

Department of Justice and Attorney-General

Legal Services Coordination Unit

# Whole of Government policy for barristers undertaking legal work for Queensland Government departments

**1 March 2019**

Version 3

## **1. Objectives**

- a) This policy establishes a consistent and fair approach to engaging barristers by or on behalf of Queensland Government departments to ensure Government receives effective legal advice and representation at the appropriate level of remuneration with the overall aim of limiting government expenditure.
- b) This policy recognizes the Government's position as a major purchaser of legal services in agreeing on the level of fees payable to barristers engaged on behalf of Queensland Government departments.

## **2. Application**

- a) The policy applies to the engagement of barristers (including interstate barristers) by Queensland Government departments and business units within departments, and it applies whether the barrister is briefed directly by Queensland Government departments and business units within departments (including the Queensland Government Insurance Fund), or by Crown Law or a private legal services provider on their behalf. The policy is not intended to apply to statutory bodies.
- b) The policy applies to all engagements to perform government work including briefs to advise and briefs to appear before courts, tribunals and inquiries. It also applies to arbitration and other alternative dispute resolution processes.
- c) It is mandatory for Queensland Government departments and business units within departments to comply with this policy.

## **3. Selection of barristers**

- a) Subject to paragraph (c), departments are responsible for deciding which barrister to brief. In making decisions about which barrister to brief, departments are encouraged to consider the selection of barristers on professional merit; value for money; the desirability of briefing a broad range of barristers (including regionally based barristers); and the Law Council of Australia's 2016 Equitable Briefing Policy (Equitable Briefing Policy). The Queensland Government adopted the Equitable Briefing Policy in March 2019.
- b) The Equitable Briefing Policy encourages all persons or entities who brief or select barristers to make all reasonable endeavours to brief or select women barristers with relevant seniority and expertise, experience or interest in the relevant practice area, with the intent that by 2020 women are briefed in at least 30% of all briefs and receive at least 30% of the value of all brief fees.
- c) In selecting counsel, all reasonable endeavours should be made to:
  - identify female counsel in the relevant practice area;
  - genuinely consider engaging such counsel;
  - regularly monitor and review the engagement of female counsel; and
  - periodically report on the nature and rate of engagement of female counsel.
- d) Only barristers who have expressed interest in performing government work and nominated a government rate may be engaged. However, Directors-General may approve briefing a barrister who has not expressed interest in performing government work subject to Clause 4 (Fees payable to barristers) and Clause 5 (Approval to pay fees above the maximum fee caps).

- e) Barristers may express interest and nominate a government rate at any time by completing an expression of interest form (available on the Department of Justice and Attorney-General (DJAG) website) and emailing it to the Legal Services Coordination Unit (LSCU) mailbox at LSCU@justice.qld.gov.au.

#### **4. Fees payable to barristers**

- a) Barristers may nominate a government rate up to a maximum fee cap of \$300 per hour (excl. GST) and \$3,000 per day (excl. GST) for junior counsel and a maximum fee cap of \$500 per hour (excl. GST) and \$5,000 per day (excl. GST) for senior counsel. Hourly rates are capped at the applicable daily rate. Barristers are requested to have regard to their seniority and experience when nominating a government rate.
- b) Barristers with a government rate may nominate a higher rate at any time by completing a new expression of interest form. The new nominated government rate must be below the applicable maximum fee cap.
- c) Fees above the nominated government rate but below the maximum fee caps may be approved by Directors-General where justified due to a matter being complex, sensitive or urgent. Departments may also seek to negotiate hourly and daily rates below the nominated government rate for a particular matter.

#### **5. Approval to pay fees above the maximum fee caps**

- a) In exceptional cases it will be necessary to pay fees in excess of the maximum daily fee caps to ensure that appropriately skilled and experienced barristers can be retained having regard to factors including, for example:
- the special expertise or skill of the barrister proposed to be briefed;
  - the availability of other barristers to be briefed in the matter;
  - the usual market fees at which barristers in that field are briefed;
  - the importance of the matter, including any special sensitivity; and
  - the urgency of the matter.
- b) Approval of the Attorney-General (or person authorised to approve on the Attorney-General's behalf) must be obtained to pay fees above the maximum daily fee cap. Approval can be sought for an on-going or one-off rate above the maximum daily fee cap.
- c) Approval to pay above the maximum daily fee cap (on an on-going or one-off basis) can be sought via email to the DJAG LSCU mailbox at: LSCU@justice.qld.gov.au, giving a brief background to the matter and reasons why it is necessary to pay above the maximum fee cap. Requests for approval will be immediately escalated to the Attorney-General's office for urgent attention. The intention is for decisions to be made within 24 hours.

#### **6. Administration of the policy**

- a) The LSCU within DJAG is responsible for implementing the policy.
- b) The LSCU will maintain a list of barristers who are available to do government work and their nominated government rates. The list contains individual barrister's private and confidential information. The information has been provided on the basis that it will only be made available to Queensland Government lawyers and officers involved in briefing barristers and, on request, to private law practices seeking to brief barristers on behalf of

departments and business units within departments. Law practices may be provided with a list of the names of barristers available to perform government work to assist in selecting a barrister. Information about rates can be obtained from the relevant briefing department. Law practices should not be provided with the full list of barristers and rates.

- c) The LSCU will monitor and report on the number of applications and approvals to pay above the maximum fee caps and also feedback from departments about the policy and how it is working in practice. The LSCU will report to general counsel/heads of departmental legal units on these issues.
- d) The maximum fee caps can only be increased by the Attorney-General following consultation with the Premier and the Treasurer.
- e) The Queensland Government is required to provide an annual confidential report on the government's briefing practices and measures taken to implement the policy by 30 September each year. The LSCU, with the support of departments will prepare the annual report for submission by the Attorney-General to the Law Council of Australia.
- f) The confidential report should address separately the figures for male and female barristers in respect of:
  - a. The number of barristers briefed during the year;
  - b. The number of those barristers who are senior barristers;
  - c. The number of those barristers who were junior barristers;
  - d. The number of those junior barristers who were briefed without a leader; and
  - e. The monetary value of the briefs.

Each agency shall report on these figures to the LSCU.

History	January 2015	Policy commencement
	July 2015	Policy amended to adopt equitable briefing – Law Council's 2004 Policy
	March 2019	Updated following Qld Government adopting the Law Council of Australia's Equitable Briefing Policy 2016 and other amendments (see #4522746)