Whole-of-government Legal Services Panel

Conflict of interest policy
Title
Whole-of-government Legal Services Panel - Conflict of interest policy

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Purpose

1. This policy sets out the obligations of the Principal, Customers and Suppliers under the Whole-of-government Legal Services Panel Standing Offer Arrangement (SOA) 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 9.2 of the SOA Details.

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 common sense approach to such matters.

Background

4. The Whole-of-government Legal Services Panel is a formal SOA between the State of Queensland and law practices (Suppliers) selected to provide external legal services to Queensland Government departments and other entities (Customers).

5. 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 – contain the terms and conditions that apply to the contracts between Customers and Suppliers.
   d. Definitions and Interpretation – contains definition and interpretation clauses for the SOA Details, SOA Conditions and General Contract Conditions.

6. The panel commences on 1 April 2015, for an initial term of three years until 31 March 2018, with two options to extend the arrangement beyond that date for one year at a time.

7. The panel has been established to:
   a. provide ready access for eligible Customers to high quality legal services that meet their needs
   b. maximise value for money in the Queensland Government’s external legal services spend
   c. simplify and reduce the cost of procuring external legal services
   d. improve the active management of legal costs and gain a better understanding of legal services expenditure and trends.

8. A centrally coordinated Panel Manager has been appointed to manage performance and monitor and report on the panel arrangement to drive continuous improvement.
9. The Panel Manager is the Director, Legal Services Coordination Unit, in the Department of Justice and Attorney-General.

10. From 1 April 2015, it is mandatory for Queensland Government departments to use the panel or Crown Law for all requirements for external legal services from solicitors initiated on or after that date, subject to limited exemptions.

11. Other entities 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.

Obligations with respect to conflicts of interest

12. 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.

Conflict of interest upon instructions

13. 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).

14. Conflict of interest is defined in the SOA Definitions and Interpretation document to mean: any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise. 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.

15. In accordance with Schedule 1 of the SOA Details, the Supplier must make diligent inquiry as to whether it has any conflicts of interest (as defined in the SOA) if it were to provide the Services requested by the Customer and either:

   a. confirm no conflict of interest, or
   b. provide details of any conflict of interest to the Customer.

16. The Supplier must not commence performing the Services until approved by the Customer.

17. 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’s request for a quote.

18. If the Customer requests urgent assistance prior to issuing an SOA Order, a conflict of interest confirmation must be provided within one business day of receiving an urgent assistance request.

19. 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.

20. 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 during engagement

21. 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.

22. The Supplier must not continue to perform the services until approved to do so by the Customer.

23. 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.

24. If a conflict of interest arises, the Customer has discretion as to whether they will continue to use the Supplier for the required services.

25. The Panel Manager is available to provide advice and guidance in relation to conflict of interest issues to Customers and Suppliers on request.

Restrictions on acting against the Principal or Customer

26. Clause 9.2 of the SOA Details provides:

   **9.2 Restrictions on acting against the Principal or Customer**

   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 professional 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. For the purposes of this clause only, a professional conflict of interest occurs where the Supplier or its Personnel is not acting or is perceived to be not acting in accordance with the conflict of interest and conflict of duty principles imposed by the Australian Solicitors’ Conduct Rules and the *Legal Profession Act 2007* (Qld).

27. The definition of conflict of interest in clause 9.2(b) is limited to conflicts of interest as understood in the Australian Solicitors’ Conduct Rules. Clause 9.2(b) reflects the position in the Australian Solicitors’ Conduct Rules that a solicitor must not act where there is a legal conflict of interest without informed consent.

28. Clause 9.2(a) is an additional requirement that Suppliers not accept instructions to act or commence proceedings against the Principal (i.e. the State Of Queensland) or a Customer during the SOA term without obtaining consent of the Principal or relevant Customer.
29. The requirement to obtain consent in clause 9.2(a) applies regardless of whether or not there is a conflict of interest.

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

30. The Supplier must seek the prior consent of the relevant Customer’s Supplier Relationship Manager to act against that Customer. Requests for consent may be made by telephone or email. Refer to the list of Panel Supplier Relationship Managers located at the Department of Justice and Attorney-General website http://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit.

   The Supplier must seek consent to act from the Panel Manager at: Panel.Manager@justice.qld.gov.au or telephone at: 07 3247 4270 if:
   
   a. the Supplier is unsure which Customer the Supplier will be acting against
   b. there is more than one Customer against whom the Supplier will be acting, or
   c. the Supplier will be acting against the State of Queensland and it is not clear that the proceedings involve a particular Customer.

31. 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 Suppliers seeking consent to act against the Principal or Customer**

32. Suppliers that seek consent to act against the Principal or a Customer must:
   
   a. notify the Customer or the Panel Manager as soon as they become aware of their potential instructions to act against the Principal or Customer
   
   b. provide the Customer or Panel Manager 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 or Panel Manager.
   
   c. if granted consent, continue to update either the Customer or Panel Manager as circumstances change or the matter for which they are acting against the State concludes.

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

33. The Customer and the Panel Manager (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.

34. In considering requests for consent, the Customer and Panel Manager will also act reasonably, be guided by the Model Litigant Principles and apply a common sense approach.
It would be unreasonable for the Customer or Panel Manager 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.

35. 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.

36. 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).

**Review of Clause 9.2(a)**

37. The Panel Manager will review the operation of clause 9.2(a) after 12 months. Panel firms and Customers will be consulted during the review.