

Department of Justice and Attorney-General

Legal Services Coordination Unit

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

July 2015

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 recognises 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) The policy applies to new instructions from 1 January 2015.
- d) 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 Bar Association of Queensland's Equal Opportunity Briefing Policy for Female Barristers and Advocates (Equal Opportunity Briefing Policy).
- b) The Equal Opportunity Briefing Policy provides, 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.
- c) 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).
- d) 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 Director-General's office for urgent attention. The Director-General, DJAG will have a standing authorisation to ensure approvals can be obtained without delay. The intention is for decisions to be made within two hours if possible, but always within 24 hours.

6. Administration, implementation and review of the policy

- a) A Steering Committee, chaired by the Director-General, DJAG and consisting of representatives from the Department of the Premier and Cabinet, Queensland Treasury and Trade and the Department of Housing and Public Works is overseeing establishment and implementation of the policy.
- b) The LSCU within DJAG is responsible for implementing the policy.
- c) 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.

- d) 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 (including instances where Director-General approval is obtained to pay above the nominated government rate). The LSCU will report to the Steering Committee and to general counsel/heads of departmental legal units on these issues.
- e) The LSCU will review the policy after 12 months to determine whether it is achieving its objectives. General counsel/heads of departmental legal units will be consulted as part of the review and a report prepared for the Steering Committee.
- f) The maximum fee caps can only be increased by the Attorney-General following consultation with the Premier and the Treasurer.