



NSW Procurement

NSW Government Legal Services Panel

Panel Rules – Schedule 3 Off-Panel Engagements Guideline

1. Definition

Unless the context requires otherwise, capitalised terms in the Panel Rules have the meaning given in the Panel Deed. Off-Panel Engagement means any engagement by a NSW Government Agency of a Panel Firm to provide services in a Sub-Panel to which the Panel Firm is not appointed to any Area of Law.

Panel Firms may be engaged to provide services in respect of an Area of Law to which they are not appointed, provided that they are appointed to another Area of Law under that Sub-Panel. This is not considered to be an Off-Panel Engagement. An engagement under this circumstance will contribute to the calculation of the Volume Discount Threshold.

2. Context

All NSW Government Agencies¹ have access to the Panel to meet their external legal services 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 Office², as set out in this Guideline. Agencies are required to refer Core Legal Work to the Crown Solicitor in accordance with [Premier's Memorandum M2016-04](#).

¹ Agency is used to describe any Agency of NSW Government whether forming part of a Cluster, Statutory Corporation, State Owned Corporation or other NSW Government Business Entity or Local Government Body.

² An Agency must engage the Crown Solicitor in relation to Core Legal Work. See Premier's Memorandum No M2016-

Crown Solicitor's Office will work alongside the panel. Agencies may engage Crown Solicitor's Office to perform work on any area of law for agency funded matters. This will not be considered to be off-panel.

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 sourcing of Legal Services.

3. Considerations for Off-Panel Engagements

When deciding whether to approve the engagement of an Off-Panel Firm, the Agency Contract Manager³ 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 on the Rural & Regional Legal Services Panel).
- To maintain flexibility and to provide opportunities for regional law firms, if a matter is estimated to cost no more than \$250,000 (ex 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 a regional firm estimates more than \$250,000 (ex GST) in costs to complete the work.
- Opportunities for suitably qualified Aboriginal businesses. Agencies may directly procure services valued up to \$250,000 (ex GST) with a minimum of one written quote.
 - Specific Agency Contract Manager approval should be sought when an Aboriginal business estimates more than \$250,000 (ex GST) in costs to complete the work.
- Work commenced under one Sub-Panel and transitions into work covered under another Sub-Panel and retaining the same Firm represents good value for money but the Firm engaged is not appointed to the Sub-Panel for the subsequent work e.g. a coronial inquest is followed by a work health and safety prosecution and the Panel Firm engaged under Sub-Panel 6, is not appointed to Sub-Panel 4.
- 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.

04 ('NSW Government Core Legal Work Guidelines).

3 E.g. the Agency's General Counsel/Chief Legal Officer or other person responsible for the engagement of legal services.

4. 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.

5. Reporting

Off-Panel expenditure will be monitored on a bi-annual basis as set out in the Panel Rules. Cluster General Counsels are required to put in place processes to track Off-Panel legal expenditure and report this in July and January each Financial Year to the Panel Contract Manager for provision to the Procurement Board.

6. Exclusions

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

1. Core Legal Work undertaken by Crown Solicitor's Office.

[Core legal work](#) is addressed in [Premier's Memorandum M2016-04](#).

Core Legal Work includes include legal matters which:

- o have implications for Government beyond an individual Minister's portfolio;
- o involve the constitutional powers and privileges of the State and/or the Commonwealth;
- o raise issues which are fundamental to the responsibilities of Government; or
- o 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. Agency funded work (non-core) undertaken by the Crown Solicitor's Office.
3. DPP and Police prosecutions.
4. Safework NSW prosecutions against Government Agencies.
5. Legal Representation Office (LRO) matters.
6. Provision of *ex gratia* legal assistance in accordance with [Premier's Memorandum M2019-01](#).
7. Legal Aid matters.
8. Direct briefs to Counsel.
9. Other NSW Government Panels:
 - o icare (including the NSW Health Medico-Legal Panel)
 - o Regional & Rural Legal Services Panel (including Care Litigation (child protection matters), Audit & Civil Claims (personal injury), Commercial & Construction (contractual, construction matters), Prosecutions (regional enforcement matters) and Property & Conveyancing (regional conveyancing matters)