



Frequently Asked Questions

Service Providers

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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. Do Service Providers (excluding Counsel) need to be appointed to the Legal Services Multi-Use List (LSMUL) to receive work from Commonwealth Agencies?

A2: Subject to transitional arrangements and exceptional circumstances, under the Legal Services Directions 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), will be required to purchase Legal Services from Service Providers appointed to 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 under paragraphs 12.3(f) or 13.1(a) of the Legal Services Directions will not be required to purchase from the LSMUL.

Q3: What does the LSMUL mean for Counsel?

A3: Counsel will continue to be engaged in accordance with the Legal Services Directions. The establishment of the LSMUL will not affect the existing arrangements for the engagement of counsel.

Q4. How does a service provider get appointed to the LSMUL?

A4: Service Providers need to consider, complete and submit an Application for Inclusion (AFI) to the LSMUL. Service Providers that satisfy all of the Conditions for Participation at Part 1 of the AFI will be appointed to the LSMUL in a specified category or categories of legal work on the LSMUL. Details on the AFI can be located on the LSMUL website (www.ag.gov.au/lsmul) or via AusTender (www.tender.gov.au).

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Q5: Can sole legal practitioners apply to be appointed to the LSMUL?

A5: Sole legal practitioners may apply. However, individual legal practitioners working in a legal practice need not apply if the practice applies for inclusion.

Q6: How is the information submitted by Service Providers in the AFIs used by the Commonwealth?

A6: Legal Service Provider's wishing to apply for inclusion should refer to the AFI for details on the information that will be collected, used and disclosed by OLSC.

In general, information provided by Service Providers in the AFI will be:

- used by AGD and other Agencies on the evaluation team to assess the AFI against the Conditions for Participation;
- disclosed to Agencies purchasing through the LSMUL; and
- used by AGD in the administration of the LSMUL.

Information requested in the AFI is commercially sensitive. As such, Service Providers will not be permitted to access another Service Provider's information or order Legal Services on behalf of an Agency. Agencies will have an obligation to ensure that their Service Providers do not receive and cannot access this information.

Q7. Can Service Providers nominate to be included in more than one category of legal work?

A7: Yes. Service Providers may nominate to participate in any or all of the categories of legal work outlined in the AFI. If a Service Provider nominates to be included in more than one category of legal work, but is not successful in being appointed to all of the categories for which they applied, the Service Provider will be permitted to submit a further application for the categories in which they were not successful. Applications (including further Applications) may be submitted at any time. However, assessments will only be undertaken two times each year and cut off dates will apply (see FAQ 10).

Q8: If appointed to the LSMUL is there a guarantee of work or any level of work?

A8: No. Appointment to the LSMUL does not guarantee a Service Provider will receive any work or any volume of work from the Commonwealth or any Agency.

Q9: In addition to the List Rates, can innovative pricing such as volume discounts to the Commonwealth be submitted?

A9: Yes. Provision of innovative fee arrangements by Service Providers, as well as List Rates, in Form 2 of Part 3 to the AFI is a Condition for Participation. List Rates are not intended to prevent a Service Provider from offering Agencies alternative or innovative fee arrangements.

Q10. Can Service Providers apply to be appointed to the LSMUL at any time?

A10: Yes. AFIs will be accepted at any time. However, assessments will only be undertaken two times each year and cut off dates will apply in relation to the assessment of applications. Any application received after the cut off date will be assessed in the next assessment round. Information on cut off dates is available on the LSMUL webpage. The first cut off date is 24 February 2012.

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Q11: What happens if an AFI from a Service Provider is incomplete or does not meet one or more of the Conditions for Participation?

A11: If an AFI is incomplete or does not meet one or more of the Conditions for Participation, that AFI will be rejected. In such a case, OLSC will notify the Service Provider of the reason(s) why the AFI has been rejected. Service Providers may amend and resubmit an AFI at any time (see FAQ 10).

Q12: Are the terms and conditions of the LSMUL Deed between the Services Provider and AGD (at Part 2 of the AFI) negotiable?

A12: No. The purpose of entering into a LSMUL Deed with AGD is to standardise the terms that will apply to all suppliers of Legal Services to the Commonwealth. These terms remove barriers to entry for Service Providers, ensure consistency and streamline contract management for the parties. AGD is unable to negotiate the terms of the LSMUL Deed with each Service Provider appointed to the LSMUL.

An Agency may use an Agency Specific Agreement or the Default Terms and Conditions contained at Schedule 4 to the LSMUL Deed for contracts established with a Service Provider on the LSMUL. 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.

Q13: What happens to existing panel arrangements when the LSMUL is operational?

A13: 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 the 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.

Agencies will be encouraged to start using the LSMUL from the date of its commencement. The common form tender package that most Agencies use provides for a non-exclusive panel arrangement. Agencies may be able to access the LSMUL during the transition period under these Deeds, even if their existing panel arrangements are still in place. Agencies bound by exclusive panel arrangements may be unable to access the LSMUL until their current arrangements expire.

Q14: Can Agencies parcel legal work?

A14: The Department of Finance and Deregulation has advised that an Agency may approach more than one pre-qualified Service Provider 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.

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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.

Q15: What obligations are there on a service provider appointed to the LSMUL to update their details with OLSC?

A15: Service Providers appointed on the LSMUL will be required to update their details (including List Rates) in accordance with the Operational Rules (see Schedule 1 of the LSMUL Deed).

Q16: What if a Service Provider no longer meets the Conditions for Participation?

A16: In accordance with the Operational Rules, AGD may remove a Service Provider from the LSMUL if it no longer satisfies the Conditions for Participation (see Schedule 1 of the LSMUL Deed).

Q17: Can a Service Provider appointed to the LSMUL resign from the LSMUL?

A17: Yes. Service Providers can resign from the LSMUL in accordance with the terms of the LSMUL Deed. Upon notice of the resignation, OLSC will promptly remove the Service Provider from the LSMUL.

Q18: What will the LSMUL mean for things like security clearances for Service Providers?

A18: The LSMUL will not impact on current requirements. Service Providers will 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.

Q19: Is there an appeal process if OLSC rejects an application or removes a Service Provider from the LSMUL?

A19: No. The LSMUL is open continuously and Service Providers may submit an AFI at any time. If a Service Provider's AFI is rejected it may reapply at any time and have that AFI assessed in the next assessment period (which will occur twice a year).

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: How can a Service Provider change their List Rates?

A21: Service Providers can update their List Rates as part of the annual review of details provided in their AFI or whenever there is a significant change in the rates provided as part of the application process (see FAQ 15).

However, in accordance with the Operational Rules, any increase in List Rates must not exceed the annual percentage change of the Labour Price Index 6345 Private, Professional, Scientific and Technical Services published by the Australian Bureau of Statistics (see Schedule 1 to the LSMUL Deed).

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FREQUENTLY ASKED QUESTIONS

Q22: What reports are Service Providers required to submit?

A22: In accordance with the LSMUL Deed, Service Providers must within thirty (30) days after the end of each financial year, report to OLSC on:

- the amount of Pro Bono Work undertaken by the Service Provider during that financial year; and
- any other information requested in writing by OLSC on performance or information that is otherwise relevant to the operation of the LSMUL.

Service Providers must also provide any reports specified by an Agency in an Order.

Q23: What proof does a Service Provider need to provide that legal practitioners are subject to the regulation of relevant State/Territory Law Society?

A23: The Conditions of Participation require that Service Providers provide proof that legal practitioners (e.g. managing partners, legal practitioner directors or chief executive officers) engaging in practice in Australia are subject to the regulation of a relevant State/Territory Law Society.

Examples of such proof may be a statutory declaration from the Service Provider or letter from the relevant Law Society confirming that the Service Provider's legal practitioners are subject to the regulation of relevant State/Territory Law Society. Practicing certificates need not be supplied in such instances. However, for a sole legal practitioner, a copy of a practicing certificate could be provided as proof.

Q24: Can a Service Provider approach a current Commonwealth client to provide a referee report?

A1:24: Yes. A Service Provider may approach a current Commonwealth client to be listed as a referee and to provide a written referee report. It is a matter for each Agency approached by a Service Provider whether or not they agree to provide that Service Provider with a written referee report on request. Service Providers should provide two written referee reports for each category, or categories, of legal work nominated (refer to Part 3, Section 4 of the AFI).

Q25: Do referee reports have to address every statement made by the Applicant?

A25: It is not necessary for each referee report to address every statement made by an Applicant. Referee reports, when taken as a whole, should address the statements made by the Applicant in Section 3, Part 3 of the AFI for each category of law.

For example, if the Applicant makes statements about their capacity to meet the requirements of the Legal Services Directions and their commitment to pro bono work, and the referee report does not specifically address pro bono work, then the AFI may not be rejected on that basis.

However, each referee report provided should broadly address each of the qualitative conditions for participation (refer to clauses 4.1.f, 4.1.g and 4.1.h, Part 1, AFI).

If a referee's report directly contradicts, or is significantly different to, an Applicant's statement, or is adverse, then the Applicant will be deemed not to have met the relevant conditions for participation and their AFI will be rejected.

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FREQUENTLY ASKED QUESTIONS

Q26: Is there a requirement for Service Providers to provide training on, or be skilled in, Alternative Dispute Resolution (ADR)?

Provision of training

A26.1: No. The AFI documents do not require Service Providers to provide training on ADR. However, a Service Provider may identify and offer to the Commonwealth ADR training as a 'value add service' (refer to Section 3 of Part 3 of the AFI). If an Agency requires ADR training, the Agency can specify this in the Request for Quote (RFQ). For example, using the RFQ template (at Schedule 2 to the LSMUL Deed, Part Two of the AFI) the Agency can include the requirement for ADR training under 'Other Requirements'.

Provision of ADR services

A26.2: If a Service Provider applies for inclusion on the LSMUL to deliver legal services related to ADR under the 'Dispute Resolution and Litigation' category of law, assessment of that Service Provider's AFI will involve an evaluation of their expertise in this category. Details regarding ADR expertise can be included at Section 3, Part 3 of the AFI.

Q27: Can Agencies access a Service Provider's AFI?

A27: Yes. If a Service Provider is appointed to the LSMUL, Part 3 of their AFI will be available to all Agencies through the LSMUL IT Solution. This will include supporting information, including CV's that a Service Provider has included in their AFI.

Q28: Are Agencies required to report on a Service Provider's performance?

A28: Yes. The amended Legal Services Directions will require that Agencies complete evaluations and report on the performance of Service Providers.

Q29: Can Service Providers access performance evaluations?

A29: Service Providers will not be able to access evaluation forms submitted by Agencies from OLSC. However, an Agency may provide a completed evaluation form to the relevant Service Provider on request.

The results of evaluations will be available to all Agencies through the LSMUL IT Solution.

The reporting and performance measurement framework will not replace any process or arrangements that Agencies and Service Providers wish to use in order to deliver performance feedback.

Any issues concerning a Service Provider's performance should be resolved between the relevant Agency and Service Provider (refer to Operational Rules 8-12 at Schedule 1 to the LSMUL Deed, Part Two of the AFI).

Q30: Will OLSC provide Service Providers with a list of Agency legal contacts?

A30: No. OLSC does not currently publish a list of Agency legal contacts. Contact details for Agencies are available on the Government On-Line Directory (www.gold.gov.au).

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Q31: Will a list of Service Providers included in the LSMUL be publically available?

A31: Yes. Once the LSMUL is established a list of Service Providers appointed to the LSMUL will be available on the LSMUL webpage (www.ag.gov.au/lsmul). There will also be a link to the LSMUL webpage on the AusTender website (www.tender.gov.au) and Department of Finance and Deregulation webpage (<http://www.finance.gov.au/procurement/wog-procurement/index.html>).

Q32: Can a Service Provider provide additional information after submitting their AFI?

During the evaluation assessment period

A32.1: No. A Service Provider cannot provide additional information to OLSC during the assessment period. However, during the assessment of AFI's, the evaluation team may request that a Service Provider clarify information already submitted within their AFI.

After appointment to the LSMUL

A32.2: Yes. An Agency may request that a Service Provider provide additional information when they are accessing the LSMUL. Under the LSMUL arrangements, Agencies will have the flexibility to further test the expertise of Service Providers, including the ability for Agencies to request further information in a RFQ. Generally, any additional information provided to an Agency during the RFQ process will not be made available to all Agencies through the LSMUL IT Solution.

Q33: Can two or more Service Providers join together to submit an AFI?

A33: No. Each Service Provider seeking inclusion on the LSMUL needs to submit their own AFI. Each potential Service Provider will be assessed against, and must satisfy, the conditions for participation (refer Clause 4, Part 1 of the AFI) to provide legal services to Agencies in their nominated categories of legal work.

However, two or more Service Providers appointed to the LSMUL may jointly respond to an RFQ issued by an Agency.

Q34: Will OLSC limit the number of Service Providers on the LSMUL.

A34: No. OLSC does not intend to limit the number of Service Providers included on the LSMUL.

Q35: Is probity and other quasi-legal work considered to be legal services covered by the LSMUL?

A35: The LSMUL is intended to apply to legal services. However, it is not intended to cover the field for services like probity advice, patent work, trademark advice or mediation services (or other similar 'contestable' services) which may be provided by Service Providers who are not legally trained or qualified. It is intended that when those 'contestable' services are purchased by Agencies from a legal service provider, that the legal service provider will be included on the LSMUL.

If an Agency is purchasing a 'contestable' service, they may either seek those services from a legal service provider through the LSMUL or from another suitable provider.

For example, the Corporate and Commercial Law category includes probity as an area of law (see Form 1 of Part 3 of the AFI). An agency could engage a Service Provider that is included in the LSMUL for this category to provide probity advice. However, an Agency could similarly procure the services from another non-legally qualified probity adviser under alternative agency procurement arrangements.