



**DEPARTMENT OF
JUSTICE AND ATTORNEY- GENERAL**

**PRE-QUALIFIED PANEL OF BARRISTERS FOR THE
OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS (ODPP)**

SCHEME RULES

February

2023

Document History

Version	Date	Status	Key changes made	Author(s)	Reviewer(s)
1	6/7/2018	FINAL	Original Scheme Rules – Pilot Scheme	Ann-Marie Ware	
2	8/7/2019	FINAL	Updated for extension of the scheme, and to include new regions and a tier 3		Marco D'Arro/Jill Petrie
3	28/10/2020		Added human rights clause and removed words referring to 2020 in clause 5.3		Jill Petrie
4	21/04/2021		Added locations to include Townsville and Rockhampton		Jill Petrie
5	15/11/2021		Amend definition of Tier 1		Jill Petrie
6	18/10/2022		Added clause 10.2, outlining the Bar Association's – Barristers' Code of Conduct Rules rule 104		Jill Petrie
7	18/10/2022		Updated Queen's Counsel (QC) to King's Counsel (KC)		Jill Petrie
8	02/02/2023		Increase to Magistrate Court daily and hourly rate to apply from 1 March 2023		Jill Petrie

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CONTACT DETAILS

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1 INTRODUCTION

The Office of the Director of Public Prosecutions (ODPP) represents the State of Queensland in criminal cases. The ODPP's significant responsibility is to prosecute criminal matters in the High Court of Australia, the Court of Appeal (Qld), Supreme Court, Mental Health Court, District Court, the Children's Court of Queensland and the Magistrates Court (in limited locations and matters).

On behalf of the Crown and State of Queensland, crown prosecutors appear as counsel in superior court trials and other criminal proceedings and undertake circuit work throughout Queensland as required.

Following a successful pilot scheme which ended on 30 June 2019, from 1 July 2019, the ODPP has further allocated funds to engage barristers from the private bar to undertake criminal prosecutions for the ODPP. In order to undertake criminal prosecutions for the ODPP, barristers will apply to join a prequalification scheme. The applications will be assessed by an assessment committee who will determine, based on the criteria set out below, the membership of the panel to be formed under the scheme. The pilot scheme was limited to Brisbane but has now been expanded to include Southport, Cairns, Maroochydore, Toowoomba, Rockhampton and Townsville as well as other areas in Queensland decided on a case-by-case basis. Barristers who have been accepted as panel members under the panel scheme are not required to re-apply.

2 DEFINITIONS

Applicant means a person who has submitted an application for admission to the Scheme.

Application means a written application for admission to the scheme.

Assessment committee means the committee responsible for determining the membership of the panel to be formed under the scheme.

Legal Services Coordination Unit (LSCU) operates within the Department of Justice and Attorney-General (DJAG) to lead and promote development and implementation of legal services policy and practice across government.

Panel means the list of panel members assessed as suitable for engagement by DJAG.

Panel member means a person who has applied for, and been granted admission to, the panel by DJAG.

Performance report means a report submitted in accordance with clause 12.

Scheme means the Prequalified Panel of Barristers Scheme owned by the ODPP and administered by DJAG.

Tier 1 is comprised of panel members who have been on the Roll for less than three years when first admitted to the Panel and are not required to have Magistrates Court experience.

Tier 2 is comprised of panel members who have demonstrated experience in the District and Supreme Courts.

Tier 3 is comprised of panel members who are King's / Senior Counsel working in the criminal jurisdiction.

3 CONFIDENTIALITY

- 3.1 Confidential information submitted with an application will be treated as confidential unless otherwise required by law.
- 3.2 Information submitted with an application may be subject to investigation, reference checking, criminal history checks, searches, interviews, enquiries and confirmation. Applicants are deemed to have authorised any such action in the lodgement of their application.
- 3.3 ODPP officers seeking to engage a panel member can view the panel member's CV submitted with the application to assist in determining a panel member's suitability for a specific engagement.

4 APPLICATIONS FOR PREQUALIFICATION

- 4.1 Applications must be completed in the prescribed application form.
- 4.2 Applications must be delivered in accordance with the delivery instructions set out in the application form.
- 4.3 Only those applications which satisfy the requirements set out in these scheme rules and the application form will be considered by the assessment committee.

5 REMUNERATION

- 5.1 Panel members engaged via this scheme will be remunerated at the rates outlined in clause 5.2 below. The rates will be reviewed every two years.
- 5.2 The rates applicable from 1 March 2023 are:

Court	Daily rate (GST incl.)	Half day rate up to 3 hours (GST incl.)
Magistrates Court	\$850	\$430 for up to 3hrs
District Court	\$1,500	\$750 for up to 3hrs
Supreme Court	\$3,000	\$1,500 for up to 3hrs
Appeal Court	\$2,500 for preparation plus first day's appearance	

- 5.3 The ODPP may also request a quote on a lump sum, fixed price, maximum fee or other basis from a panel member with respect to long or complex engagements.
- 5.4 The rates are inclusive of GST.
- 5.5 The method of payment shall be against a tax invoice.

- 5.6 The rates include *all* costs of the panel member including subsistence and travel costs to and within the geographical area of nominated work.
- 5.7 Should a panel member be engaged outside their selected geographical area, subsistence and travel expenses outside the Brisbane metropolitan, Southport, Maroochydore, Toowoomba, Cairns, Rockhampton and Townsville areas are to be charged at actual cost or at the rates specified under the Domestic travelling and relieving expenses directive (www.forgov.qld.gov.au/), whichever is the lesser. All charges must be approved by ODPP in advance of the expense being incurred.
- 5.8 Notwithstanding clause 5.2, King's / Senior Counsel engaged via this scheme (Tier 3) may be remunerated at their nominated government rate provided to the Department of Justice and Attorney-General under the *Engaging barristers to undertake legal work for government departments policy*.

6 PREQUALIFICATION PROCESS

- 6.1 The assessment committee will determine the membership of the panel to be formed under the scheme. The assessment committee will be convened by a senior representative from the ODPP.
- 6.2 The panel to be formed under the scheme will be composed of applicants who are deemed to be qualified following the assessment of an application by the assessment committee and in accordance with the scheme rules.
- 6.3 Applications may be made at any time.
- 6.4 After the initial assessment of the applications by the assessment committee to establish the panel, applications will be assessed periodically at the discretion of the assessment committee, and generally every six months.

7 EVALUATION CRITERIA

The evaluation criteria are as follows:

- 7.1 applicant's agreement to undertake a criminal history check (mandatory)
- 7.2 applicant's agreement to scheme rules (mandatory)
- 7.3 supply of practising certificate (mandatory)
- 7.4 demonstration of experience in Magistrates Court, District and Supreme Court (not required for Tier 1)
- 7.5 demonstration of experience in the Court of Appeal (not required for Tier 1)
- 7.6 demonstration of understanding the appropriate approach towards the victims of crime. (mandatory for Tier 1 and Tier 2).

8 INTERVIEW WITH ASSESSMENT COMMITTEE

Where further clarification is required, an applicant may be provided with the opportunity to attend an interview with members of the assessment committee. This is at the complete discretion of the assessment committee.

9 NOTIFICATION OF ASSESSMENT OUTCOME

- 9.1 The assessment committee may accept an application (with or without limitation) or reject the application.
- 9.2 DJAG will notify all applicants of the outcome of their application in writing. Panel members will be required to complete and return an acknowledgement of panel members' obligations and undertaking (Appendix 1).

10 SPECIAL REQUIREMENTS

Membership of the panel under the scheme is subject to the following conditions:

- 10.1 For each matter for which the panel member is engaged, the panel member will receive an engagement letter unless other arrangements are specified by the ODPP.
- 10.2 The panel member must comply with Rule 104 of the Bar Association of Queensland – Barristers' Conduct Rules regarding briefs which may be refused or returned. Panel members who wish to return a brief must do so in enough time to give another legal practitioner a proper opportunity to take the case. Briefs must be returned to the ODPP if the panel member is unable to complete the matter. Passing the brief to another panel member or barrister is not permitted.
- 10.3 The panel member may be subject to criminal record and financial status (bankruptcy) checking at any time. The panel member has a responsibility to disclose any change in circumstances that may cause any level of concern for the ODPP. DJAG reserves the right to temporarily suspend scheme membership if any investigation is required.
- 10.4 Any potential conflict of interest arising for the panel member in relation to an individual engagement is to be declared prior to engagement by the agency.
- 10.5 The panel member must comply with the scheme rules.

11 UPGRADING OF PREQUALIFICATION

The assessment committee may upgrade a panel member's status under the scheme from one tier to a higher tier when:

- 11.1 The panel member has submitted a written application seeking such an upgrade, including documentation and other material in support of his or her request.
- 11.2 The panel member is assessed by the assessment committee as meeting the criteria set out in clause 7.

12 PERFORMANCE MANAGEMENT / REPORTING

The ODDP/LSCU may establish a mechanism for reporting on the performance of the scheme or of individual panel members.

13 PERFORMANCE REPORTING BEHAVIOUR

Panel member performance monitoring and reporting may be conducted in accordance with the following principles:

- 13.1 the mutual objective of the parties is to achieve continuous performance improvement
- 13.2 performance issues being promptly addressed by the parties concerned
- 13.3 performance issues being discussed openly with the panel member to ensure that concerns (such as dissatisfaction with performance) do not come as a surprise prior to formal notification.

14 REMOVAL FROM THE SCHEME

- 14.1 Membership of the panel will be reassessed and may be terminated by the assessment committee if the member has:
 - (a) breached the scheme rules
 - (b) been declared bankrupt or found to be insolvent
 - (c) been the subject of substantiated reports of unsatisfactory performance
 - (d) experienced an adverse change in capacity or capability
 - (e) experienced an adverse change in business status
 - (f) been proven to be in serious breach of his or her obligations under any legislation
 - (g) otherwise failed to meet the standards required of the scheme in terms of its project outcomes and ethical business practices.
- 14.2 The panel member has a responsibility for continuous disclosure of any change in circumstances, particularly in relation to any suitability matter referred to in sections 9 and 46 of the *Legal Profession Act 2007* which may affect the panel member's eligibility or fitness to hold a practicing certificate.
- 14.3 Before membership of the scheme is formally revoked, the LSCU will advise the panel member of the matters prompting the proposed action and will give the panel member the opportunity to provide reasons as to why the revocation should not occur.

15 PUBLICITY

Panel members must not advertise, promote or publicise their admission to the scheme without the written consent of the ODPP.

16 APPLICANT'S ACKNOWLEDGMENT

In applying for membership, the applicant agrees to the scheme rules.

17 DISCLAIMER

- 17.1 The assessment committee reserves the absolute discretion to:
 - (a) accept an application with or without conditions
 - (b) reject an application

(c) revoke a panel member's admission to the scheme.

17.2 The department will not be held liable for any costs or damages incurred by the panel member in the exercise of such discretion.

18 PREQUALIFICATION NO GUARANTEE OF WORK

The receipt of prequalification by an applicant does not guarantee:

18.1 continuity of the prequalification during the duration of the scheme

18.2 engagements or work of any kind or quantity will be offered.

19 NO EMPLOYMENT RELATIONSHIP

Membership of the scheme does not give rise to any form of employment relationship or access to any form of employee related entitlements.

20 Human Rights

20.1 Under the *Human Rights Act 2019*, decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under the scheme, to give proper consideration to human rights.

20.2 If you consider that a relevant human right has not been taken into account in making this decision, you may make a complaint using the department's process for making a human rights complaint. If you appeal a decision, you can include information about your human rights complaint.

20.3 Further information about your human rights is available: <https://www.qhrc.qld.gov.au/your-rights/human-rights-law>.

21 REVIEW AND DEVELOPMENT OF THE SCHEME

The scheme will be monitored by DJAG to assess whether the objectives and intent of the scheme are being met. Modifications may be made at any time at the department's discretion.

APPENDIX 1 – Acknowledgement of Panel Member’s obligations and undertaking

Office of the Director of Public Prosecutions Acknowledgement of Panel Member's Obligations and Undertaking

I, _____ acknowledge the following conditions of my engagement by the Office of the Director of Public Prosecutions (ODPP):

<input type="checkbox"/> I have read the QLD Public Service Code of Conduct and DJAG Workplace Policy and understand my responsibilities to follow the Code of Conduct, DJAG Workplace Policy and the ODPP Director's Guidelines.	<input type="checkbox"/> I agree not to disclose any information obtained in the course of my engagement to any unauthorised person [s.24A <i>Director of Public Prosecutions Act 1984</i> prohibits the disclosure of confidential information, punishable by a maximum fine of \$10,000].
<input type="checkbox"/> Under the provisions of the <i>Work Health and Safety Act 2011</i> , I understand I have an obligation to act in a manner that reduces the risk of harm, including communicating identified risks to management in a timely manner.	<input type="checkbox"/> I agree not to use any information obtained in the course of my engagement for any personal benefit or gain.
<input type="checkbox"/> I acknowledge the work of the ODPP may expose me to material containing offending behaviours and criminal activity.	<input type="checkbox"/> I agree to notify the ODPP should I become aware of any real or apparent conflict of interest. (e.g. information that involves a family member or friend.
<input type="checkbox"/> Should I not abide by the conditions of my engagement, I understand this may give rise to my removal from the Prequalified Panel of Barristers for the Office of the Director of Public Prosecutions.	<input type="checkbox"/> I understand under the <i>Director of Public Prosecutions Act 1984</i> , persons seeking engagement by the Office of the Director of Public Prosecutions are required to disclose their criminal histories (including convictions which are not recorded) and/or charges.
<input type="checkbox"/> I give my consent for the ODPP, its employees and agents to seek a national criminal history check on me through the Queensland Police Service and the Australian Police Services as allowed by s.24B <i>Director of Public Prosecutions Act 1984</i> .	<input type="checkbox"/> I also give consent for disclosure of any criminal history information, including charges laid against me awaiting determination, to the ODPP, its employees and agents. I understand the disclosure of information about my criminal history will be subject to applicable Commonwealth, State and Territory Legislation Police Service policy making the disclosure, or both.
Name: _____	
Signature: _____	
Date: _____	

