

Whole-of-Government Legal Services Panel

Customer Opt In policy

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Version control

Version 1	New Policy for implementation of new Legal Services panel
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Purpose

1. This policy sets out the eligibility criteria and processes for entities other than Queensland Government departments to opt in to the whole-of-Government Legal Services Panel arrangement, and their obligations if they are approved as eligible Customers.

Background

2. The whole-of-Government Legal Services Panel is a formal Standing Offer Arrangement (SOA) between the State of Queensland (acting through the Department of Energy and Climate as Principal) and law practices (Suppliers) selected to provide external legal services to Queensland Government departments and other eligible entities (Customers).
3. 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.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.

Eligibility to opt in to the panel

9. Only eligible Customers may purchase legal services under the SOA. The SOA contains a broad definition of an eligible Customer. The following entities are eligible Customers under the panel arrangement:
 - a. Queensland Government departments
 - b. Queensland Government agencies accepted by the Panel Manager to opt in to the panel
 - c. Queensland Government Bodies accepted by the Panel Manager to opt in to the panel
 - d. any entity which is directly or indirectly, partially or entirely funded by the State of Queensland, and/or a community based, non-profit making organisation performing community services, and/or another entity, accepted by the Panel Manager to opt in to the panel, and
 - e. the Commonwealth, another State or a Territory Government, accepted by the Panel Manager to opt in to the panel.
10. Queensland Government agencies and bodies include incorporated or unincorporated bodies established under legislation or through the Governor in Council or a Minister or a body over which the State of Queensland exercises control. These include Government committees and advisory councils, statutory authorities, statutory bodies, trusts, Government companies, commercial business units and Government owned corporations.

Process for opting in to the panel

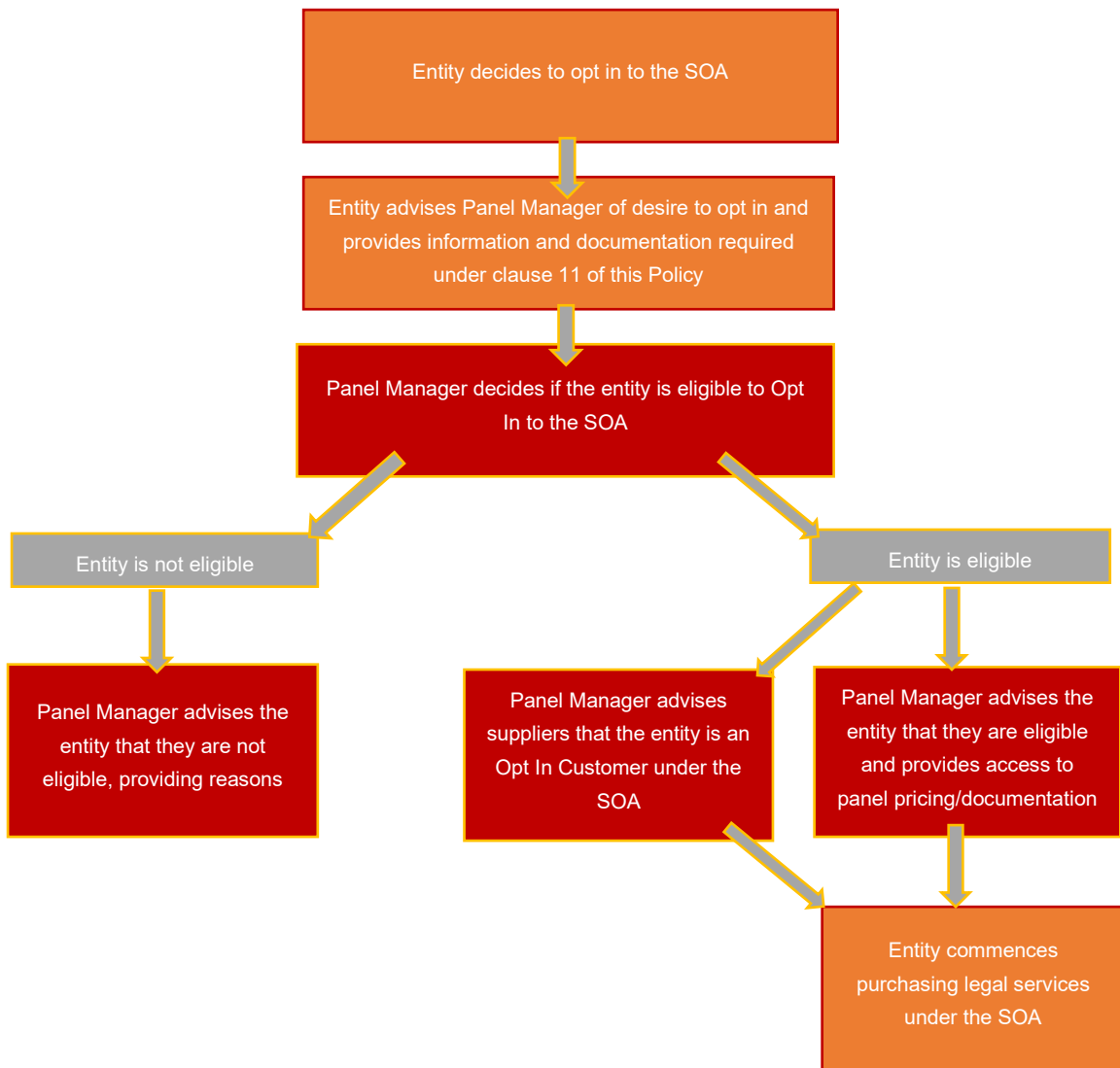
11. Any entity mentioned in clauses 9b, 9c, 9d and/or 9e. of this policy may apply to opt in to the panel arrangement by writing to the Panel Manager. The notification should include:
 - a. confirmation the entity wishes to opt in
 - b. confirmation the entity understands the obligations of opt in entities and the Panel Manager outlined in this Policy
 - c. confirmation the entity understands the obligations under the SOA.
 - d. the contact details of a nominated Supplier Relationship Manager who will be the entity's main point of contact for both the Panel Manager and Suppliers for matters arising under the arrangement, and
 - e. a signed Deed of Confidentiality with respect to all details of the SOA, including pricing details (refer **Attachment A** to this Policy).
12. The Panel Manager may be contacted by email at: Panel.Manager@justice.qld.gov.au or by phone at 07 3738 9841.
13. As soon as possible after receiving an application by an entity to opt in to the arrangement, the Panel Manager will:
 - a. determine if the entity is an eligible Customer entitled to purchase legal services under the SOA and has provided the required statements and documentation outlined in clause 11
 - b. subject to a), confirm by return email that the entity may opt in to the panel

- c. advise the entity about panel policies and any other obligations under the panel arrangement (other than those listed in this Policy)
- d. provide any necessary information to enable the entity to purchase legal services under the SOA, including the SOA documentation, Supplier details and pricing information, and
- e. advise SOA Suppliers that the entity is an eligible Customer under the SOA.

Obligations of opt in entities

14. An entity that is accepted by the Panel Manager to opt in to the panel is not required to use the panel exclusively for its legal services requirements.
15. In opting in to the panel, the entity acknowledges that the obligations of Customers under the SOA include:
- a. maintaining confidentiality for all details of the SOA, including supplier's pricing details
 - b. advising the Panel Manager of any changes to the entity's nominated Supplier Relationship Manager
 - c. managing operational relationships with Suppliers including engaging Suppliers and day to day management of Contracts entered into under the SOA
 - d. providing feedback on supplier performance when requested by the Panel Manager
 - e. maximising value for money when purchasing legal services, and
 - f. identifying opportunities for continuous improvement.
16. In opting in to the panel, the entity acknowledges that the obligations of the Panel Manager under the SOA include:
- a. managing the SOA and relationships with Suppliers at the SOA level
 - b. monitoring performance and reporting to Customers and Suppliers on panel usage, expenditure and performance
 - c. receiving monthly reports (on information outlined in the SOA Details) from Suppliers for work invoiced to Customers (including the entity) and annual reports on supplier performance
 - d. maintaining a list of eligible Customers and Supplier Relationship Managers
 - e. establishing panel policies and procedures
 - f. managing ad hoc issues and assisting Customers to resolve disputes with Suppliers, and
 - g. identifying opportunities for continuous improvement.
17. The entity also acknowledges that the Panel Manager will:
- a. receive quarterly reports from Suppliers which will outline basic details of work invoiced to the entity under the SOA. The Supplier will not include confidential matter details in this reporting.
 - b. report the entity's expenditure through the panel arrangement at an aggregated level, to enable assessment of the panel's performance, and
 - c. use the quarterly reports from Suppliers to report at an aggregated level to the Attorney-General on expenditure through the panel arrangement and for the purpose of reporting to the Attorney-General on equitable briefing of barristers.
18. More detailed information about how to use the panel arrangement is set out in the *Legal Services Panel Buyers Guide*.

Opt in process flow chart



Attachment A – Opt In Customer Deed of Confidentiality

DEED POLL OF CONFIDENTIALITY made by:

..... ACN/ABN.....
 <insert name and ACN/ABN (if applicable) of the Opt In Customer> (the “**Confidant**”)

in favour of

The STATE OF QUEENSLAND acting through the Department of Energy and Climate (the “**Principal**”)
 (formerly known as the Department of Energy and Public Works)

Recitals:

- A. The Principal is responsible for managing the whole of Government standing offer arrangement for the provision of Legal Services (“the Arrangement”).
- B. The Confidant may from time to time request from the Principal copies of the relevant terms and conditions of the Arrangement, including pricing secured under the relevant Arrangement, to enable the Confidant to assess whether it wishes to utilise the Arrangement as a customer.
- C. The Confidant acknowledges that improper use or disclosure of that information may severely damage the Principal’s ability to perform its governmental/statutory functions as well as the ability of the supplier/s under the Arrangement to operate commercially.
- D. The Principal agrees to disclose the relevant terms and conditions of the Arrangement, including pricing, to the Confidant on the condition that the Confidant agrees to treat the information as confidential.

Agreed Covenants:

1. Recitals

- 1.1 The Confidant acknowledges the truth and accuracy of the Recitals in every particular.

2. Definitions and Interpretation

2.1 Definitions

In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:

“**Arrangement**” means the whole of Government Legal Services standing offer arrangement entered into by the Principal and supplier/s by executing an SOA Details;;

“**Business Day**” means between 9:00am and 5:00pm on a weekday other than a Saturday, Sunday or public holiday in Brisbane, Queensland;

“**Confidential Information**” means all information (whether in hard copy, electronic form or otherwise), given by the Principal to the Confidant, directly or indirectly about the Arrangement, including pricing by the supplier/s under the Arrangement, but does not include information which:

- (a) was already lawfully disclosed by the Principal prior to the Confidant being required to treat the information as confidential;
- (b) is lawfully received from a third party which is not bound by a duty of confidentiality;
- (c) has become public knowledge (other than through a breach of an obligation of confidence under this Deed or the Arrangement); and/or
- (d) was independently developed or released by the Confidant without reference to the Confidential Information;

“**Competing Interest**” means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the commercial activities of a supplier under the Arrangement;

“**Deed**” means this deed poll of confidentiality;

“**State**” means the State of Queensland.

2.2 Interpretation

- 2.2.1 In this Deed, the clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Deed.
- 2.2.2 The following rules shall apply in interpreting this Deed, unless the context otherwise requires:
- (a) words importing a gender include the other gender;
 - (b) words in the singular include the plural and vice versa;
 - (c) all dollar amounts refer to Australian currency;
 - (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
 - (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
 - (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
 - (g) "consent" means prior written consent;
 - (h) "in writing" means either by letter, email or facsimile;
 - (i) a reference to a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to this Deed;
 - (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Principal agrees otherwise;
 - (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
 - (l) a clause is a reference to all of its sub-clauses; and
 - (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

3. Non Disclosure

- 3.1 The Confidant must not disclose the Confidential Information to any person without the consent of the Principal.
- 3.2 The Principal may grant or withhold its consent in its absolute and unfettered discretion.
- 3.3 If the Principal grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Principal may require that the Confidant procure the execution of a deed of confidentiality in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- 3.4 If the Principal grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5 The obligations of the Confidant under this Deed shall not be taken to have been breached where the Confidential Information is legally required to be disclosed.

4. Restriction on Use

- 4.1 The Confidant will use the Confidential Information only for the purposes of assessing, within a reasonable time, whether the Confidant wishes to utilise the Arrangement as a customer.
- 4.2 If the Confidant decides not to use the Arrangement as a Customer, the Confidant must immediately upon making its decision deliver up to the Principal all documents in the possession or control of the Confidant containing the Confidential Information.

5. Survival

- 5.1 This Deed will survive the termination or expiry of the Arrangement.

6. Powers of the Principal

6.1 Production of Documents

- 6.1.1 The Principal may demand (without needing to reduce the demand to writing) the delivery up to the Principal of all documents in the possession or control of the Confidant containing the Confidential Information.

6.1.2 The Confidant must immediately comply with a demand under this clause 6.

6.1.3 If the Principal makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.

6.1.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 *Legal Proceedings*

6.2.1 The Confidant acknowledges that the Principal may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. **Confidant's Undertaking**

7.1 The Confidant undertakes:

- (a) not to access, use, modify, disclose or retain any Confidential Information of the Principal that he or she has acquired from the Principal, except for the purpose for which the Confidential Information was acquired; and
- (b) in addition to any direction as to particular measures specified by the Principal, take all reasonable measures to ensure that any Confidential Information held in connection with the Arrangement is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.

8 **Acknowledgement by Confidant**

8.1 The Confidant undertakes that in signing this Deed, the Confidant:

- (a) understands its responsibilities in relation to Confidential Information;
- (b) will not access, use, disclose or retain Confidential Information except in relation to the purpose set out in clause 4 of this Deed; and
- (c) understands the possible consequences of a breach of this Deed.

8.2 The Confidant acknowledges that this Deed is made for the benefit of the Principal and may be enforced by the Principal.

9. **Competing Interest**

9.1 The Confidant warrants that, to the best of its knowledge, as at the date of signing this Deed the Confidant does not have, or is likely to have, a Competing Interest.

9.2 If a Competing Interest or risk of a Competing Interest arises during the time in which the Confidant is in possession or control of the Confidential Information, the Confidant must as soon as practicable after identifying the Competing Interest give notice of it, to the Principal.

9.3 Upon receipt of a notice in accordance with clause 9.2, or upon the Principal otherwise identifying a Competing Interest, the Principal may direct the Confidant as to how to manage the Competing Interest.

9.4 The Confidant must comply with the Principal's directions in clause 9.3.

10. **No Exclusion of Law or Equity**

10.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

11. **Variation and Waiver**

11.1 This Deed shall not be varied either in law or in equity except by agreement in writing signed by the Principal and the Confidant.

11.2 A waiver by the Principal of a breach of a provision of this Deed by the Confidant shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of the Principal to enforce a provision of this Deed shall not be interpreted as a waiver of that provision.

12. Applicable Law

12.1 The laws of the State govern this Deed and the Confidant submits to the non-exclusive jurisdiction of the courts of Queensland.

13. Assignment

13.1 The Confidant shall not assign, in whole or in part, or novate this Deed except with the consent of the Principal.

14. Severability

14.1 If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Deed and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

15. Remedies Cumulative

15.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

16. Notices

16.1 Any notice or other form of communication (a "notice") which may be given to or served on the Confidant under this Deed must be in writing and must be sent by prepaid postage, or email or delivered by hand to the following address:

Principal:

Physical address: C/- Legal Services Coordination Unit, Level 17, 50 Ann Street, Brisbane, Qld, 4000

Postal address: C/- Legal Services Coordination Unit, GPO Box 149 Brisbane, Qld, 4002

Email address: Panel.Manager@justice.qld.gov.au

Confidant:

Physical address:
<<insert physical address of Confidant>>

Postal address:
<<insert postal address of Confidant>>

Email address:
<<insert email address of Confidant>>

16.2 Notwithstanding clause 16.1, if the Confidant is a company then the Principal may serve a notice at any time on the Confidant's registered office.

16.3 A notice will be deemed to be given:

- (a) if posted – two Business Days after the date of posting;
- (b) if delivered by hand during a Business Day – on the date of delivery;
- (c) if emailed – on the date of the email

except that an email received after 5.00pm (local time of the receiver) will be deemed to be given on the next Business Day.

