

# Whole-of-Government Legal Services Panel

## Conflict of Interest Policy

<b>Policy title</b>	<b>Whole-of-Government Legal Services Panel – Conflict of Interest Policy</b>
<b>Date and version number</b>	August 2020 DJAG Reference #5182987 Classification - official
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# 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 obligations of the Principal, Customers and Suppliers under the whole-of-Government Legal Services Panel Arrangement to identify and resolve Conflicts of Interest when instructions are provided/received, or during the course of a Supplier's engagement on a matter.
2. This policy also sets out the additional obligations for Suppliers to seek consent to act against the Principal or Customers during the SOA term, as per Clause 9p of the SOA Conditions.
3. It also sets out the obligations for Suppliers and Customers to do all that is reasonably practicable to identify and resolve Conflicts of Interest at the earliest opportunity, by maintaining timely and open communication and adopting a commonsense approach to such matters.

## Background

4. The whole-of-Government Legal Services Panel is a formal Standing Offer Arrangement (SOA) between the State of Queensland (acting through 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).
5. The panel commenced 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 panel arrangement 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 SOA has been established for Queensland Government departments and agencies and other eligible Customers who use the panel or Crown Law for requirements for external legal services from solicitors. Other Eligible Customers may 'opt in' to the panel arrangement with

the approval of the Panel Manager but are not required to use the panel exclusively to access external legal services.

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.

### Obligations with respect to conflicts of interest

10. In the interests of ensuring the success of the panel arrangement, Suppliers and Customers are expected to communicate openly and promptly and act reasonably, in accordance with this Policy and other relevant rules, to attempt to identify and resolve any actual or potential conflicts of interest throughout the course of the SOA.
11. The Panel Manager is available to provide advice and guidance in relation to Conflict of Interest issues to Customers and Suppliers on request.

### Conflict of Interest upon instructions

12. The SOA does not change the obligations of Suppliers to adhere to all the normal rules of professional conduct stipulated in the *Australian Solicitors' Conduct Rules 2012* and the *Legal Profession Act 2007 (Qld)*.
13. Conflict of Interest as defined in the SOA Definitions and Interpretation document means: having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise) which conflicts, may reasonably have the potential to conflict, or may reasonably be perceived as conflicting, with the ability of the Supplier or its Personnel to perform its obligations under the Contract or SOA fairly and objectively. The definition is broader than the concept of a conflict of interest under the Australian Solicitors' Conduct Rules as it extends beyond professional conflicts of interest.
14. In accordance with Schedule 1 of the SOA Details, the Supplier must make diligent inquiry as to whether it or its personnel has a Conflict of Interest (as defined in the SOA) if it were to provide the Services specified in the SOA Order and either:
  - a. confirm no Conflict of Interest, or
  - b. provide details of any Conflict of Interest to the Customer.
15. The Supplier must not commence performing the Services until approved by the Customer.
16. The Supplier must disclose in writing to the Customer whether it has any Conflicts of Interest no later than one business day following the Customer issuing the SOA Order to the Supplier.
17. If the Customer requests urgent assistance prior to issuing an SOA Order, a Conflict of Interest confirmation must be provided by the Supplier within one business day of receiving an urgent assistance request.
18. It is ultimately a matter for the Customer to decide whether a Conflict of Interest exists in relation to a particular matter and whether to proceed with the engagement of a particular Supplier given the information provided about the Conflict of Interest by the Supplier.

## Conflict of Interest during engagement

19. The Supplier must:
- a. monitor Conflicts of Interest during the engagement, and
  - b. report any Conflict of Interest, and the steps taken or that are being taken to resolve it, to the Customer, immediately upon becoming aware of a Conflict of Interest. The Panel Manager may assist to resolve disputes, but if a Conflict of Interest cannot be resolved to the Customer's satisfaction, it is their choice as to whether they continue to engage that Supplier.
20. The Supplier must not continue to perform the services until approved to do so by the Customer.
21. It is ultimately a matter for the Customer to decide whether a Conflict of Interest exists in relation to a particular matter and whether to proceed with the engagement of a particular Supplier given the information provided about the Conflict of Interest by the Supplier.
22. If a Conflict of Interest arises, the Customer has discretion as to whether they will continue to use the Supplier for the required services.

## Restrictions on acting against the Principal or Customer

23. Clause 9p of the SOA Conditions provides:

The Supplier must not accept instructions to:

- a. commence or act in proceedings against the Principal or Customer during the SOA term, or
- b. act where there is a Conflict of Interest,

without the prior consent of the Principal (where proceedings are taken against the State of Queensland) or the relevant Customer (where proceedings are taken against a Customer), as applicable. The Principal and relevant Customer will act reasonably and expeditiously in determining their consent.

24. The requirement to obtain consent in clause 9p(a) applies regardless of whether or not there is a Conflict of Interest. To "act in proceedings against the Principal or Customer" includes proceedings instituted by or against the Principal or Customer during the SOA term.

## Process for seeking consent to act against the Principal or Customer

25. Suppliers, as soon as they become aware of potential instructions to act against the Principal or Customer must seek the prior consent of the Principal or Customer, as follows:
- a. for actions against the State or a Department/Agency Customer, Suppliers must seek consent through the Panel Manager, or
  - b. for Opt In Customers, notify and seek the consent of the Opt In Customer's Supplier Relationship Manager.
26. Suppliers that seek consent to act against the Principal or a Customer must:
- a. submit their requests via email
  - b. provide the Panel Manager or Opt In Customer with succinct, but adequate information to make an informed decision about whether there is a Conflict of Interest. For example, in the case of judicial review proceedings, generally all that

would be required is for the Supplier to advise that they have been approached by a named client to bring a judicial review of a named decision. The Supplier will not be required to disclose the client's cause of action or basis for the proceeding in order to obtain the consent of the Customer, and

- c. if granted consent, continue to update either the Panel Manager or Customer as circumstances change or the matter for which they are acting against the State concludes.

27. The Panel Manager will keep a record of the number of requests for consent, the type of proceedings for which consent is sought and cases where consent is refused.

### Obligations of the Panel Manager or Customer when receiving requests for consent to act against the Principal or Customer

28. The Panel Manager and the Opt In Customer (as the case may be) must act reasonably and expeditiously in determining consent and aim to consider most requests from a Supplier within one business day and use best endeavours to respond to all requests within two business days.

29. In considering requests for consent, the Panel Manager and the Opt In Customer will also act reasonably, be guided by the Model Litigant Principles and apply a commonsense approach. It would be unreasonable for the Panel Manager or the Opt In Customer to require a Supplier to act inconsistently with the Supplier's obligations under the Australian Solicitors' Conduct Rules, for example, to disclose a client's confidential information.

30. The Panel Manager or the Customer may provide a blanket consent for all proceedings arising out of an ongoing instruction or for particular types of proceedings.

31. It is the sole discretion of the Customer or the Panel Manager whether to consent to a request to act against the Customer or Principal (as the case may be).