

## Whole-of-Government Legal Services Panel

### Panel use and exemptions policy

<b>Policy title</b>	<b>Whole-of-Government Legal Services Panel – Panel use and exemptions policy</b>
<b>Date and version number</b>	August 2020 DJAG Reference #5182993
<b>Data classification</b>	Sensitive
<b>Approved by</b>	David Mackie, Director-General, Department of Justice and Attorney-General
<b>Policy owner</b>	Legal Services Coordination Unit (DJAG)

## Table of contents

Purpose .....	3
Background .....	3
Panel structure .....	4
Requirement to use the panel by Government departments.....	5
Exemptions from using panel firms.....	6
Exemption process and approvals required .....	7
Reporting on spend with off panel firms.....	9

## Version control

<b>Version 1</b>	New Policy for implementation of new Legal Services panel
	Updated to new template on 5 August 2024

## Purpose

1. This policy sets out the conditions and processes for Queensland Government departments who are required to use the Queensland Government Whole-of-Government Legal Services Panel, or, if necessary, to seek an exemption to the panel arrangement to use a non-panel supplier for a specified matter or matters.
2. This Policy supports the integrity of the panel arrangements and balances the needs for customers to have their legal needs met.

## Background

3. The whole-of-Government Legal Services Panel is a formal Standing Offer Arrangement (SOA) between the State of Queensland (with the Department of Housing and Public Works as Principal) and law practices (Suppliers) selected to provide external legal services to Queensland Government departments and other eligible entities (Customers).
4. The SOA consists of the following documents:
  - a. SOA Details – contains information specific to the SOA including requirements, pricing, performance measures and governance. The terms agreed in the SOA Details flow through to the contracts between Customers and Suppliers
  - b. SOA Conditions – contains the terms and conditions for the SOA between the Principal and the Supplier
  - c. General Contract Conditions – contains the terms and conditions that apply to the contracts between Customers and Suppliers, and
  - d. Definitions and Interpretation – contains definition and interpretation clauses for the SOA Details, SOA Conditions and General Contract Conditions.
5. The panel commences on 1 June 2020 for an initial term of four (4) years until 31 May 2024. There is a mid-term review in 2022, and an option to extend the arrangement beyond 31 May 2024 for a further two (2) years.
6. The panel has been established to:
  - a. provide high quality legal services that meet a broad range of legal needs
  - b. better value for money by simplifying procurement and tendering, providing more competitive pricing for aggregated legal services, and facilitating alternative fee arrangements in appropriate circumstances
  - c. provide greater visibility of engagements
  - d. establish an outcome focused legal services panel
  - e. ensure appropriate diversity in the supply base, including clear consideration for Small businesses, Aboriginal businesses and/or Torres Strait Islander businesses and localised delivery of services where capability exists
  - f. enable buyers to contribute to key Government priorities through more contemporary procurement practices
  - g. simplify the market's dealings with Government and reduce 'cost to service'
  - h. generate and share meaningful performance and expenditure data
  - i. understand and deliver 'value' to stakeholders, and
  - j. advance the Government's continued role in providing growth, employment and skilling opportunities within Queensland.
7. A centrally coordinated Panel Manager manages performance and monitors and reports on the SOA to drive continuous improvement. The Panel Manager is the Director, Legal

Services Coordination Unit, Strategic Policy and Legal Services in the Department of Justice and Attorney-General.

8. The Queensland Government adopted the Law Council of Australia's 2016 Equitable Briefing Policy in March 2019. Separate policies exist for the use of barristers which should be read alongside this document including:
  - *The whole of Government Briefing Barristers Policy, and*
  - *Barristers Undertaking Legal Work for Queensland Government Departments.*
9. Capitalised terms in this Policy are defined terms under the whole-of-Government SOA for Legal Services. The meanings of these terms are as per the SOA documentation.

## Panel structure

10. The panel is made up of eight areas of law and 14 categories of legal service, which align to the priority needs identified by Government departments. There is a further service area of legal resourcing available under the arrangement.
11. The areas of law and legal service categories are:

Area of law	Legal service category
<b>Major Projects</b>	1 Major Projects
<b>Property, Planning &amp; Environment</b>	2 General & Transactional Property
	3 Planning & Environment
	4 Energy & Resources
	5 Compulsory Acquisitions
	6 Building & Construction
<b>Corporate &amp; Commercial</b>	7a. General Corporate & Commercial
	7b. Competition Law
	7c. Banking & Finance
	8 Taxation & Revenue
<b>Workplace &amp; Industrial</b>	9 Workplace & Industrial
<b>Information and Communications Technology &amp; Intellectual Property</b>	10 Information and Communications Technology & Intellectual Property
<b>Litigation &amp; Dispute Resolution</b>	11 Litigation
	12 Prosecutions & Advocacy
<b>Health Law</b>	13a. Health Law
	13b. Insurance matters including medico legal claims
<b>Public &amp; Administrative Law</b>	14. Public & Administrative Law
<b>Service Area</b>	15. Legal Resources

12. Legal services excluded from the scope of the whole of Government SOA include, but are not limited to:
  - Work tied to Crown Law in accordance with the Crown Law Tied Work Guidelines
  - Department of Public Prosecutions and Police prosecutions
  - Family law
  - Child protection matters
  - Direct briefs to barristers, and
  - Legal technology solutions.
13. The panel Suppliers for each category have been selected based on a rigorous assessment of their capability and capacity to deliver quality and value for money legal services for that category/service area.
14. More detailed information about the panel categories, appointed Suppliers, the services they offer, and how to use the panel arrangement is set out in the *Legal Services Panel Buyers Guide, Suppliers & Categories* fact sheet, and the *Supplier Capability Matrices*.
15. Crown Law is not a panel supplier, however may continue to be used, as of right by Customers to procure non-tied legal services.
16. The Public Trustee may also be engaged by Customers outside the Panel for legal services categorised as Property Law.

### Requirement to use the panel by Government departments

17. From 1 April 2015, Queensland Government departments and agencies have been required to use a whole-of-Government Legal Services panel or Crown Law for all requirements for external legal services from solicitors initiated on or after that date, subject to limited exemptions as outlined in this Policy.
18. Under the SOA, other entities may 'opt in' to the panel arrangement with the Panel Manager's approval. Other entities approved to 'opt in' by the Panel Manager are not required to use panel Suppliers exclusively, so they are not required to seek exemptions.

### Categorisation of legal matters

19. It is the Customer's discretion into which of the categories of law a matter fits.
20. If there is an overlap between some categories for a matter, it is the Customer's discretion into which category it best fits.
21. Some matters might be categorised differently as they progress and the needs of the Customer change.
22. The Customer may, at any time, elect to reclassify a matter from one category to another. If a matter is reclassified, the Customer may approve the Supplier they have previously engaged (the existing Supplier) to continue to provide services on the matter, even if that Supplier has not been appointed to the new category into which the matter has been reclassified.
23. Alternatively, the Customer may elect to engage a new Supplier from within the category to which the matter has been reclassified.
24. If a matter is reclassified and the Customer chooses to engage a new Supplier, the existing Supplier must immediately transfer all Customer information to the new Supplier and must

provide all transitional assistance as may be reasonably necessary or requested by the Customer.

### Exemptions from using panel firms

25. Queensland Government departments are required to use the panel or Crown Law for untied external legal services requirements, subject to limited exemptions.
26. Departments must seek an exemption from using Panel Suppliers prior to engaging a non-panel supplier (i.e. a supplier that is not appointed to the panel) in accordance with this Policy.
27. This exemption Policy applies to the engagement of a supplier
  - who has been appointed to the Legal Services Panel but not appointed to a particular category of law in which legal services are required, or
  - not appointed to the whole-of-Government legal services panel.
28. Where an exemption is granted for a specific matter, this does not negate the obligation of departments to use panel Suppliers or Crown Law for all other matters.
29. A Department engaging a non-panel firm for a matter must still apply Queensland Government project planning, procurement and contract management principles, including seeking value for money for purchased services.
30. Customers should also note the Office of the Official Solicitor of the Public Trustee is also a provider of legal services in the property area, and this arrangement will continue.
31. Customers must keep records of exemptions and the reasons for using non-panel firms.

## Exemption process and approvals required

32. Queensland Government departments must not engage a non-panel firm without the prior approval of their Supplier Relationship Manager or Director-General (or the authorised delegate of the Director-General) depending on the reason for the exemption.
33. A department's Supplier Relationship Manager may approve a request to engage a non-panel supplier in any of the following circumstances:
  - a. the matter is within an area of law outside the scope of the Legal Services Panel (e.g. as outlined in Section 11 of this Policy). The buyer must follow the Department's internal procurement policy for procuring outside an SOA.
  - b. if a matter is reclassified, the Customer may approve the Supplier they have previously engaged (the existing Supplier) to continue to provide services on the matter, even if that Supplier has not been appointed to the new category into which the matter has been reclassified.
  - c. an ongoing matter needs to be completed, and the contracted Key Personnel is moving to a non-panel supplier
  - d. where the Customer has identified a non-panel supplier with the relevant experience who offers a cost-effective solution and procuring from that supplier would increase the Customer's spend with a supplier identified in the Queensland Procurement Policy Government targets and commitments. Examples include Aboriginal or Torres Strait Islander owned businesses and Social Enterprises, or
  - e. the matter arises in a regional area and is expected to cost under \$15,000, the matter can be managed by non-panel local suppliers to maintain flexibility and provide opportunities for local suppliers.
34. A Director-General (or the authorised delegate of the Director-General) may approve a Customer's written request to use a non-panel supplier in any of the following circumstances:
  - a. where all panel Suppliers have a conflict of interest for the matter
  - b. where it is desirable to obtain a number of quotes, and there are insufficient panel Suppliers available due to conflicts of interest or unavailability of Key Personnel
  - c. where specialist expertise is required but is not currently available from panel Suppliers, and non-panel suppliers have the required expertise
  - d. where use of a non-panel supplier would represent value for money, such as when:
    - the non-panel supplier has specific prior knowledge of a particular project or specific issues relevant to the matter, and so does not need time to 'get up to speed,'
    - the non-panel supplier has recently undertaken similar work for the Customer and the work needs to be done urgently, or
  - e. A matter arises in a regional area, and the work is quoted by a non panel local supplier to cost more than \$15,000, but it is deemed by the Customer to be more cost effective for the matter to be dealt with by that local non-panel supplier. This will maintain flexibility for customers, encourage new entrants to gain Government experience and support procurement policy targets and commitments.
35. For the purposes of the panel, a local supplier is defined in the Queensland Procurement Policy and means a supplier of goods or services that maintains a workforce whose usual place of residency (i.e. where they normally live, sleep and eat) is located within a 125 kilometre (km) radius of where the good or service is to be supplied.

36. The Customer must inform the department's Supplier Relationship Manager who will formally seek the Director-General's approval in the above circumstances. Exemptions requests must be in writing to the Director-General and satisfy the customer's procurement rules.

A summary of the exemption reasons is included in the table below.

Exemption reason	Level of approval required	Supplier Relationship Manager	Director-General
1. Matter is within an area of law is outside the scope of the Legal Services Panel (e.g. as outlined in Section 11 of this Policy). The buyer must follow the Department's internal procurement policy for procuring outside an SOA		X	
2. If a matter is reclassified, the Customer may approve the Supplier they have previously engaged (the existing Supplier) to continue to provide services on the matter, even if that Supplier has not been appointed to the new category into which the matter has been reclassified.		X	
3. An ongoing matter needs to be completed, and the contracted Key Personnel is moving to a non-panel supplier		X	
4. All panel Suppliers have a conflict of interest for the matter			X
5. It is desirable to obtain a number of quotes, and there are insufficient panel Suppliers available due to conflicts of interest or unavailability of Key Personnel			X
6. Specialist expertise is required but is not currently available from panel Suppliers, and non-panel suppliers have the required expertise			X
7. Use of a non-panel supplier would represent value for money, such as when: <ul style="list-style-type: none"> <li>the non-panel supplier has specific prior knowledge of a particular project or specific issues relevant to the matter, and so does not need time to 'get up to speed,'</li> <li>the non-panel supplier has recently undertaken similar work for the Customer and the work needs to be done urgently</li> </ul>			X
8. The Customer has identified a non-panel supplier with the relevant experience who offers a cost-effective solution and procuring from that supplier would increase the Customer's spend with a supplier identified in the Queensland Procurement Policy Government targets and commitments. Examples include Aboriginal or Torres Strait Islander owned businesses and Social Enterprises.		X	
9. A matter arises in a regional area and is expected to cost under \$15,000, the matter can be managed by non-panel local suppliers to maintain flexibility and provide opportunities for local suppliers.		X	
10. A matter arises in a regional area, and the work is quoted by a non panel local supplier to cost more than \$15,000, but it is deemed by			X



the Customer to be more cost effective for the matter to be dealt with by that local non-panel supplier.

### Reporting on spend with off panel firms

37. All exemptions to use an off panel firm approved by a department's Director-General or Supplier Relationship Manager must be reported to the Panel Manager via the Legal Services Coordination Unit at: [Panel.Manager@justice.qld.gov.au](mailto:Panel.Manager@justice.qld.gov.au) biannually within 10 business days of the end of each six month period.