

Schedule 16 - Legal

POSITION CLASSIFICATION DESCRIPTION

LEGAL

LEGAL 1 and 2

GROUP DESCRIPTION.

Descriptions for Legal 1 and 2 are not meant to encompass the full range of government legal work. It is recognised that this range may include positions in the SES or SES (Specialist) categories.

Definition

The work of positions in this stream involves the application of professional knowledge and skills in law and legal practice to:

- the drafting and interpretation of legislation;
- the preparation, negotiation and review of contracts, leases and other legal agreements or documentation;
- the provision of legal advice and/or legal policy advice;
- the preparation for and conduct of prosecutions or civil litigation;
- the exercise of statutory functions and judge directed powers of a registrar of a court or tribunal;
- legal research; and
- the negotiation of legal agreements and treaties.

It also includes the professional direction of this work.

Eligibility Requirements

Eligibility requirements are prescribed in the Public Sector Management Act for appointment, promotion or transfer to and salary advancement within this Stream. These are set out in the Conditions of Entry and Advancement in the APS Gazette.

It should be noted that the possession of legal qualifications by the occupant of a position does not necessarily mean that the work of the position is appropriate to the Legal structure.

Terms Used

Complexity means the variety and intricacy of tasks, processes or methods in the work performed; the difficulty in identifying what needs to be done from a legal perspective; and the difficulty and originality involved in performing the work. Features of the work which might be considered include:

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- the degree of similarity or interrelationship between matters;
- difficulty arising from processes or systems and in deciding how matters should be handled from a legal perspective;
- the specificity, applicability and availability of guidelines for the performance of legal work and the professional judgement needed to apply them in problem solving:
 - guidelines may include legal policies or ruling, opinions, Court or Tribunal judgement, statutory interpretations, academic papers or other reference material which define the law and/or appropriate practices in a particular field;
- difficulty in weighing up available legal advice, judgements and other authorities;
- extent of legal analysis required;
- the complexity of the legal and factual issues ie whether problems involve numerous, varied and complex laws and authorities and present difficulties in interpretation.

Straightforward or less complex legal work involves cases or legal problems that can normally be completed or solved by the application of well established or readily determinable legal principles or procedures. The applicable laws or authorities may be numerous but are normally not difficult to interpret. The work is reviewed for validity of legal conclusions.

More complex legal work might consist of cases or legal problems that are made difficult by their novel nature or by the existence of conflicting legal principles. The applicable laws and authorities are numerous, varied and complex and present problems of interpretation.

The significance of legal matters, cases or problems handled should be assessed (in conjunction with the direct or shared accountability of the position) having regard to such factors as:

- the consequences of legal advice, counsel or opinion or recommendations for the organisation and its administration of the law;
- the consequences of error in advice, recommendations or legal documentation;
- the impact of the case or problem on the public, on inter-Governmental relations, on private interests, or on agency authority, operations, procedures or practices;
- the significance of the case or legal action as a legal or administrative precedent;
- effect on responsibility when large sums of money are involved in non

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standard contracts and other legal documents, the conduct of litigation or prosecutions or other legal work.

Guidelines

Positions in the Legal structure are expected to undertake legal professional work (ie work satisfying the Stream Definition) and in this respect are clearly distinguishable from positions classified in other employment streams (eg ASO/Senior Officer).

It would be generally expected, but not essential, that legal professional work would comprise the predominant component of the duties of a legal position. Work undertaken by legal positions may from time to time include non legal tasks. In keeping with standard classification practice, judgement on whether a position is appropriate to the Group should rest on legal professional work constituting the highest function (or duties) regularly performed.

The following provides a description of the range of legal or quasi legal activities typically undertaken in agencies and guidelines to assist agencies in distinguishing work which is appropriate to the legal stream (ie work requiring legal professional knowledge and skills).

Note: It should be noted that some categories of Legal work are, under administrative arrangements or by legislation, confined to specific agencies.

Drafting of legislation (including subordinate legislation)

- The drafting of Bills or subordinate legislation such as regulations, rules, determinations, orders or other legislative instruments would generally require the exercise of legal professional knowledge and skills.
- Legal professional knowledge and skills may not be essential for the drafting of straightforward instruments such as Proclamations or Determinations which are to be further refined by Legal staff.

The primary test is whether questions of law need to be addressed or whether this is avoided by the application of standardised, well established precedents.

Development and Implementation of Legislative Proposals

- The actual drafting of legislation may represent only one aspect of an agency's legislative activities. Other aspects may include:
 - the development of legislation ie preparation of drafting instructions, obtaining or providing legal opinions and liaison and consultation with other agencies and interest groups involving the presentation of the legal aspects of policy proposals;
 - co-ordination of legislative processes; and
 - preparation of briefs to Ministers and other parliamentarians on legislation and related administrative policies.

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The knowledge of administrative or legislative processes and/or detailed knowledge of specific legislation generally required for the satisfactory performance of these activities would not in itself justify a Legal classification. The determining factor would be whether the work requires knowledge of the underlying legal precepts or principles and skills in their application.

- Positions engaged in the development of legislative proposals may often not require the exercise of legal professional skills in initial development work (ie policy development and problem identification).
- Interpretation of legislation can be part of the implementation process as well as a normal legal advising function. It will cover a range of activities from advice on the legal meaning of the words (to assist where necessary in the day to day administration of the legislation) to matters in which Court action is required.

Preparation and review of legal documentation

- This may involve the drafting or reviewing (for legal sufficiency) of contracts, leases, agreements, decisions or other legal documents required by the agency's activities. However, for these activities, work which is sufficiently standardised on well established precedents so as to avoid the need for (or likelihood of) questions of law to be addressed would not be regarded as legal work.

Legal advising and legal policy advising

- This involves the provision of advice, counsel or opinion (or recommendations) on questions of law or legal practice. It may include statutory interpretation.
- Legal professional knowledge and skills may not be essential where provision of advice requires only an analysis of legal or administrative facts or questions which have been settled by interpretations of applicable legal provisions or precedents and agency policies.
 - This cannot always be foreseen, however, and in these circumstances the problem or assignment may need to be handled by a legal position.
- Legal policy advising describes a wide range of activities including:
 - providing a full range of options in response to a request for legal advice where only some of those options are solutions involving law or legislative proposals/amendments;
 - legal advising which provides solutions which are themselves subject to evaluation in the advice by reference to factors such as likelihood of challenge in courts or relevant judicial decisions;

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- advice on legal implications or proposed legislation for agency operations; and
- advice on the conduct of an agency's legal services or activities which draws on a knowledge of the relevant law.

Prosecutions and related activities

(Prosecutions are part of the litigation activity addressed below)

- Prosecution and related activities which would generally require legal professional knowledge and skills include:
 - conduct of investigations and research into cases to collect information and/or evidentiary material:
 - such investigations and research may not require the exercise of legal professional knowledge and skills where they are carried out under or with access to legal direction;
 - the consideration of evidence and other factors bearing on the advisability of instituting Court proceedings;
 - reviewing and preparing a case:
 - activities associated with timing, the availability of witnesses and the preparation of documentation may not normally require the exercise of legal professional knowledge and skills, where they are carried out under or with access to legal direction;
 - the briefing of the counsel to conduct the prosecution;
 - the conduct of the prosecution including the actual presentation of the case before the Court; and
 - conduct of activities such as extradition or matters arising under proceeds of crime legislation.

Litigation

- Litigation work comprises a range of activities associated with Court and/or Tribunal actions or suits contemplated, threatened, likely or which have been or may be brought by or against the Commonwealth, including:
 - conduct of investigations and research into cases to collect information and/or evidentiary material or the provision of legal direction/supervision over work in the collection of information and/or evidentiary material:
 - such investigations and research may not require the exercise of legal professional knowledge and skills where they are carried out under or with access to legal direction;

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- the consideration of evidence and other factors bearing on the advisability of instituting court or Tribunal proceedings or settlement;
- reviewing and preparing cases:
 - . activities associated with timing, the availability of witnesses and the preparation of documentation may not normally require the exercise of legal professional knowledge and skills, where they are carried out under or with access to legal direction;
- the briefing and instructing of counsel to conduct cases;
- the conduct of cases including the actual presentation of cases before a Court or Tribunal;
- advice as to the effect of an unfavourable decision and the desirability of appeal.

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Work for certain Registrars and Deputy Registrars of Courts and Tribunals

- Whether the exercise of statutory functions and judge directed powers of a Registrar or Deputy/District Registrar of a Court or Tribunal requires the exercise of legal professional knowledge and skills will depend upon the nature of the statutory functions (or delegated statutory functions) exercised.
 - Administrative activities associated with the operation of a Court or Tribunal Registry would not generally require the exercise of legal professional knowledge and skills;

Legal Research

- Legal and quasi-legal research work comprises a range of activities conducted in support of an agency's legal advising, legal policy advising/development, prosecution, litigation and other legal services. It may be carried out by non legal staff and may require the direction of legal staff. This work may include:
 - collecting, analysing and evaluating evidence associated with prosecutions or litigation;
 - analysing legal decisions, opinions, rulings, memoranda, and other legal material, selecting and reporting on principles of law;
 - searching legal records for information on legal precedents, points of law, decisions and other legal matters;
 - compiling from legal documents, legislation, and other legal material digests of points of law for use of Department/Agency legal advisers;
 - selecting, assembling, summarising and compiling substantive information on statutes, treaties and specific legal subjects.

This work would normally require for its satisfactory performance at least some knowledge of the law and legal practices in order to determine pertinent facts and legal questions, to understand, differentiate and apply pertinent legal provisions, legislation and previous decisions. This knowledge would not in itself justify a Legal classification. The determining factor would be whether the work requires knowledge of the underlying legal precepts or principles and skills in their application.

Negotiation of legal agreements and treaties

- Conducting negotiations on legal agreements or treaties and the preparation and presentation of the Department's or Agency's position would ordinarily require the exercise of legal professional knowledge and skill.

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LEGAL 1

Two distinct levels of work have been defined within the Legal 1 classification. These are described below.

While Legal 1 represents only one classification, a separation of work value occurs between the seventh and eighth salary point of the salary scale. This is a formal separation for the purposes of supporting particular advancement requirements for movement beyond the seventh salary point.

LOWER - WORK LEVEL DESCRIPTION

Definition

Under general direction performs legal professional work and exercises initiative and judgement in the application of legal professional knowledge and skills.

Features

This level includes new graduates generally lacking practical experience in the application of their legal professional knowledge and skills, and more experienced legal practitioners who have undergone professional development and are consolidating their legal professional knowledge and skills.

Staff moving through the lower work level are expected to exercise increasing independent legal professional judgement such as in providing legal advice, conducting litigation and undertaking legal research. With professional development, it is expected that new techniques and methods will be learnt and applied to progressively more difficult problems. As experience is gained, the contribution and the level of professional judgement increases and professional supervision decreases.

Typical Duties

The duties listed below are typical of this work level.

- Prepare drafts of Bills or subordinate legislation to be settled by more senior officers.
- Draft instruments of delegation, statutory appointments and statutory instruments requiring knowledge of legal principles and statutory interpretation.
- Prepare drafting instructions for amendments to regulations and Acts, including ministerial briefs.
- Provide advice to policy areas of Department/Agency concerning legal implications of new policy proposals and options for implementation, including the need, if any, for legislative amendment.
- Draft or provide advice on contracts, leases and agreements.

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- Provide advice on legal questions and on legal aspects of policy proposals.
- Prepare or conduct straightforward or less complex civil litigation or prosecutions. Brief counsel as appropriate.
- Represent the Department/Agency at preliminary conferences, directions hearings and hearings.
- Prepare reports on decisions of courts and tribunals involving the Department/Agency including advice on their legal implications.
- Analyse legal opinions and other legal material, conduct legal research and provide reports and papers on points of law and legal issues.

UPPER - WORK LEVEL DESCRIPTION

Definition

Under general direction performs legal professional work of a complex or significant nature as an individual or the leader of a group. Exercises a high degree of professional judgement.

Features

Persons at this level are expected to have an extensive legal experience and substantial professional knowledge of the law and legal practice.

They are expected to exercise considerable professional judgement in the preparation of material for legal proceedings, and to conduct legal proceedings if required.

Persons at the higher level of Legal 1 would be expected to require minimum assistance and supervision to produce quality results consistent with more experience. When experienced, advice and guidance may also be provided to less experienced professional staff, in particular, persons at this level would be able to act as consultants or mentors to para-legal staff.

Typical Duties

The duties listed below are typical of this work level.

- Draft complex legislation to be settled by more senior officers.
- Draft complex instruments of delegation, statutory appointments and statutory instruments requiring substantial knowledge of legal principles and statutory interpretation.
- Prepare drafting instructions for complex Acts and regulations and amendments to Acts and regulations, including ministerial briefs.
- Provide advice on complex legal questions.

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- Provide advice on complex legal aspects of policy proposals and options for implementation, including the need, if any, or legislative amendment,
- Draft or provide advice on complex contracts, leases and agreements.
- Prepare or conduct complex civil litigations or prosecutions and brief counsel as appropriate.
- Assist more experienced lawyers in the preparation and conduct of more complex cases before Courts and Tribunals.
- Represent the Department/Agency at preliminary conference, directions hearing and hearings involving complex matters.
- Conduct research and write papers on complex or significant legal issues.
- Carry out routine functions of a court or tribunal registrar and other more complex registrar functions, as directed.

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LEGAL 2

WORK LEVEL DESCRIPTION

Definition

Under broad direction exercises extensive or in-depth legal professional knowledge and skills and a high degree of independent professional judgement in performing more complex or significant legal professional work or directing a significant function or group of activities.

Features

A person at this level would generally be required to have a high degree of originality and analytical and conceptual skills in the resolution of more complex legal or legal policy issues. The work requires a good working knowledge of the legislation, and where appropriate, expert knowledge in significant areas of the legislation, administered by the agency and related legislation and legal policies.

Judgements made at this level form the basis of advice to senior levels within an agency and Ministers and are often critical to the achievement of the overall objectives of an agency.

The work may require adaptation of existing legal principles to new and unusual problems which take account of ongoing changes in policy.

A manager at this level would be expected to exercise a high degree of independence in the determination of overall strategies, priorities and work standards and the allocation of resources.

Typical Duties

The duties listed below are typical of this work level.

- Draft complex and more significant legislation and supervise the drafting of less complex or less significant legislation.
- Direct the drafting of instruments of delegation, statutory appointments, and statutory instruments and undertake the more complex and significant drafting work.
- Direct and prepare drafting instructions for the more complex and/or significant legislation.
- Draft or provide advice on the more complex and/or significant contracts, leases and agreements.
- Provide advice and reports to Ministers and senior management on the more complex or significant decisions or courts and tribunals involving the Department/Agency.

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- Provide legal advice to policy areas of the Departments/Agency and the Minister on legal implications of new policy proposals and options for implementation, and on more complex or significant legislative amendments.
- Provide advice on more complex legal questions and prepare or direct the preparation of discussion papers on legal aspects of policy proposals for submission to the Minister/Cabinet, other areas of the portfolio and other Departments/Agencies.
- Represent the Department/Agency at preliminary conferences and hearings involving more complex and significant cases.
- Prepare or conduct more complex civil litigation or prosecutions and brief counsel as appropriate.
- Provide advice and reports to Ministers and senior management on the more complex or significant decisions of courts and tribunals involving the Department/Agency.
- Initiate, plan and conduct legal research projects of considerable breadth, complexity or significance. As appropriate, direct legal and other staff involved in legal research.
- Carry out more complex statutory functions of a court or tribunal registrar and, in smaller registries, direct the registry's operations.
- Direct and train legal officers who are engaged in a significant function or group of activities and, generally, act as a consultant or mentor to less experienced legal staff.

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ATTACHMENT B

LEGAL 1

Legal 1

ELIGIBILITY REQUIREMENTS

1. A degree in Laws of an Australian tertiary institution, or a comparable overseas qualification, which, in the opinion of the Secretary, is appropriate to the duties of the office; OR
2. Admission as a practitioner, however described, of the High Court or the Supreme Court of an Australian State or Territory.

SELECTION ARRANGEMENTS

On successful completion of a course of training as Aboriginal Professional Assistant or Professional Assistant, officers will be promoted or transferred as Legal 1 under the Public Sector Management Act. Such promotions are not subject to appeal.

In all other cases, selections will be made in accordance with guidelines issued by the ACT Government Service.

SALARY ADVANCEMENT PROVISIONS

Legal 1

1. An officer shall not, on appointment, be paid salary at a rate exceeding the first salary point in the scale of rates applicable to the classification of Legal 1 unless the Secretary determines otherwise or the officer:
 - (a) has been admitted as a practitioner, however described, of the High Court or the Supreme Court of a State or Territory; and
 - (b) (i) has served under articles of clerkship for a period of not less than one year; or
 - (ii) before being so admitted, successfully completed a course of training in the Legal Workshop conducted by the Faculty of Law at the Australian National University or a comparable course in Australia; or
 - (iii) has gained experience which in the opinion of the Secretary, is equivalent to the experience of a person who has satisfied (i) or (ii) above.
2. An officer shall not be paid salary at a rate per annum exceeding that which was paid on appointment, transfer or promotion unless he or she has complied with the conditions specified in clause 1.
3. An officer shall not be paid salary on appointment, promotion or transfer at a rate exceeding the seventh salary point in the above scale unless the officer has complied with the conditions specified in clause 1.

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4. An officer who has complied with the conditions specified in clause 1 shall be advanced to salary points in the scale in accordance with such performance appraisal procedures which in the opinion of the Department of Public Administration are appropriate and the conditions specified in clause 5.

5. (a) Subject to this clause an officer shall be paid salary at a rate exceeding that which was payable on appointment, transfer or promotion to the office where the officer has attained a performance rating of 3, 4, or 5 shown in column 1 of the table in this clause;

(b) Where an officer has attained a performance rating shown in column 1 of the table in this clause the officer is entitled to be advanced by the number of salary points specified in column 2 corresponding to the performance rating attained by the officer except as specified otherwise in this clause.

Column 1
Performance Rating

Column 2
Rate of Advancement

1	No advancement
2	No advancement
3	Advancement by one salary point
4	Advancement by two salary points
5	Advancement by three salary points

- (c) An officer shall not be advanced beyond the seventh salary point in the scale unless:
- (i) in the opinion of the Secretary the level of the work allocated for the office is classified as higher level work; and
 - (ii) the officer has performed work at the higher level for a minimum period of three months and attained a performance rating of 3, 4, or 5 shown in column 1 of the above table;
- (d) Where an officer has complied with the provisions of sub-clause (c) of this clause the officer shall advance to the eighth salary point;
- (e) An officer shall not advance beyond the eighth salary point in the scale until the officer has completed twelve months' service at the eighth salary point;
- (f) The provisions of sub-clause (b) of this clause shall not apply to:
- (i) an officer on appointment unless the officer has completed twelve

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months service; or

- (ii) an officer on transfer or promotion unless the officer has completed at least three months service as a Legal 1 at the rate payable on transfer or promotion.

ASSOCIATED CATEGORIES

Aboriginal Professional Assistant
Professional Assistant
Legal 2

LEGAL 2

Legal 2

ELIGIBILITY REQUIREMENTS

1. Admission as a practitioner, however described, of the High Court or the Supreme Court of an Australian State or Territory.

SALARY ADVANCEMENT PROVISIONS

1. An officer shall be advanced in accordance with such performance appraisal procedures which in the opinion of the Department of Public Administration are appropriate and the conditions specified in clause 2.
2. (a) Subject to this clause an officer shall be paid salary at a rate exceeding that which was payable on appointment, transfer or promotion to the office where the officer has attained a performance rating of 3, 4, or 5;
(b) The provisions of sub-clause (a) of the clause shall not apply to:
 - (i) an officer on appointment unless the officer has completed twelve months service; and
 - (ii) an officer on transfer or promotion unless the officer has completed at least three months service as a Legal 2 at the rate payable on appointment, transfer or promotion.

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ATTACHMENT C

THE PERFORMANCE MANAGEMENT PROGRAM

The principal elements of the Program are an annual performance appraisal with performance measured against a performance agreement.

The performance agreement is settled at the start of each annual cycle between the officer and his or her supervisor. It sets out the officer's key job responsibilities for the coming year which include references to the Corporate Plan, the Business Plan and any work plans relevant to the officer's work area.

There is then a mid cycle review of performance, half way through the annual cycle, which gives the officer feedback on performance to that time.

At the end of cycle performance appraisal, performance against targets in the performance agreement is assessed and a new performance agreement is settled for the following year.

Performance Appraisal: The end of cycle performance appraisal will be conducted, and the new performance agreement will be settled, between the officer and his or her supervisor, and then reviewed by that supervisor's own supervisor. In the appraisal process an overall rating of performance will be determined, using a 5 point rating scale.

Training and Development Plan: The Performance Management Program also includes a requirement for the annual completion of a training and development plan. That Plan is developed after an assessment of core skills is conducted to identify particular skills which may need further development. The core skills assessment is not part of the performance appraisal process and as such does not impact on the overall rating performance.

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ATTORNEY-GENERAL'S DEPARTMENT

PERFORMANCE MANAGEMENT PROGRAM FOR LEGAL STAFF

GUIDEBOOK

SUMMARY

The Performance Management Program for Legal staff is based on principles which are consistent with the appraisal guidelines issued by the Department of Public Administration for the Senior Executive Service.

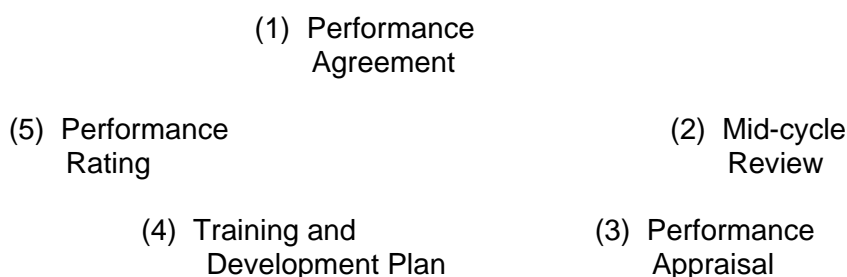
OBJECTIVES

The Departmental objectives in establishing a Performance Management Program are to provide a mechanism to periodically assess and if necessary to improve performance to meet corporate goals. This involves assessing and improving performance against corporate goals, the understanding by staff of their work responsibilities and of the performance standards expected of them. Another objective is to improve communications between staff and their managers.

The Performance Management Program is also intended to provide staff with opportunities to meet their development needs, provide career and advancement opportunities, and increase mobility and flexibility. In addition, the program will provide the basis for salary advancement of legal staff.

PROGRAM STRUCTURE

The following diagram outlines the performance appraisal cycle:



The annual appraisal cycle for Legal 2 staff is 1 September to 31 August. The annual appraisal cycle for Legal 1 staff is either mid February to mid February, mid May to mid May or mid September to mid September. Legal 1 staff will be generally placed in one of these three parts of the overall legal 1 cycle, by reference to the dates on which, but for the introduction of a new Award, they would otherwise have received a salary increment.

Details of the 5 stages in the cycle are as follows:

(1) **Performance Agreements:** Following a discussion between the appraisee and the appraiser (the supervisor), a Performance Agreement Record will be completed in respect of aims, strategies and performance targets (including the

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mandatory continuing legal education requirements) that the appraisee will be required to achieve during the appraisal year. Priority activities should be given appropriate weighting and indicators of performance expected against performance targets should be set.

Activities to be undertaken should be clearly described in terms which will allow appropriate assessment during the appraisal cycle. They should also be directed towards achieving Corporate Goals and/or Divisional or Office Aims. The completed Performance Agreement should be forwarded to the appraiser's supervisor for confirmation and copies would be kept by the appraisee and the appraiser.

(2) **Mid-Cycle Review:** The appraisee and appraiser will review progress towards achievement of the agreed results and complete the performance review section of the Performance Agreement Record. Feedback on performance should be informal and ongoing throughout the appraisal cycle and formal review interviews may be held more often if required. An important outcome from the review interview is that there should be no surprises at the end of cycle appraisal interview.

Discussion at review interviews can include reviewing performance against targets to date, checking the relevance of the performance agreement and making any necessary alterations if the nature of the job has changed, as well as training and development needs, providing coaching and addressing career path planning. Any proposed changes to the Performance Agreement flowing from the review must be endorsed by the appraiser's supervisor.

(3) **Performance Appraisal:** At the end of the appraisal cycle the appraisee and appraiser should discuss and determine an assessment of work performance over the appraisal year. Both the appraisee and appraiser should prepare for the interview and at least 5 working days notice of the interview should be given.

The completed Performance Agreement (which includes a single overall rating recommendation) forms the basis of the report to the Evaluation Committee for the Office or Division. Evaluation Committees will include the Senior Professional in the office (eg a Division Head or Director), a union representative and an outside professional.

(4) **Training and Development Plan:** The appraisee and appraiser discuss and determine the appraisee's training (particularly the continuing legal education training requirements), relevant personal and career development needs and complete the Training and Development Plan section of the Performance Agreement Record.

An assessment of the appraisee's performance against the relevant core skills contained in the Core Skills Handbook should be made to identify any areas that need further developing. The assessment of core skills does not contribute to the Single Overall Rating of performance.

When completed, a copy of the Training and Development Plan should be forwarded to the relevant Training Section (central or regional).

(5) **Performance Rating:** Following consideration of the Performance Agreement, including the appraiser's suggested Single Overall Rating and any other material presented by the appraisee, the Evaluation Committee will make a recommendation to

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the relevant Program Co-ordinator for Legal 1 staff, or to the Secretary for Legal 2 staff, as to the Single Overall Rating. The relevant Program Co-ordinator or the Secretary will determine the single overall performance rating.

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RESULTS-BASED PERFORMANCE RATING SCALE

The five point rating scale with general descriptions of the standard of performance expected for each level in the scale is set out below:

5 Outstanding

A staff member whose performance against the targets in his/her Performance Agreement far exceeds that required, resulting in performance which consistently and substantially exceeds standards (rating level 3) competency expectations.

Commentary:

Staff members in this category would have made a significant contribution toward meeting corporate goals and be recognised as models of excellence in their particular areas. Sustained performance and further advancement (if the person aspired to a higher level) could be assumed.

4 Above Competent (Noteworthy)

A staff member whose performance against the targets in his/her Performance Agreement is well above that required, resulting in consistently high performance which usually exceeds standard (rating level 3) competency expectations.

Commentary:

Staff members in this category would be expected to develop further so as to maintain a consistently high performance which exceeds competency expectations given their current job classification, as well as being assessed as having strong potential for further advancement through the normal selection process (while not necessarily aspiring to a higher level).

3 Competent (The Performance 'Standard')

A staff member who meets fully the targets in his/her Performance Agreement, resulting in consistent and competent performance.

Commentary:

All staff members in this category would be expected to develop further so as to maintain a consistent and competent level of performance at their current job classification, with a number of staff members in this category being assessed as having the potential for advancement to the next level through the normal selection process (while not necessarily aspiring to a higher level).

2 Marginal

A staff member who only just meets the targets in his/her Performance Agreement, but at a below standard (rating level 3) level resulting in indifferent performance.

Commentary:

Staff members in this category will be informed that their performance is

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less than competent and that they are expected within 12 months to raise it to an accepted level (ie a 3 rating). If it is relevant, the Department may be able to assist by providing specific remedial training and supervision to enhance skills.

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1. Unacceptable

A staff member who has not met the targets in his/her Performance Agreement at an appropriate level, resulting in performance being consistently below standard (rating level 3) expectations.

Commentary:

Officers in this category will require extensive career counselling in relation to their continued employment at their present level.

SPECIAL NOTE: Appraisers should ensure that appraisees rated 3 or above are EXPRESSLY informed that they should not on the basis of this rating alone build up unjustified expectations of promotion. Promotion decisions are, in contrast to appraisals of outcomes against agreed obligations, made quite separately on the basis of applications considered against unilaterally established requirements and criteria in open competition where comparative merit is the only test.

ADMINISTRATIVE ASPECTS

The Performance Appraisal Record is classified Personal-Staff-In-Confidence and the provisions of the Privacy Act apply to the recording, storage, retention, access to and use of the Record. Strict procedures have been established for the storage, retention and access to Performance Appraisal Records.

When new staff join an area (except in the case of short term moves of less than 3 months), a performance agreement needs to be established within four weeks of arrival. The minimum time before performance can be appraised is 3 months.

If an appraisee and appraiser cannot agree on an aspect of the appraisal process, they should seek a discussion with the appraiser's supervisor. If resolution is not reached, disagreements should be recorded and submitted to the Evaluation Committee. Ultimately the Secretary will be the final arbiter.

SALARY FIXING AND ADVANCEMENT MECHANISM FOR LEGAL STAFF

This document, outlining the salary fixing and advancement arrangements for legal staff, should be read in conjunction with the Guidebook on the Performance Management Program for Legal Staff (the Guidebook).

2. An important element of these arrangements is the division of Legal 1 into work at the lower and higher levels as outlined in the attached Work Level Descriptions. The basic distinctions between the levels are the complexity of the work in Legal 1 (routine at the lower end and more complex at the higher end) and the amount of assistance and supervision provided to the officer. The division between the lower and higher level has been made above the 7th salary point.

3. There will be three parts of the Legal 1 annual appraisal cycle, one commencing mid February, mid May, and mid September.

4. Commencing salaries on appointment and promotion will be determined in accordance with the provisions of the Public Sector Management Act. Supervisors will be required to have settled a performance agreement with new staff within four weeks

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of commencement. Persons appointed, promoted or transferred cannot be paid above the 7th salary point unless they have satisfied the requirements for admission to practice.

5. New staff who have been promoted or transferred will have their first appraisal at the time of the next part of the cycle that allows for the officer to have demonstrated performance against the agreement for a period of at least three months. Staff who have been appointed will have their first appraisal at the time of the next part of the cycle that allows for the officer to have demonstrated performance for a period of at least twelve months. Staff who have not been admitted to practice are not eligible for salary advancement until they are admitted.

6. The following diagram outlines the salary advancement arrangements and the annual appraisal cycle:

The following notes describe the concepts mentioned in the above diagram.

(A) Work Level and Capability Assessment (for Legal 1)

(i) The relevant Program Co-ordinator makes an assessment of the level of the work of the position to be included in the performance agreement (see C) and to be performed by an officer in the next year. In the making of the assessment, regard will be had to the Work Level Descriptions, the need for work to be done at that level and the capabilities of the officer as demonstrated by past recent and relevant performance as indicated by the Appraisal Report (see D). That is, regard will be had to whether the officer will be required to perform work at the lower or higher end of the Legal 1 salary band.

(ii) Consideration will then be given to whether the officer has demonstrated by an established record of performance at the higher level, the capability to perform work at that higher level in the band. It would normally be expected that a period of at least three months would be required to establish this record.

(iii) The above considerations (A i and ii) will then be taken into account to establish the performance agreement for the next appraisal cycle and to fix the salary of the officer in accordance with (B), below.

(B) Salary Decision

(i) Advancement Rules for Legal 1

Rating	1	- no advancement
	2	- no advancement

Subject to the conditions below:

3	- advancement by one salary point
4	- advancement by two salary points
5	- advancement by three salary points

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Conditions:

In situations where the Program Co-ordinator (or senior officer in other agencies) has assessed the work to be performed by a Legal 1 officer in the next year as being at the lower end of the band or the officer has not demonstrated the capability to perform work at the higher level (see C above) the officer will not advance beyond the 7th salary point.

Officers below the 8th salary point of Legal 1 will advance to the 8th salary point (regardless of whether they have a rating of 3, 4, or 5) where the Program Co-ordinator (or senior officer in other agencies) has assessed the work to be performed in the next year as being at the higher end of the band, the officer has demonstrated the capability to perform work at the higher level (see C above) and the officer is rated 3, 4, or 5. Officers at the 8th salary point will only be eligible to advance beyond that point after the completion of the next cycle.

Examples

The following are examples of how the arrangements for Legal 1 are intended to operate:

(a)

- . paid at lower level
- . rating at 3 or higher
- . work level and capability assessed as being at the lower level

advancement is by 1, 2 or 3 salary points up to the 7th salary point

(b)

- . paid at lower level
- . rating at 3 or higher
- . work level and capability assessed as being at the higher level with a record of performance at that level having been established

advancement is to the 8th salary point.

(c)

- . paid at higher level
- . rating at 3 or higher
- . work level and capability assessed as being at the higher level

advancement is by 1, 2 or 3 salary points up to the top of the Legal 1 band.

The supervisor of each officer rated as 1 or 2 on the above scale must ensure that that officer receives counselling, training and assistance to improve his or her performance, in accordance with the Performance Management Program Guidebook.

Date of Effect

All salary advancement for Legal 1 will take effect from a common date. That is either mid February , mid May or mid September.

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(ii) Advancement Rules for Legal 2

Rating	1 or 2	- no advancement
	3, 4 or 5	- advancement to top salary point

Date of Effect

All salary advancement will take effect from a common date, 1 September.

(C) Performance Agreement

A performance agreement is to be settled annually between the officer and the relevant supervisor in accordance with the process described in the Guidebook.

(D) Appraisal

An appraisal of the performance of the officer against the agreement and the level at which the work has been performed, is made by the officer's supervisor on an annual basis with a periodic review mid year of the agreement and the officer's performance to that date. The annual appraisal is also in accordance with the procedures described in the Guidebook and culminates in a recommended single overall rating of the officer's performance for the year. The recommendation in the form of an appraisal report is then considered, along with any other material provided by the officer, by an Evaluation Committee. Evaluation Committees will comprise the senior professional in the work area concerned, a union representative, and an outside professional. The final decision on the appraisal rating, in the case of Legal 1 officers in the Commonwealth Attorney-General's Department, is made by the relevant Program Co-ordinator and in the case of Legal 2 staff by the Secretary. (The final decision in other agencies is to be made by an equivalent senior officer.)

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ATTACHMENT D

CONTINUING LEGAL EDUCATION (CLE) REQUIREMENTS

Mandatory CLE requirements

Carrying out CLE obligations is not a function on which performance would be assessed and included in an officer's overall rating of performance. An objective of the Performance Management Program is to appraise performance of work duties. CLE obligations are included in the Program as a means to maintain and enhance skills and performance. They are not normally an outcome in the performance of work duties but a means by which staff are assisted to perform those duties.

The two exceptions to this are:

- an officer who does not meet his or her CLE obligations but is in other respects competent (ie rated 3 or better), should not be rated higher than 3, other than in exceptional circumstances. This matter is dealt with in more detail in the Continuing Legal Education Guidelines (see below); or
- there may be a limited number of officers who have to deliver CLE (far in excess of the requirements mentioned above) as a significant part of their duties - these officers may have particular targets in their Performance Agreements to cover the delivery of such training.

The Continuing Legal Education (CLE) Guidelines

The *Continuing Legal Education Guidelines* are set out below. These Guidelines apply in the Attorney-General's Department and were developed to assist legal officers and their supervisors in meeting the mandatory continuing legal education requirements of the Australian Government Lawyers (AGLA) Award.

CONTINUING LEGAL EDUCATION (CLE) GUIDELINES

INTRODUCTION

The Australian Government Lawyers (AGLA) Award 1987 (the Award), under which Legal 1s and 2s are employed, sets out mandatory CLE requirements.

These requirements are:

- For Legal 1's - complete 20 hours of office approved CLE per year.
- For Legal 2's - complete 5 hours of office approved CLE per year and , as required, provide 4 hours of office approved CLE per year.

The term 'office approved continuing legal education' has not been defined. The meaning of that term, and the means by which the requirement can be met, are set out in these Guidelines.

GUIDELINES

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1. Compliance with the *Training Guarantee (Administration) Act 1990*; Categories of 'office approved continuing legal education' should be developed to accord with Government policy on training and development as enunciated in the *Training Guarantee (Administration) Act 1990* (the Act).

In particular, CLE should accord with the definitions of 'eligible training program' and 'structured training program'. Essentially this means that prior to delivering a program, be it in-house CLE or for external clients, the following items need to be clearly identified, formulated and documented:

- the qualifications of the person who has designed or approved the CLE;
- the skills to be acquired by the participants;
- the means of imparting the skills; and
- the expected program outcomes or the means of identifying the extent to which the program has enhanced the participants productivity.

In the further development of CLE programs, regard will be had to these requirements. However, in recognition of the valuable forms of CLE available at present which may not satisfy these definitions, other categories of CLE (see paragraph 2 below) will be recognised as office approved CLE.

2. **Other categories of legal education:** As there is a need for a full range of CLE, the following is 'office approved CLE', whether or not it satisfies the requirements of the Act:

- (a) any course recognised as CLE by a Law Society or other legal professional body, whether or not a particular recognised course is concerned with technical legal skills or practice development skills;
- (b) all legal education which provides training specifically related to the development of technical legal skills, for example, methods of legal research or information related to an area of legal knowledge;
- (c) post-graduate studies in law;
- (d) presentations by officers to other officers of legal material whether as a result of study by the presenter, attendance at another course or on any other basis; and
- (e) any other relevant legal education which is approved by a Division/Office Head.

3. **Approvals:** Divisions/Offices have responsibility for approving courses and seminars as office approved CLE. Such approvals can be given by the Head of the Division/Office or any person designated by the Head (a delegate). As well as Division/Office Heads, the Office of Legal Professional Development (OLPD) determines whether particular courses or seminars will be approved.

4. **In-house seminars:** The continuation of existing in-house seminar programs

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in Divisions/Offices is encouraged. Some of these will not meet the definition of the Act, but will, nevertheless, remain a category of office approved CLE. In time, it is expected that some of these will be able to be developed to be consistent with the requirements of the Act.

5. **Dissemination of information about CLE:** Information about in-house programs should be made available to other Divisions/Offices and appropriate opportunities to attend those programs should be extended to their staff. This should generally be done by informing the OLPD and/or the relevant CLE Co-ordinators in sufficient time for advertising to be arranged. There should be overall co-ordination of CLE in the interests of making it as widely available as possible.

6. **Obligations to contribute to CLE:** Divisions/Offices will be expected to contribute significantly to the CLE program by investigating opportunities for their own officers to offer in-house legal education.

7. **Target group:** The Award requirements contain an obligation on Legal 2's to provide legal education and those officers and their supervisors should look to carrying out this obligation in a way beneficial to both their own areas and other areas of the Legal Practice and the Department. CLE should preferably be delivered in-house. A maximum of 2 hours credit can be claimed for externally given CLE.

8. **Meaning of 'Year':** The 'year' in respect of which the CLE requirements apply is taken to be the Performance Management Cycle year applying to each officer.

9. **Commencement of CLE obligations:** All officers must comply with the obligations and should discuss CLE proposals with their supervisors when settling and reviewing Performance Agreements.

A pro rata CLE requirement applies for all new starters and officers returning from leave whose Performance Management Cycle is less than 12 months.

10. **Part-time Officers:** Part-time officers need only meet pro rata CLE requirements based on the proportion of hours worked compared to those of a full-time officer, rounded to the nearest half-hour.

Formula:

$$\frac{\text{Number of hours worked per week}}{36.5} \times \text{CLE hours required if working full-time} = \text{CLE Required}$$

36.5

For example, a Legal 1 who works 22 hours per week needs to complete 12 hours of office approved CLE per year. A Legal 2 who works 15 hours needs to complete 2 hours and provide 1.5 hours of CLE.

11. **Requirement to include CLE in Performance Agreements:** Meeting the CLE requirements of the Award is a matter to be reflected in Performance Agreements, either as a separate item or as part of a program of legal education if the officer's duties involve more than meeting the minimum Award requirements for CLE.

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CLE is not formally 'rated'. CLE obligations should be kept in mind when setting performance targets and the obligations should be stated as an additional item in the Performance Agreement.

12. **Penalty for failure to meet CLE obligations:** In recognition of the importance of meeting CLE obligations, officers who do not undertake CLE, but are in other respects competent (ie rated 3 or better), should not be rated higher than 3 unless there are exceptional circumstances.

13. **CLE 'as required':** There is a requirement for Legal 2 officers to provide 4 hours of office approved CLE per year. This is made subject to the qualification 'as required'. That qualification is not to be interpreted liberally, so as to defeat the purpose of the CLE requirements.

14. **Entitlement to attend office approved CLE:** The designation of any program as office approved CLE does not of itself confer on any officer the right to attend that program. Attendance during working hours remains dependent on the needs of the officer's work unit and the requirements of the officer's workload and requires the approval of an appropriate supervisor.

Meeting the stated CLE requirements is both an Award obligation and entitlement and it would be expected that sufficient CLE will be made available, either internally or externally (and subject to the approval process), to officers of the Legal practice and the Department. The hourly billable rate incorporates allocation of time of three standard days for CLE participation.

15. **The obligations of professionals to maintain their own skills:** Offers are encouraged to pursue CLE in their own time and can seek approval for courses, seminars etc attended after hours from the officer in their Division/Office authorised to approve such legal education. Approvals after the event are acceptable. The obligation on the Legal Practice and the Department to make sufficient legal education available and on supervisors to enable officers to undertake that education is not regarded as being inconsistent with this general professional obligation which officers have.

16. **Recording of CLE:** It is the responsibility of individual officers to ensure that CLE undertaken or provided is recorded. A running record of the CLE hours credited is kept, for each Performance Appraisal Cycle and for each officer, by a designated person in each Division/Office; being the CLE Co-ordinator, Office Manager or delegate. It is the responsibility of individual officer to provide the designated person with the information required for recording CLE. A copy of this record should be sighted by your appraiser at mid-cycle review and again at the final appraisal. A copy of the record must be included in the report completed by each officer at the time of Performance Appraisal.

17. **Post-graduate studies:** The option to pursue post-graduate studies in law as a means to discharge CLE requirements does not carry with it any obligation by the Legal Practice and the Department to fund that post-graduate study. The choice to undertake the study is voluntary. There are scholarships offered from time to time and officers are able to compete for these.

18. **Panel presentations:** The obligations on Legal 2s to provide CLE can be

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discharged by participation as a panel member to the extent allowed under paragraph 7.

19. **Public education programs:** As the benefits of office approved CLE are primarily for staff of the Legal Practice and the Department, Legal 2s would be expected to provide legal education in-house or in a more public forum to which staff would have access.

CLE credit is available to officers who deliver seminars or courses as part of public awareness sessions or promotion/information on, eg new legislation: subject to the provision specified in paragraph 7 that Legal 2s must give a minimum of 2 hours CLE in-house.

[Guidelines 20 and 21 related to other internal training within the Department.]

22. **Delivery of legal education by Legal 1s can be recognised:** Delivery by Legal 1s of office approved CLE can be counted, with the approval of the relevant Division/Office Head (or delegate). towards discharge of Award obligations.

For each hour of delivery, an extra hour preparation time may also be credited.

23. **Video presentations:** Where an officer has conducted a seminar and had a video made of that presentation, credit towards that officer's CLE requirements will be available for repeat showing of the video in other Divisions/Offices. The amount of credit to be made available depends upon the officer's Division/Office Head and/or OLPD being satisfied of the quality and value of the presentation. Repeat showings of such a video are only available for credit towards and officer's obligations in the particular appraisal year in which the video is produced and cannot be used to discharge future obligations.

Viewing of legal education videos will be able to be credited towards CLE provided that a commentator participates in the overall presentation of leads a discussion group on it.

FOR FURTHER INFORMATION

The Office of Legal Professional Development in the Attorney-General's Legal practice can answer queries about the application of the Guidelines.

The Office can also advise on and help arrange the delivery of CLE programs.