publishing the LAPS Program (a list of LAPS in progress that is published externally)
 - providing targeted exception reporting on LAPS in progress to key stakeholders
 - providing advice on matters of policy, procedure, presentation and style
 - circulating draft LAPS for mandatory consultation
 - formatting and publishing new and revised LAPS and ensuring these have conformed with the requirements of this practice statement, and
 - initiating periodical reviews of the currency of published LAPS.

³ See Law Administration Practice Statement PS LA 2008/3 *Provision of advice and guidance by the Australian Taxation 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 relate to the infrastructure that supports the administration of the law, such as this one. They deal with work practices and procedures which enable the laws administered by the Commissioner to be administered but do not relate to the administration of those laws. For example, LAPS outlining procedures for referring certain types of cases to a particular functional area of the ATO, or outlining the role of a particular advisory panel would fall into the category of process LAPS.
23. Technical LAPS outline work practices or provide guidelines for staff in relation to the administration of particular provisions of the laws administered by the Commissioner. For example, LAPS outlining guidelines for the exercise of a penalty or interest discretion or outlining how a particular section is administered would fall into the category of technical LAPS. However, as stated in paragraph 1 of this practice statement, they must not provide interpretative advice. If interpretative advice is required, that advice should be contained in a ruling or other advice publication.
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 36 and 39 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 laws administered by the Commissioner.
26. The general administration series of LAPS began on 15 April 2004. These practice statements derive their authority from the Commissioner's powers of general administration as set out in the various Acts administered by the Commissioner, for example section 8 of the *Income Tax Assessment Act 1936*.
27. LAPS (GA) focus on the practical administration of the tax system. They aim to help reduce compliance costs for taxpayers within a framework that demonstrates the ATO's accountability for its decisions. They are not intended to remedy defects or omissions in the law. They offer practical compliance solutions in situations where a strict interpretation of the law may lead to unsatisfactory compliance outcomes. More information on the Commissioner's powers of general administration, including when it is appropriate to exercise the power, can be found in Law Administration Practice Statement PS LA 2009/4 *Escalating a proposal requiring the exercise of the Commissioner's powers of general administration*.

Application of good work management principles to LAPS

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

Procedures for the development of LAPS

30. The procedure for the development of LAPS will depend on their classification as either a process, technical or LAPS (GA) (refer to paragraphs 21 to 27 of this practice statement).
31. Where doubt exists whether a topic should be addressed in LAPS form, the Law Practice Management Unit can provide advice.
32. The preparation stage of LAPS must include identifying any implementation issues that may result from the eventual publication of those LAPS and which may, if not addressed, delay its release. For all draft LAPS, an implementation strategy should be discussed within the authoring business line and formulated throughout the development of the LAPS.
33. All LAPS must be prepared using the Case Management functionality on Siebel. A link to the procedures for managing the different types of cases is available in the 'Other References' section at the conclusion of this practice statement.

The development and approval of process LAPS

34. Process LAPS may sometimes cover technical matters in the course of addressing their particular subject matter. If the technical matters are only incidental to the issue of process (for example, if they merely provide background information to explain the reason for a particular process) those LAPS should still follow the procedures outlined in paragraphs 35 and 36 of this practice statement. If however, the technical issues form a significant part of the subject matter of those LAPS, those LAPS should be classified as technical LAPS and follow the procedures outlined in paragraphs 38 and 39 of this practice statement.
35. The key steps in the development of process LAPS are set out below.
 - The appropriate National Program Manager,⁴ approves a notification form which advises:
 - the details of the topic
 - expected timeframes for completion, and
 - name of the Senior Executive Service (SES) sponsor.

⁴ 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 CM PS 2003/03 Governance*.

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

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

The development and approval of technical LAPS

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

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

- The SES Sponsor approves a notification form which advises:

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

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

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

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

The development and approval of General Administration LAPS

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

Evidence of the Commissioner's in-principle approval must be included in the notification form.
 - The notification form is forwarded to the Work allocation, reporting and monitoring team in Law and Practice. The Work allocation, reporting and monitoring team will assess the topic and if it is considered necessary,⁶ will engage required tax technical officers to work with the business line to progress the draft and decide the appropriate level of their engagement on the topic.
 - If any tax technical officers from Law and Practice are engaged, expected timeframes for completion will be discussed, and if required, negotiated with the business line.
 - The notification form, with agreed timeframes for completion, will be forwarded to the Law Practice Management Unit for registration of the topic on the LAPS Program.
 - The author consults within the owning business line, and with other relevant stakeholders and sources of expertise.

⁶ Given the nature of LAPS (GA) and the inherent risk involved, it would be usual for an officer from Law and Practice to be allocated.

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

LAPS information kit for authors and sponsors

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

Numbering

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

Amendment history

Date of amendment	Part	Comment
18 October 2012	Throughout	Updated processes to reflect withdrawal of the priority technical issue system Removed requirement to undergo official extension of time process if due dates pass Updated names of relevant areas of responsibility Updated citations and style in accordance with corporate requirements
	Paragraph 2	Allowed for interim policy to be distributed via office minute, subject to conditions
	Paragraph 39	Removed the active role of the Assistant Commissioner, Law Practice Management Unit in the registration and approval processes of process LAPS
29 November 2011	Various	Unified format of headings
	Various	Formatting of LAPS citations updated as per ATO Standards for Citations and References
	Paragraph 12	Maintenance & Support team's role in LAPS currency review.
	Paragraph 30	Removed reference to former Commissioner Carmody's speech as this link is no longer available
	Paragraph 42	DCTC approval of topics being added to the LAPS Program
	Paragraph 39	Assistant Commissioner's details updated to Law Practice Management Unit.
	Various	PTI & Public Rulings Branch updated to PTI & Public Rulings Unit (PTI & PRU).
	Various	Tax Office updated to ATO as per the ATO Style Guide.
	Contact details	Updated.

27 August 2009	Paragraph 14	Sentences included to allow for the introduction of point in time functionality
	Paragraph 37	Inserted to mandate the use of Siebel in the development of LAPS. All consequent paragraphs renumbered
	Paragraphs 39, 42 and 45	Amended to allow for minor changes to the process due to the introduction of Siebel
	Related practice statements	Hyperlink to PS LA 2009/4 added
	Other references	Hyperlink to Siebel procedures added
21 May 2009	Paragraphs 45 – 46	Amended to incorporate the process outlined in PS LA 2009/4 in relation to obtaining approval for the exercise of the Commissioner's power of general administration
23 September 2008	Contact details	Contact details updated
29 June 2007	Various	Amended to: <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 and Sponsors mandatory
31 July 2006	Various	Amended to: <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
Also previously amended on 20 December 2002, 4 May 2003 and 9 June 2005.		

Subject references	general administration law administration practice statements practical compliance practice statements
Legislative references	Public Service Act 1999 13(5) Public Service Act 1999 15(1) ITAA 1936 8 AIA 1901 15AA Financial Management and Accountability Act 1997 44
Related public rulings	
Related practice statements	PS LA 2003/3 PS LA 2003/10 PS LA 2008/3 PS LA 2009/4 PS LA 21012/1 PS CM 2003/00 (link available internally only) CMPS 2003/1 (link available internally only) CMPS 2003/03 (link available internally only) CMPS 2003/05 (link available internally only) CMPI 2003/01/14 (link available internally only)
Case references	
Other references	Schedule of documents containing precedential ATO views ORCLA – Citing the authority for decisions (link available internally only) Law Practice Management Unit – contacts (link available internally only) Delegations and Authorisations Manual (link available internally only) Law Administration Practice Statements home page (link available internally only) LAPS information kit (link available internally only) Commissioner's powers of general administration (link available internally only) General administration provisions – frequently asked questions (link available internally only) Siebel procedures (link available internally only)
File references	98/117644
Date originally issued:	17 December 1998
Date of effect	29 June 2007
Other Business Lines consulted	All