



## NSW Procurement

# NSW GOVERNMENT LEGAL SERVICES PANEL

## Off-Panel engagements guideline – Panel Rules Schedule 3

### Context

All NSW Government Agencies<sup>1</sup> will have access to the Panel to meet their external legal requirements.

There are specific categories of work not covered by the panel arrangements (see 'Exclusions' below) and agencies have discretion to retain legal services outside the Panel arrangement, including from the NSW Crown Solicitor's Office<sup>2</sup>, as set out in this Guideline. Agencies are required to refer Core Legal Work to the Crown Solicitor in accordance with Premier's Memorandum 95-39.

An Agency's procurement of legal services outside these arrangements will usually be on an exceptional basis, for example, for work requiring unique or specialist expertise or resources that the Agency considers are not available among firms on the Panel, or for matters that may arise in new categories of legal work that were not included in the Services Brief.

Under this Panel, Agencies will continue to be responsible for meeting the savings targets of their Agency in the procurement of Legal Services.

### Considerations for off-Panel engagements

When deciding whether to approve the engagement of an off-panel firm, the Agency Contract Manager<sup>3</sup> should have regard to the following considerations:

- Unique / Specialist expertise (e.g. key legal practitioner moving firms).
- Work not included on the panel or falling outside the nominated areas of law (e.g. regional work such as RMS enforcement or conveyancing).
- To maintain flexibility and to provide opportunities for regional law firms, if a matter is estimated to cost no more than \$30,000 (incl GST) and it arises in a regional area, agencies may engage 'off panel' regional firms in accordance with any arrangements required by their Agency Contract Manager.
  - Specific Agency Contract Manager approval should be sought when such a regional firm estimates more than \$30,000 (incl GST) in costs to complete the work.

<sup>1</sup> Agency is used to describe departments, agencies, separate agencies, statutory bodies, State owned corporations and other agencies eligible to purchase from NSW Government contracts.

<sup>2</sup> An agency must engage the Crown Solicitor in relation to core legal work and may engage the Crown Solicitor in relation to any other legal matter. See Premier's Memorandum No 95-39 ('Arrangements for seeking legal advice from the Crown Solicitor's Office').

<sup>3</sup> Eg the Agency's General Counsel/Chief legal officer or other person responsible for the engagement of legal services

- Work commenced under one area of law transitions into work covered under another area and retaining the same firm represents good value for money but the firm engaged is not on the sub-panel for the subsequent area e.g. a coronial inquest is followed by a work health and safety prosecution and the law firm engaged for area 6(d) *Inquiries* is not on the panel for area 4(d) *Work health and safety*.
- For major projects or commercial transactions, associated work spanning a number of areas of law may be undertaken by the firm engaged for the major transaction e.g. PPP projects involving tax issues; divestment transactions involving property or employment issues.
- High volume, routine work with a low cost per matter, other than debt recovery.
- Prosecutions against Government agencies e.g. WHS, Chain of Responsibility.
- To manage a conflict of interest (where the conflict cannot otherwise be properly managed by engaging a panel member).
- Any other exceptional circumstance approved by an Agency Contract Manager.

## Process

Agencies must not engage an off-panel firm without approval of the Agency Contract Manager. Exemption requests and responses should be in writing and satisfy the agency's procurement rules. Agencies must keep a record of the reasons for using an off-panel firm.

## Reporting

Off-panel expenditure will be monitored on a bi-annual basis as set out in the Panel Rules.

## Exclusions

Specific categories of work are excluded from the legal services provided by the Panel:

### 1. Core legal work undertaken by Crown Solicitor

[Core legal work](#) is addressed in Premier's Memorandum 95-39.

Core Legal Work includes include legal matters which:

- have implications for Government beyond an individual Minister's portfolio;
- involve the constitutional powers and privileges of the State and/or the Commonwealth;
- raise issues which are fundamental to the responsibilities of Government; or
- arise from, or relate to, matters falling within the Attorney General's areas of responsibility.

The relevant Practice Group Leader in the Crown Solicitor's Office is responsible for classifying legal work as core or non-core-work.

2. DPP & Police prosecutions
3. Safework NSW prosecutions against Government agencies
4. RMS regional enforcement
5. Child protection matters
6. Legal Representation Office (LRO) matters

7. Provision of ex gratia legal assistance in accordance with [Premier's Memorandum 99-11](#)
  8. Legal Aid matters
  9. Direct briefs to counsel
  10. Existing panels:
    - o icare (including the NSW Health Medico-Legal panel)
    - o RMS conveyancing
    - o Health Cluster employment and WHS panel (in place until 30 June 2017)
    - o Treasury (in place until 30 June 2018)
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