



# Frequently Asked Questions

## *Commonwealth departments, agencies and bodies*

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## LEGAL SERVICES MULTI-USE LIST

### FREQUENTLY ASKED QUESTIONS

***Q1: What consultation has been occurring to inform the development of the Legal Services Procurement Reform?***

A1: The Attorney-General's Department (AGD) held a legal services reform roundtable on 16 February 2011, which included key government and industry stakeholders. A number of procurement reform options were discussed at the roundtable, including the legal services multi-use list (LSMUL).

Following the roundtable, AGD consulted with lead Commonwealth agencies, the General Counsel Working Group and the Department of Finance and Deregulation (Finance) in relation to purchasing policy matters and the framework for the LSMUL.

On 7 July 2011, AGD held an information session on legal services procurement reform for government and industry representatives at the National Convention Centre, Canberra. The information session included a presentation on the proposal to establish a whole of government LSMUL and provided interested parties with an opportunity to ask questions.

AGD then released an exposure draft of a Deed in October 2011, which would act as the head agreement between the Commonwealth and each successful legal service provider appointed to the LSMUL. Feedback received in relation to the draft Deed was incorporated in the final document where appropriate.

Following this consultation, the LSMUL is being established. Consultation on other Commonwealth legal services reforms continues.

***Q2: When will the LSMUL be operational for use by the Commonwealth?***

A2: AGD envisages that the LSMUL will be operational from 1 June 2012. All Commonwealth departments, agencies and bodies subject to the *Financial Management and Accountability Act 1997* (FMA Act) or *Commonwealth Authorities and Companies Act 1997* (CAC Act) (Agencies), with limited exception, will be required by the *Legal Services Direction* to use the LSMUL.

Government Business Enterprises (GBEs) prescribed under Regulation 4 of the CAC Act and any Agencies exempt from compliance with Appendix F of the *Legal Services Directions 2005* (as amended) under paragraphs 12.3(f) or 13.1(a) of the *Legal Services Directions* will not be required to purchase from the LSMUL.

***Q3: How do Service Providers qualify for appointment to the LSMUL?***

A3: Applications from Service Providers that satisfy all of the Conditions for Participation outlined in the Application for Inclusion pack (AFI) will be appointed to the LSMUL in a specified category or categories of law on the LSMUL.

***Q4: Is it mandatory for Agencies to source Legal Services from Service Providers on the LSMUL?***

A4: Subject to transitional arrangements and exceptional circumstances, under the Legal Services Directions, Agencies will be required to purchase Legal Services from Service Providers appointed to the LSMUL.

If exceptional circumstances exist where it may not be possible to use a Service Provider on the LSMUL, Agencies should contact OLSC immediately.

For information on transitional arrangements refer to FAQ 6.

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### FREQUENTLY ASKED QUESTIONS

***Q5: Does the LSMUL affect the way Agencies engage Counsel?***

A5: Counsel will continue to be engaged in accordance with the Legal Services Directions. The establishment of the LSMUL will not affect existing arrangements for the engagement of counsel.

***Q6: What happens to existing panel arrangements when the LSMUL is operational?***

A6: There will be a transitional period of 12 months after the operative date of the LSMUL. Agencies may continue to use existing panel arrangements (including exercising any remaining options to extend) during this transitional period. Agencies are encouraged to vary existing Deeds of Standing Offer and any contracts (arising under the Deeds) to incorporate reporting provisions similar to those in the LSMUL Deed (refer to Part 2 of the AFI).

Any contracts formed under existing panel arrangements during the transitional period do not have to be terminated. However, options to extend should only be exercised up until 1 June 2013.

Following the transitional period, Agencies will be required to source all Legal Services through the LSMUL. Agencies wishing to use an existing panel arrangement or exercise an option to extend a current panel arrangement after the expiration of the transitional period must contact OLSC for prior written approval to do so.

***Q7: How will Agencies purchase Legal Services from the LSMUL?***

A7: Subject to parcelling arrangements, Agencies may purchase Legal Services through the LSMUL in a manner consistent with the Commonwealth Procurement Guidelines (CPGs). For example:

- for purchases of less than \$80,000 for FMA Act Agencies or \$400,000 for CAC Act Agencies (both GST inclusive) (Threshold Amount), Agencies may seek at least one quote; or
- for purchases at or above the Threshold Amount, Agencies must seek a quote from two or more Service Providers, except where the CPGs allow an agency to direct source the procurement to a single supplier.

An Agency should have regard to the size and complexity of the matter and any internal Agency procurement guidance.

When an Order for legal services is issued by an Agency (in accordance with the LSMUL Deed) then a separate Contract is created between the Service Provider and the Agency. The terms of the Contract may either be the Default Terms and Conditions at Schedule 4 to the LSMUL Deed or the terms under an Agency Specific Agreement. The terms in an Agency Specific Agreement cannot be less favourable than certain terms set out in the Default Terms and Conditions at Schedule 4 to the LSMUL Deed. Refer to clause 4 of the LSMUL Deed for the full list of clauses. An Agency will identify which terms will apply to the Contract in the Order.

Agencies may also establish arrangements with pre-qualified service providers for particular 'parcels' of legal work. For information on parcelling arrangements refer to FAQ 8.

## LEGAL SERVICES MULTI-USE LIST

### FREQUENTLY ASKED QUESTIONS

***Q8: Can Agencies parcel legal work?***

A8: The Department of Finance and Deregulation has advised that an Agency may approach more than one Service Provider on the LSMUL to submit proposals for parcels of legal work that individually may cost more than the relevant Threshold Amount.

These parcels may range from a specific task or matter, to broader categories of work required over a period of time.

It is not necessary for Agencies to seek quotes for individual purchases over the relevant Threshold Amount, where a parcelling arrangement exists. Value for money needs to be assessed at the point of establishing a parcel arrangement, but the process need not be complex or cumbersome.

For further advice on parcelling or compliance with the Commonwealth Procurement Guidelines, Agencies should contact the Procurement Division in the Department of Finance and Deregulation.

***Q9: Do Agencies need to tell OLSC when they procure legal services from the LSMUL?***

A9: No. However, Agencies will be required to submit annual expenditure reports and comply with reporting obligations under the Legal Services Directions, including submitting Service Provider evaluation forms regarding Legal Services that they have purchased through the LSMUL to OLSC .

***Q10: How up to date will the LSMUL be?***

A10: Service providers appointed on the LSMUL will be required to update their details in accordance with the LSMUL Operational Rules (see Schedule 1 of the LSMUL Deed).

OLSC will also regularly update the LSMUL when new Service Providers are appointed or when Service Providers are removed or resign from the LSMUL.

***Q11: What does the List Rate tell an Agency as a purchaser of legal services?***

A11: A List Rate is a cap or a maximum hourly rate that cannot normally be exceeded. Agencies may negotiate lower rates than the List Rate or alternative pricing arrangements with Service Providers on the LSMUL.

***Q12: How do Agencies know which Service Provider's have expertise on the LSMUL?***

A12: Legal Services on the LSMUL are divided into categories of legal work.

Service Providers may nominate to be included for one or more categories of legal work within their AFI.

Claims made by a Service Provider against each nominated category will be evaluated and only Service Providers that satisfy the Conditions for Participation (for example, demonstrate the capability to undertake legal work in that category of legal work) will be appointed to provide services against that category.

When purchasing Legal Services from the LSMUL, Agencies must also comply with the CPGs. As such, Agencies may further assess any claims made by Service Providers in order to satisfy any obligation under the CPGs.

## LEGAL SERVICES MULTI-USE LIST

### FREQUENTLY ASKED QUESTIONS

***Q13: Does an Agency have to engage a Service Provider based on categories of legal work?***

A13: Yes. Agencies will be required to source Legal Services from Service Providers which have been pre-qualified to undertake Legal Services in a relevant category of legal work. This means that Agencies should make an initial assessment as to the 'dominant' area of the Legal Services required before entering into arrangements with a Service Provider(s). If an Agency anticipates that a matter or parcel of work may cross categories, then it should seek to engage a Service Provider which has been pre-qualified in each of the relevant categories.

***Q14: What if an Agency has chosen a Service Provider in the 'dominant' area and as the matter progresses the Agency discovers an ancillary issue that the Service Provider is not pre-qualified for the further required category?***

A14: An Agency can continue to use the Service Provider if the issue is an ancillary issue and the Agency is satisfied that the Service Provider has the relevant expertise in the further category of law. Alternatively, the Agency can approach a different Service Provider that has been included on the LSMUL for the further category of law.

If the Service Provider wishes to continue to provide services in the further category of legal work, it will need to submit an AFI and be assessed against the additional category(s).

***Q15: Can an Agency permit a Service Provider or its personnel (e.g. a secondee) to access another Service Provider's information on the LSMUL or order services on behalf of an Agency?***

A15: No. Some information provided by a Service Provider (for example, List Rates) is commercially sensitive information and cannot be disclosed to, accessed or used by another Service Provider or its personnel. However, this does not prevent personnel of a Service Provider from issuing instructions or broadly being involved in a matter outsourced to another Service Provider.

If an Agency believes there are exceptional circumstances which require an exemption from this rule, they must immediately consult OLSC.

***Q16: What will the LSMUL mean for security clearances for Service Providers?***

A16: The LSMUL will not impact on current requirements. Service Providers will still need to fulfil all administrative processes that are the pre-conditions of working within the Commonwealth's legal services environment. Some Agencies may require Service Provider personnel to obtain security clearances as a pre-condition to providing Legal Services.

***Q17: Can the terms and conditions of any Agency Specific Agreement be negotiated?***

A17: An Agency may determine whether to use an Agency Specific Agreement or the Default Terms and Conditions contained at Schedule 4 to the LSMUL Deed. Agencies may negotiate the proposed terms of an Agency Specific Agreement. However, terms in an Agency Specific Agreement cannot be less favourable than certain terms set out in the Default Terms and Conditions at Schedule 4 to the LSMUL Deed, for example provisions on intellectual property, insurance and the Legal Services Directions. Refer to clause 4 of the LSMUL Deed for the full list of such clauses.

## LEGAL SERVICES MULTI-USE LIST

### FREQUENTLY ASKED QUESTIONS

***Q18: How do I engage Service Providers practicing law in another country (e.g. the United Kingdom or New Zealand)?***

A18: The LSMUL only covers legal practitioners engaging in practice in Australia. An Agency may procure legal services from an international legal service provider, however in doing so should ensure that the provider is regulated by a statutory or professional body or equivalent and that the Agency's procurement complies with the Commonwealth Procurement Guidelines.

***Q20: Does the LSMUL affect the current arrangements for tied areas of Commonwealth legal work?***

A20: The LSMUL will apply to the provision of legal work that is 'tied' to a 'tied provider' under paragraph 2 of the Legal Services Directions, except for legal work that is provided by Agencies (AGD, Department of Foreign Affairs and Trade, Office of Parliamentary Counsel). List Rates provided by Service Providers on the LSMUL will apply to tied legal work delivered by that provider.

***Q21: Can an Agency provide a Service Provider with a referee report?***

A21: Yes. Section 4, Part 3 of the AFI requires applicants to provide two written referee reports. It is a matter for each potential referee Agency whether or not they agree to provide a Service Provider with a written referee report on request.

***Q22: Can Agencies ask for, or accept, a quote that has been prepared by two or more Service Providers?***

A22: An Agency may determine whether to permit or accept two or more Service Providers appointed to the LSMUL jointly responding to a Request for Quote. If an Agency determines that joint quotes will be considered, Agencies would need to amend the template documents in the LSMUL Deed. For example, an Agency could specify that joint quotes are permitted in the 'Other Requirements' item of the Request for Quote Template at Schedule 2 of the LSMUL Deed.

When accepting a joint quote, Agencies must ensure that all Service Providers are included on the LSMUL under the category(ies) of legal work relevant the legal Services required.