

Whole of Australian Government Legal Services Panel

Corporate Commonwealth Entities and Commonwealth Companies Factsheet

What is the Legal Services Panel?

The Attorney-General's Department (AGD), together with the Department of Finance, has undertaken an open tender process to establish a whole of government Legal Services Panel (the Panel), which will be administered by AGD. This follows the recommendations of the Secretary's Review of Commonwealth Legal Services to take advantage of the Commonwealth's purchasing power and to create efficiencies, simplify reporting, and provide a whole of government perspective to the management of legal services.

The Panel will consist of five broad **Areas of Law**, consisting of a number of Practice Areas (see table). Legal services providers will be appointed to the Panel for one or a number of Practice Areas, with distinct schedules of rates for each Practice Area. In addition, **Legal Support Services** is a separate service for the procurement of legal staff in labour-hire type arrangements. What does opting-in entail?

Whole of Australian Government Legal Services Panel

Workplace, Industrial Relations and Compensation	Corporate and Commercial
<ul style="list-style-type: none"> ■ Employment and industrial relations ■ Commonwealth workers' compensation ■ Workplace health and safety ■ Compensation, damages and personal injury ■ Dispute resolution and litigation 	<ul style="list-style-type: none"> ■ General contract law ■ Procurement and tendering ■ Governance and Probity ■ Corporations, markets, financial services and consumer credit law ■ Insurance (other than workplace) ■ Intellectual property ■ Media ■ Information and communications technology ■ Insolvency & bankruptcy ■ Dispute resolution and litigation
Property and Environment	Litigation Specialisation
<ul style="list-style-type: none"> ■ General property ■ Transactional property ■ Construction and infrastructure ■ Environment ■ Dispute resolution and litigation 	<p>Specific litigation, disputes and proceedings that require expertise in large scale, routine, and/or complex dispute resolution processes.</p>
Public Law	Legal Support Services
<ul style="list-style-type: none"> ■ Administrative law ■ Debt recovery ■ Freedom of information, privacy and public interest disclosure ■ Human rights and discrimination ■ Dispute resolution and litigation 	<p>Short to medium term Legal Support Services (labour-hire)</p>
SPECIALISED STREAM PANELS	ACCC – Competition and Consumer Law
	ATO – Tax Technical Law

Who can use the Legal Services Panel?

Corporate Commonwealth entities (CCEs) and Commonwealth Companies are encouraged to opt-in to use the Panel. Use of the Panel will be mandatory for all non-corporate Commonwealth entities (NCCEs) as defined in the *Legal Services Directions 2017*. Once an Agency opts in to use the Panel, the Agency will be required to source its external legal services from the Panel, subject to the Legal Services Panel Guidance Material (including the Flexibility Framework).

Using the Panel for external legal services will fulfil the procurement obligations of prescribed CCEs that are subject to the Commonwealth Procurement Rules (CPRs). A full list of prescribed CCEs can be found in rule 30 of the *Public Governance, Performance and Accountability Rule 2014*.

Why should you opt-in to the Legal Services Panel?

Competitive pricing and benefits

The competitive evaluation process and restricted number of legal services providers that will be on the Panel provides favourable pricing and beneficial value-add services for users of the Panel. Participating Agencies will be able to purchase directly from legal services providers on the Panel, or undertake further processes to set up more targeted arrangements with one or more legal services providers, such as more favourable rates for volume services, fixed fee arrangements, or bundles of legal services.

AGD will enable access to pricing information including Panel rates and bundling arrangements established by other Agencies. This will improve transparency in pricing and encourage more favourable rates for volume services, fixed fee arrangements, or bundling. Agencies can continue to purchase services from the Australian Government Solicitor (AGS) whether or not they opt in to the Panel arrangements.

Flexibility Framework

AGD will administer the Flexibility Framework, including considering applications for exemptions from using the Panel, to ensure that the most appropriate services are available to all Agencies. In addition, up to 10% of an Agency's external legal professional fee expenditure may be spent off-Panel at the Agency's discretion.

Legal Services Panel Portal

AGD will manage the Legal Services Panel Portal, which is a web based information technology system available to Agencies to streamline the use of the Panel. Functions of the Portal include searching for Panel legal services providers and AGS (including their approved Practice Areas, rates, locations, and key personnel), issuing Requests for Quote and Orders, reporting, access to performance ratings and the display of Value Add Services.

Reduction in reporting requirements

Legal services providers will report Panel related legal services expenditure directly to AGD on a quarterly basis. Agencies will have access to the quarterly legal services expenditure reports from legal services providers and will be responsible for ensuring the data is consistent

Access to AGD support

AGD will provide a range of services to support the successful implementation and use of the Panel by Agencies. CCEs and Commonwealth Companies that opt-in to use the Panel will have access to the services provided by AGD, which include:

- Managing the Head Agreements between AGD on behalf of the Commonwealth and legal services providers.
- Hosting the information technology platform known as the Legal Services Panel Portal.
- Overseeing a performance management framework for legal services providers and addressing systemic performance issues.
- Coordinating access to value-add services offered by legal services providers.
- Monitoring the Panel to implement efficiencies for the Commonwealth.
- Providing high level analysis, reporting and strategic advice to support legal services decision making, planning and delivery across the Commonwealth.
- Reviewing and refreshing the Panel.

What does opting-in entail?

Entering into the arrangement

CCEs and Commonwealth Companies that choose to opt-in will be required to sign a Deed of Participation in the Whole of Australian Government Legal Services Panel Arrangement (the Deed of Participation).

A condition of the Deed of Participation is that Participants may not enter any other agreement for services which are the same as the Services under the Legal Services Panel Arrangement, except as provided for in the Legal Services Panel Guidance Material (the Guidance Material).

Compliance with the Legal Services Panel Guidance Material

Agencies that opt-in to use the Panel are required to comply with the Guidance Material. The Guidance material (currently in draft) deals with use of the Panel including the Flexibility Framework and the Panel Fee.

The Guidance Material also provides that the following services are outside of the Panel arrangements:

- Specialised Stream Panels established for technical legal work by the Australian Competition and Consumer Commission or the Australian Taxation Office in accordance with the terms of those panels;
- Engaging AGS for legal work – either tied work as defined in the *Legal Services Directions 2017*, or non-tied work where any Agency chooses to engage AGS instead of approaching the Panel; or
- Directly engaging counsel to provide legal services.

Panel Fee

In accordance with the government decision, a Panel Fee will be payable by all participating Agencies to fund AGD's Panel administration costs on a cost-recovery basis.

The Panel Fee will be set by AGD at a rate of between 0.4% and 1% of an Agency's *external professional legal fee* expenditure (excluding GST, disbursements, counsel, AGS and work performed through the Specialised Stream Panels). In any given year, the same Panel Fee rate will apply to all Agencies. The rate will be adjusted by AGD annually within the range to ensure that the total Panel Fee collected from all Agencies covers AGD's forecast costs of administering the Panel.

Government business enterprises and other Agencies that are exempt from reporting legal services expenditure to AGD must certify their total *external professional legal fee* expenditure should they opt-in to the Panel to enable the Panel Fee to be calculated.

AGD will invoice Agencies in June of each year for the following financial year, and Agencies must pay the Panel Fee to AGD no later than 30 September of each year. If a CCE opts-in to use the Panel part way through the year, AGD will charge a pro-rated Panel Fee to cover the remaining period of the financial year.

AGD is considered to be making a taxable supply to entities that will pay the Panel Fee otherwise than from the Consolidated Revenue Fund, and accordingly a GST component may be included.

The Panel Fee will not be charged to an Agency if the Panel Fee for that Agency is calculated to be less than \$500 (ex. GST).

Please refer to the **Panel Fee Fact Sheet** for more information.

Prior to opting-in

AGD may grant CCEs and Commonwealth Companies access to Confidential Information to assist in their decision to opt-in to the Panel, including details about legal services providers, their approved Practice Areas and rates.

Confidentiality obligation: Confidential Information must be used solely for the purpose of deciding to opt-in to the Panel. Your Agency must agree to not disclose Confidential Information to anyone except relevant internal management personnel and their advisers. Your Agency must not copy or reproduce the Confidential Information without the written authorisation of AGD, and must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information. Upon arriving at a decision on whether to opt-in to the Panel, or on earlier request by AGD, your Agency must promptly deliver to AGD all documents in its possession or control containing the Confidential Information.

We request a senior representative from your Agency sign and return this page to acknowledge the **confidentiality obligation**:

Agency:

Name:

Position:

Signature:

Contact

For more information contact the Office of Legal Services Coordination on
02 6141 3642 or email **LSPanel@ag.gov.au**.