# *PS LA 2007/15 (Withdrawn) - Briefing counsel*

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This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9

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Australian Government
Australian Taxation Office

# Practice Statement Law Administration

## PS LA 2007/15

This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9.

**FOI status: may be released**

*This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. 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:** **Briefing counsel**

**PURPOSE:** **To provide details of the process and standards for briefing external counsel**

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## STATEMENT

1. The Tax Office's engagement of external legal providers, including solicitors or counsel, is subject to requirements formulated by the Attorney-General's Department. This practice statement is subject to those requirements, but in particular Appendix D to the Attorney General's Legal Services Directions 2005 (Legal Services Directions), '*Engagement of Counsel*'.

2. The Legal Services Branch (LSB) has corporate responsibility for legal services in the Tax Office, and is the central point of reference in respect of all legal work where the Tax Office is using external legal providers.[1] Requests for access to any legal services, including counsel, must go through LSB.[2] Business lines generally have a central point which coordinates all contact with LSB. Business line officers must check their own business line procedures before approaching LSB.

3. In all matters where external counsel is engaged and officers from the Tax Counsel Network (referred to as Tax Counsel) are involved, the relevant Tax Counsel must approve the contents of the brief before it is forwarded to counsel.

4. The business line has the responsibility of collecting sufficient documentary and other material to enable the litigation team[3] to understand the transaction or issue generally, so that counsel can be briefed appropriately. Prior to the brief being prepared, members of the litigation team should collaborate with each other to determine the legal issues surrounding the evidence, in particular whether or not there is sufficient evidence in the matter for the purposes of litigation.

5. Where an external solicitor is engaged in a matter, the external solicitor will prepare the brief to counsel. The LSB officer must ensure that the external solicitor is aware of and adhere to the requirements under the Legal Services Directions.

### Litigation matters

6. In direct brief litigation matters (where an external solicitor is not engaged) the LSB officer will prepare the brief to counsel. However, during the litigation process, questions may arise for counsel where an ATO view has not yet been formed, or there are alternative views within the office. In this type of situation, it may be appropriate for Tax Counsel to prepare the brief (or parts of it) rather than the LSB officer. Officers will need to work collaboratively to achieve the best outcome.

[1] External legal providers include the Australian Government Solicitor.
[2] There will be rare cases where this does not occur. Where an alternative arrangement is preferred, this must have the approval of the Senior Assistant Commissioner, LSB.
[3] This will normally comprise the LSB officer, business line officer, and Tax Counsel or Centre of Expertise representative (where involved)

## Technical advice outside of litigation

7. Where a technical or point-of-law opinion is sought from counsel, and the matter has not yet progressed to litigation, it may be more appropriate for an officer outside of LSB (either the business line officer, or if Tax Counsel is involved, the Tax Counsel Network officer) to prepare the brief. However, as the central point of reference to legal work in the Tax Office, LSB will be responsible in all matters for the professional management of the brief. This means that LSB will look after the administrative mechanics of briefing counsel. Where Tax Counsel is not involved, LSB will also ensure that the standard of the brief and requirements as set out in this practice statement have been met.

## Basic requirements of a brief

8. It is recognised that every brief is different. There must be some degree of flexibility in the manner in which briefs are compiled, having regard to the special circumstances of any particular matter, but a high standard of professionalism is expected in the content and presentation of any brief prepared on behalf of the Commissioner. This practice statement sets out the basic requirements that the brief must meet, and the process that Tax Officers must follow in briefing counsel.

9. The basic requirements which must be met for each brief are summarised below.

- Where Tax Counsel is not involved, LSB officers must obtain the appropriate approval to brief counsel.
- The approval must be recorded by the LSB officer on ATOlegals and placed on the LSB litigation file.
- On each occasion counsel is briefed, the LSB officer must contact the Office of Legal Services Co-ordination (OLSC) to ascertain the approved Commonwealth Rate.
- Counsel is only to be briefed at the approved Commonwealth Rate.
- Where counsel is briefed to appear at a hearing, the brief must advise counsel:
  - what the tax mischief is, and instruct counsel to communicate the tax mischief to the Court or Tribunal
  - to communicate the ATO view to the Court or Tribunal, and
  - to provide written submissions to the LSB officer at least a week prior to the hearing.
- The brief must contain a condition that, in accepting the brief, counsel is taken to warrant that he or she has not, at any time, been declared bankrupt.
- The brief must include a copy of Appendix B to the Legal Services Directions – *The Commonwealth's Obligation to Act as a Model Litigant*, and the brief must instruct counsel to comply with its obligations.

The brief must contain the following statement:

> The Attorney-General has made it clear to all Commonwealth Departments and Agencies that it is expected that the Commonwealth will not engage counsel who use insolvency as a means of avoiding tax. In accordance with paragraph 4A of Appendix D of the Legal Services Directions 2005, counsel is taken to warrant, unless he or she advises to the contrary, that he or she has not, at any time, been declared bankrupt.
>
> Additionally, the Commissioner of Taxation does not wish to engage Counsel who are not complying with their taxation obligations. If you have any concerns about these requirements or wish to discuss any aspect of them please do not hesitate to contact your instructor.

## EXPLANATION

### The decision to brief counsel

10. The decision for counsel to be briefed may be made at any time during the dispute process. However, where counsel is to be briefed in a litigation matter, it is desirable to do so at the earliest possible time.

11. In a litigation matter, the question of whether counsel should be engaged should be canvassed at the Instruction Strategic Internal Litigation Committee (SILC) meeting, held within two weeks of notification of the matter between the litigation team. The question of whether the matter should be briefed by an external solicitor or by LSB must also be considered at this time.

12. As a guide, early consideration of engaging counsel should be given in matters which have the following factors:

    - a high net wealth or prominent taxpayer
    - a history of audits or investigations by the Tax Office
    - any inconsistency in the Tax Office position
    - the taxpayer is represented by a big accounting or legal firm
    - senior counsel is being briefed for the taxpayer, and
    - significant volumes of material or a very complicated factual matrix are involved.

13. There are also instances where counsel may be briefed for advice in matters not currently in litigation. Complex matters at the audit or objection stage may benefit from advice from counsel on contentious technical issues or evidence requirements. In these circumstances, business lines must follow their risk management processes and determine as early as possible whether or not it would be appropriate to engage counsel. If the business line decides that counsel should be engaged, the business line officer must check their own business line procedures before contacting LSB to commence the process. The decision on whether or not to engage counsel rests with LSB, unless Tax Counsel is involved. Where Tax Counsel is involved, the decision will rest with Tax Counsel. The process set out in this practice statement will apply in all instances where the decision has been made to engage counsel.

14. If a decision is made that counsel involvement is appropriate, the litigation team should turn its mind to which barrister(s) should be briefed. Where there is, or is to be, an external solicitor involved, the external solicitor must also be consulted before making a final recommendation.

**Selection of counsel**

15. The Legal Services Directions, under paragraph 4C of Appendix D *Engagement of counsel*, state that:

> All barristers are to be selected for their skills and competency independently of their gender. An agency is to ensure that arbitrary and prejudicial factors do not operate to exclude the engagement of female barristers or to limit the range of barristers being considered for the brief.

16. The Tax Office is always looking to brief new and different counsel, rather than always using the same barristers, in order to build the tax bar with capable new senior and junior counsel. Nurturing new counsel into tax work is an aspect to consider in addition to the consideration of how best to run a particular matter. Engaging a new junior counsel to assist an established senior from the tax bar can often work well in simple but important matters. There will be situations where an experienced tax law junior could work well with a senior with relatively little tax experience. Having two seniors or two juniors may be appropriate to consider in rare matters. All barristers are to be selected for their skills and competency.

17. When choosing barristers, three basic factors should be taken into account, having regard to the nature of the particular matter: seniority, specialisation and experience. Officers should also factor in counsel's past behaviour. For example, if counsel is known to be tardy in meeting deadlines, whether set by the Tax Office or the Court or Tribunal, then this should be taken into account in determining whether that counsel is appropriate in the matter under consideration. Further, if a counsel is known to give excellent written advice but is not known for court advocacy, then that counsel may not be an appropriate choice for a matter that will be heavily dependant on what happens in court and in cross examination. In the case of new counsel, other factors that need to be taken into account include the barrister's potential, and any recommendations received from respected and more experienced counsel.

18. The LSB officer should discuss the selection of counsel with the litigation team, with particular regard being given to the advice of the external solicitor if engaged. The views of the business line as the risk owner of the underlying technical issue are important and need to be taken into account. However the final decision on selection of counsel will rest with the Law Sub-plan, as it is here that the legal risks and knowledge of counsel can be properly weighed against the relative importance of the particular matter. This means that where Tax Counsel is involved in a matter, Tax Counsel's preference will usually be followed in the selection of counsel. However the LSB officer should obtain approval of the Assistant Commissioners, Litigation on the counsel selected so that LSB can monitor and ensure that counsel already engaged in significant matters are not overloaded by the Tax Office. Disagreements on selection of counsel will be escalated to the relevant Senior Tax Counsel (Strategic Litigation), or a Deputy Chief Tax Counsel, who has the final say.

19. Where Tax Counsel is not involved, the LSB officer must obtain written approval for selection of counsel from one of the following:

(a) For matters involving indirect taxes:

(i) Senior Tax Counsel (Indirect Taxes), or in his/her absence

(ii) Senior Tax Counsel (Strategic Litigation), or

(iii) Assistant Commissioner, Litigation (North or South).

(b) For matters involving Mass Marketed Schemes:

(i) Senior Tax Counsel (Mass Marketed Schemes), or in his/her absence

(ii) Senior Tax Counsel (Strategic Litigation), or

(iii) Assistant Commissioner, Litigation (North or South).

(c) For all other matters under Part IVC of the *Taxation Administration Act 1953*:

(i) Senior Tax Counsel (Strategic Litigation), or

(ii) Assistant Commissioner, Litigation (North or South).

(d) For Debt matters:

(i) Senior Tax Counsel (Strategic Litigation)

(ii) National Technical Adviser (Debt Litigation)

(iii) Senior Tax Adviser (Debt Litigation)

(iv) Stream Leader

(v) Assistant Commissioner, Litigation (North or South), or

(vi) State Manager.

(e) For Commercial and General Law matters, and Freedom of Information (FOI) matters:

(i) General Counsel, or

(ii) Stream Leader.

20. Ideally, a Nomination of Counsel form should be used for the written approval on the selection of counsel. The submission for approval and the documented approval should be placed on the LSB litigation file. However, it is accepted that sometimes the approval of counsel is made on a more informal process, such as by email (or if approval is provided orally it is then documented) and placed on the file.

21. As a general rule, approval is given only to brief particular counsel. If a particular barrister is not able to accept the brief, approval should be sought to brief alternate counsel.

22. Approval to brief counsel should also be recorded by way of an ATOlegals approval.

### Setting a brief fee

23. Appendix D to the Legal Services Directions sets out the maximum rates payable to counsel and the circumstances under which 'Out of Chambers' and 'Cancellation' fees may be paid.

24. Once approval for a particular counsel is given, LSB officers must ensure that counsel is briefed and paid at the approved Commonwealth rate. Before engaging counsel LSB officers are required to contact OLSC to ascertain the current approved rate for counsel. This must be done on every occasion counsel is engaged.

25. If counsel does not have an approved rate, the LSB officer should escalate the matter to the relevant LSB business manager or to the Assistant Commissioner, Litigation (North or South) with a view to having one established and approved by OLSC. For further details on how to contact OLSC refer to LSB Bulletin 2006/1.

### Briefing counsel

26. Once appropriate counsel has been identified and approved, the LSB officer, (or our external solicitor, if involved), should telephone counsel prior to the brief being prepared and sent. This will give the Tax Office and counsel an opportunity for the nature of the matter to be outlined and to ascertain whether the matter is one that is appropriate for the chosen counsel to have. Such a conversation will determine whether counsel has any conflict in appearing for the Tax Office in the matter, in terms of a timing or commitment difficulty or an actual conflict of interest in the matter. A timing or commitment conflict might not just involve schedule hearing dates, but counsel's general availability to prepare all necessary documentation, such as Statement of Facts, Issues and Contentions, summonses, interrogatories, witness statements as well as attend each interlocutory appearance before the relevant Court or Tribunal.

27. In direct brief matters where an external solicitor is not involved, all members of the litigation team should be consulted before the final brief is issued to counsel. Depending on the nature of the matter, the business line will be more cognisant of the facts and can provide assurance that facts and evidence referred to in the brief are correct. However, it is recognised that in circumstances where time is of the essence, it may not be appropriate to engage in this consultation process. In all direct brief matters where Tax Counsel is involved, Tax Counsel must provide final approval before the brief is issued.

28. In all litigation matters, a copy of the brief should be provided to all members of the litigation team.

29. The brief contains instructions to counsel and informs counsel as to what is being sought from him or her. The quality of counsel's advice will often be reflected in the quality of the brief. It is therefore important that briefs are of a high standard in order to obtain the best use of counsel's time and expertise.

### Presentation of the brief

30. Care should be taken in the presentation of the materials in the brief. Materials should be provided in ring binder folders for ease of reference and access to

documents. This approach will also accommodate any necessary 'updates' to the brief by way of additional or substitute documents.

31. It is vital to ensure that all documents incorporated in the brief are copied as legibly as possible. Original documents should not be routinely provided to counsel, but rather only provided where counsel has specifically requested the production of the original documents.

32. Every brief must include a cover page. The cover page of the folder should contain the following information:

    (a) the type of brief (for example, Brief to Advise, Brief to Advise and Appear)

    (b) the name of the barrister being briefed, and the name of the barrister's clerk (if any)

    (c) the fee on brief – this is usually expressed as an hourly rate and a maximum daily rate and should be expressed as including GST and inclusive of conferences, consultations, preparation and other necessary work

    (d) the name of counsel's instructor and his or her contact details

    (e) where the matter is a matter that is at litigation – the name of the Court or Tribunal, the Court or Tribunal reference, and the names of the parties

    (f) the names of other barristers also briefed in the matter (senior or junior) and relevant contact details, and

    (g) the Tax Office's Australian Business Number.

33. The brief should be indexed, presented in a logical chronological order and divided by numbered tabs.

**Content of the brief**

34. The basic rule is that the brief should contain everything that counsel will need to undertake the task for which he or she is briefed. As an illustration, the kind of materials which might need to be included in a brief are:[4]

    (a) instructions to counsel with a comprehensive memorandum as described below

    (b) a chronology of critical events, the evidence which the Commissioner has in his possession in support of each event, where the documentary evidence was obtained from and in what respects the evidence is lacking or the facts unknown

[4] The contents of the brief may vary as they will be dependent on when counsel is briefed. That is, if counsel is briefed at the beginning of the litigation process, then some documents, such as discovered documents won't be available for inclusion at that time. Once these documents become available, they should be provided to counsel.

(c) relevant documents filed in the Court or Tribunal, including the initiating process, any Order 52B documents[5] or 'T' documents[6] and other relevant documents

(d) affidavits and any witness statements

(e) expert reports

(f) other evidence including discovered documents or documents obtained under subpoena that the instructing officer thinks should be included. It might be sufficient to include a copy of the list of documents discovered and provide a copy of those documents which are of interest (cross referenced to the list of documents to identify what is being provided)

(g) relevant correspondence

(h) any previous instructions from the Tax Office, and advices received from the counsel briefed, and

(i) relevant authorities, articles, explanatory materials, rulings and other materials which might assist counsel.

**Other information**

35. Depending on the type of matter that is being briefed, there may be other kinds of materials which might need to be included. For example:

(a) FOI matters: the original FOI request and any relevant decision document/s

(b) employment law matters: relevant documents from proceedings before the Industrial Relations or other Commission, and

(c) recovery proceedings:

- the correct name of the taxpayer and where the name has changed, a copy of the relevant Australian Securities and Investments Commission records setting out the history of the change in names
- the current status of that taxpayer – if a corporate body, whether it has been or is subject to external administration and if so, what type and when
- a statement of the objective of the Tax Office
- a statement of all of the current outstanding tax liabilities of the taxpayer
- a statement of the current financial position of the taxpayer and whether there are any other debt recovery actions on foot
- a short chronology of the facts giving rise to the tax debt

[5] See PS LA 2007/18 Tax technical litigation in Federal Court matters for further information on Order 52B requirements.

[6] See PS LA 2007/19 Tax technical litigation in the Administrative Appeals Tribunal for further information on 'T' documents.

- a chronology of the relevant communications between the Tax Office and the taxpayer since the assessment was issued; and
- a short advice on evidence directed to the nature of the tax debt and the type of recovery proceedings.

36. As mentioned, materials should be presented in a logical order – usually chronological order.

37. There will be times when an urgent issue arises in a matter which has voluminous supporting documentation. The time required to collate this material might be insufficient to meet an important Court event. A prior discussion with counsel may enable the LSB officer to only provide essential materials in the brief and all other documents could be provided shortly afterwards.

### *Instructions to counsel*

38. The brief should always begin with instructions to counsel. The function of this part of the brief is to inform counsel about the matter and what is being sought from him or her. As a general rule, the memorandum of instructions should include:

    (a) a clear statement of what counsel is being asked to do and any time constraints, including any deadlines

    (b) how the matter arose and its current status, including any proceedings

    (c) a clear identification of the issue which includes:

    - the name of the taxpayer or taxpayers concerned
    - the years of income concerned
    - the provision(s) of the relevant Act (and other relevant legislation such as the *A New Tax System (Goods and Services Tax) Act 1999*), and
    - a description of the issue raised. If it is for advice, there needs to be a precise identification of the question(s) to be addressed

    (d) the material facts, in chronological order, cross referenced to the evidence

    (e) the relevant legislation,[7] case law, relevant extrinsic materials such as the explanatory memorandum and other materials

    (f) the Tax Office position and detailed references to case law, facts and evidentiary position

    (g) the tax mischief arising from the matter, and

    (h) any desired outcome for the Tax Office (for example law clarification) and any broader implications including policy/commercial/financial/revenue/industry considerations.

[7] This means the whole of the relevant section or Division of the Act and all relevant interpretation provisions.

### *The ATO view*

39. The instructions should clearly set out the ATO view to counsel.[8] This should be reinforced with a simple explanation supporting the reasoning of that view and linking the position to policy documents and extrinsic materials. In the event that after discussion with counsel there is any doubt as to the correctness of an ATO view, the issue should be escalated in the usual way[9] to a Deputy Chief Tax Counsel for urgent allocation to Tax Counsel or a Centre of Expertise.

40. Where counsel is briefed to appear at a hearing in a Part IVC matter, counsel should be instructed to communicate to the Court or Tribunal the ATO view and what the tax mischief is in that matter. If counsel perceives any difficulty with the Commissioner's case, early advice is required to ensure that concerns can be urgently dealt with, or escalated. Counsel should also be instructed that they are required to provide draft written submissions in advance of the hearing, preferably at the latest one week prior to the date for filing and serving. This will allow all relevant stakeholders sufficient time to consider the submissions and ensure that counsel is putting forward arguments consistent with the ATO view.

41. Where an external solicitor is engaged, the LSB officer must instruct the solicitor to communicate to counsel the ATO view and what the tax mischief is, and ensure that the Court will be similarly advised.

### *Aspects of Retainer*

42. The memorandum of instructions should also refer counsel to the Aspects of Retainer included at the end of the instructions. The Aspects of Retainer must contain the following:

    (a) a reference to the Legal Services Directions, and in particular, Appendix D to those Directions – *Engagement of Counsel*

    (b) a condition that, in accepting the brief, counsel is taken to warrant that he or she has not, at any time, been declared bankrupt

    (c) an instruction that counsel is to comply with Appendix B to the Legal Services Directions – *The Commonwealth's Obligation to Act as a Model Litigant*

    (d) the following statement:

    > The Attorney-General has made it clear to all Commonwealth Departments and Agencies that it is expected that the Commonwealth will not engage counsel who use insolvency as a means of avoiding tax. In accordance with paragraph 4A of Appendix D of the Legal Services Directions 2005, counsel is taken to warrant, unless he or she advises to the contrary, that he or she has not, at any time, been declared bankrupt.
    >
    > Additionally, the Commissioner of Taxation does not wish to engage counsel who are not complying with their taxation obligations. If you have any concerns about these requirements or wish to discuss any aspect of them please do not hesitate to contact your instructor.

[8] There may be limited circumstances where counsel's advice is sought where no ATO view has yet been formed. For example, where there is disagreement at senior level in the Tax Office about the most technically correct view.

[9] See PS LA 2005/22 Litigation and Priority Technical Issues.

(Note: any concerns raised by counsel should be escalated to the regional Assistant Commissioner, Litigation)

(e) if the matter is urgent and if there is a specific date by which the brief must be attended to, and

(f) other matters as appropriate.

43. A copy of Appendix B to the Legal Services Directions – *The Commonwealth's Obligation to Act as a Model Litigant* – must be attached to the Aspects of Retainer.

**Conferences**

44. The LSB officer should continuously monitor the progress of the case and at key points such as prior to filing documents, considering evidence of the taxpayer and in settling the Commissioner's evidence, consideration should be given to calling a face to face conference with counsel to ensure that the case is progressing in line with the Commissioner's instructions. The LSB officer, business line officer and Tax Counsel (where involved) should attend conferences with counsel as a matter of course. Other members of the litigation team may also attend conferences, depending on the purpose and significance of the particular conference, however regard should always be given to the efficient and ethical use of Commonwealth resources.

45. Conferences with counsel should be arranged as required, however conferences should always be held shortly after counsel receives the brief and shortly before a hearing. A key purpose of the initial conference with counsel is to ensure that counsel fully understands the ATO view, and to emphasise that this view needs to be put to the Court or Tribunal.

46. At the initial conference held shortly after counsel receives the brief, the matter should be discussed generally, issues should be clarified, and a clear plan set out for the future conduct of the matter, such as whether a written advice on evidence or prospects will be required, or otherwise what steps will be required in preparation of the matter. Careful notes should be taken of this conference to ensure that it is clear who is taking responsibility for each action required and when that action is required by.

47. At the conference shortly before the hearing, draft submissions should be reviewed or considered to reinforce the communication of the ATO view to counsel and in turn the Court or Tribunal.

**Decisions**

48. Where counsel has appeared at a hearing and a decision is subsequently given, counsel should be provided with a copy of the decision.

49. Where the decision is against the Commissioner, or is adverse in any respect of the findings of the Court or Tribunal, counsel might be asked at this time to provide advice regarding a possible appeal, or advice in relation to any contentions or cross-appeals that may need to be filed if the taxpayer appeals.

### Fee disclosure agreements

50. In some jurisdictions, counsel is required, on receiving a brief, to provide a fee disclosure agreement.

51. The instructing officer should review the fee disclosure agreement to confirm that it is in accordance with the Legal Services Directions.

52. Where particular clauses in counsel's fee disclosure agreement are inconsistent with the Legal Services Directions, counsel should be advised of any requisite modifications to the fee agreement that will make it consistent with the Legal Services Directions.

### Memoranda of fees

53. Accounts from counsel or other external legal service providers must be paid within 30 days in accordance with standard Commonwealth Government policy. Counsel will generally conduct Government legal work at a discounted rate and therefore prompt payment of the accounts is critical. Where an external solicitor is involved, counsel's accounts will be recorded on ATOlegals. Where counsel has been directly briefed by the Tax Office, the accounts will be paid through normal accounting for public monies; however they should still be recorded on ATOlegals.

54. It is the responsibility of the instructing officer to ensure that there are no irregularities with counsel's memorandum of fees and to verify that the amounts should be paid.

### Counsel's travel costs

55. Under paragraph 13 of Appendix D to the Legal Services Directions, counsel is entitled to be paid reasonable costs for travel and accommodation when travelling interstate on behalf of the Commissioner in the conduct of matters. Costs which will be covered include air fares, accommodation, meals and incidentals. Unless special circumstances exist, counsel is allowed business class travel with accommodation and meals at the Senior Executive Service rates.

56. Where the instructing officer arranges travel and accommodation for counsel, care must be taken to not exceed the aggregate amount.

57. Where counsel arranges travel and accommodation themselves, such costs will be recorded as a disbursement on his or her Memorandum of Fees. Counsel should be advised of the maximum rate that will be paid by way of travel allowance. Where amounts claimed by counsel are in excess of the approved rates, such amounts are not to be paid unless approved by the regional Assistant Commissioner, Litigation and supported by receipts. If possible, travel costs should be negotiated when counsel is first briefed.

### ATO Special Counsel

58. The Tax Office has access to highly respected and knowledgeable former Judges, Queens Counsel and Senior Counsel who have been engaged to

perform services for the Tax Office. These services may be limited to provision of advice. They are referred to by the title ATO Special Counsel.

59. The Tax Counsel Network provides the gateway function for access to Special Counsel and undertakes a review of all briefing materials forwarded to Special Counsel to ensure that such materials are of an appropriate quality. All requests seeking access to Special Counsel must be referred to the appropriate Deputy Chief Tax Counsel.

60. To assist with quality control, business lines should work with LSB in the first instance to ensure that the briefing materials are likely to be acceptable to TCN before being forwarded to Special Counsel.

| | |
|---|---|
| Subject references | Briefing counsel |
| Legislative references | TAA 1953 Pt IVC<br>ANTS(GST)A 1999 |
| Related public rulings | |
| Related practice statements | PS LA 1998/1; PS LA 2005/22; PS LA 2007/16; PS LA 2007/17; PS LA 2007/18; PS LA 2007/19 |
| Case references | Not applicable |
| Other references | Legal Services Directions 2005<br>LSB Bulletin 2006/1 |
| File references | 07/11 |
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| Other Business Lines consulted | All |