



Litigation

Detailed information about litigation relating to avoiding or resolving disputes.

Litigation – our policies



The ATO conducts and manages litigation in accordance with its obligations under the law, relevant court and tribunal rules, and ATO policies and guidelines.

Decision impact statements



Learn about when decision impact statements are issued and what they include.

Early assessment and resolution



An early assessment and resolution process aims to resolve disputes by discussing and accepting evidence of events.

39549

Litigation – our policies

The ATO conducts and manages litigation in accordance with its obligations under the law, relevant court and tribunal rules, and ATO policies and guidelines.

7 November 2018

The ATO conducts and manages litigation in accordance with its obligations under:

- the law
- the Attorney-General's *Legal Services Directions 2017*
- the relevant court and tribunal rules
- the relevant practice notes or directions
- ATO policies and guidelines.

We strive to finalise all disputes in a fair, timely and equitable manner consistent with the law, using dispute resolution techniques to minimise litigation and related costs.

Conducting ATO litigation

Our practice statement, PS LA 2009/9 *Conduct of Tax Office Litigation*, sets out our approach and philosophy to litigation. It provides:

- guidance to tax officers about our obligations to act as a model litigant under the Attorney-General's *Legal Services Directions*
- the processes tax officers must follow to ensure those obligations are met, including how to engage external legal service providers.

The practice statement also explains our commitment to alternative dispute resolution (ADR) in litigation and discusses the various obligations that are imposed under the different court and tribunal rules.

See also:

- PS LA 2009/9 *Conduct of ATO litigation and engagement of ATO Dispute Resolution*

Solicitor on the record

We will operate as the solicitor on the record in certain cases. A solicitor on the record, in relation to any party to proceedings, means the solicitor who is, for the time being, named as the party's legal representative in the documentation for the proceedings.

Professional obligations

Our officers have the same professional and ethical obligations as any other legal practitioner. They must comply with the relevant legal profession legislation and any related regulations. They must comply with the *Solicitors' Rules* and be familiar with the legislation that governs the conduct and obligations of their profession.

Legal services directions

We have obligations under the *Legal Service Directions* issued by the Attorney-General through the [Office of Legal Services Coordination](#) (OLSC). These are a set of binding rules about the performance of Commonwealth legal work – whether it is legal work performed:

- in-house
- by the Australian Government Solicitor (AGS)
- by external legal providers.

The directions help to ensure that the Australian Government receives consistent and well-coordinated legal services that are:

- a high standard
- upholding the public interest
- sensitive in the context of Commonwealth interests (which are broader than any one agency).

In turn, this approach protects the government's legal and financial position.

The ATO takes these obligations seriously and is proactive about initiating reports of potential breaches to OLSC. We also provide regular training to our legal services officers in their model litigant obligations. Taken together, these explain the higher rates of self-reporting of potential breaches and the relatively small number of determined breaches.

The directions cover matters such as:

- briefing the Solicitor-General
- recovery of costs
- reporting on legal services expenditure


- reporting on significant issues
- principles of constitutional litigation involving *Commonwealth Authorities and Companies Act 1997 (CTH)* bodies
- use of in-house lawyers for court litigation
- model litigant obligations.

See also:

- [Legal Services Directions and guidance notes](#) 

Model litigant

As an Australian Government agency, the ATO applies the highest standards of ethical behaviour when it is involved in litigation. Accordingly, our obligations in litigation matters go beyond those imposed upon private litigants.

Under the [Legal Services Directions 2017](#)  we have an obligation to act as a model litigant. This means that in handling claims and litigation, brought by or against us, we are required to act with complete propriety, fairness and in accordance with the highest professional standards.

Taxpayers and their representatives are advised of our model litigant obligations at the beginning of litigation. External legal service providers and counsel representing the ATO are also informed of their model litigant obligations at the time they are engaged.

See also:

- Our obligations as a model litigant
- Dispute Resolution Instruction Bulletin DR IB 2013/10

40380

Decision impact statements

Learn about when decision impact statements are issued and what they include.

28 August 2020

A decision impact statement (DIS) advises the community of our view on the implications of a particular court or tribunal decision. The statement provides information for taxpayers and advisers.

Usually a DIS will not be published until all appeals have ended and there is a final decision. In some circumstances we publish an interim DIS.

DIS provides the following information:

- details of the case itself
- a brief summary of facts
- issues decided by the court or tribunal
- relevant legislation and case law
- relevant rulings and determinations
- our view of the decision and administrative treatment
- implications on current public rulings, determinations and law administration practice statements.

See also

- [Decision impact statements](#) (a list of DIS available on our Legal Database)

40371

Early assessment and resolution

An early assessment and resolution process aims to resolve disputes by discussing and accepting evidence of events.

30 March 2017

An early assessment and resolution process is applied to all tax dispute cases...

The process focuses on early engagement with the taxpayer (preferably in person), to listen, discuss and accept evidence of events where appropriate. The officer will also engage with other stakeholders in the ATO in attempt to resolve the dispute.

This approach is particularly suited to cases:

- of low monetary value
- involving taxpayers with good compliance history
- where the law is quite settled
- where evidentiary issues are of primary concern
- where the dispute relates solely to a penalty imposed.

Where complete resolution is not achieved, the process aims to identify and narrow the issues in dispute, and ensure that only the right matters proceed to hearing without delay.

See also:

- In-house facilitation

40369

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

Copyright notice

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).