



**Australian Government**  
**Attorney-General's Department**

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# **Senate Standing Committee of Privileges**

## **Inquiry into Department of Parliamentary Services handling of documents and communications**

### **Attorney-General's Department Submission**

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## Introduction

The Attorney-General's Department (department) refers to the invitation from Senate Standing Committee of Privileges (committee) to make a submission to the inquiry into the Department of Parliamentary Services handling of documentation and communications.

The department was invited to address some or all of the terms of reference, noting the committee's particular interest in the processes the department applied when assessing the suitability of legal firms to be appointed to the Whole of Australian Government Legal Services Panel (SON 4072331) (Panel).

This submission primarily focuses on the establishment of the current Panel, which commenced on 1 July 2024 (Request for Tender AGD APP 2023-24-003) (RFT), and replaced the previous panel which ran from 2019 to 30 June 2024.

Aspects of the tender process including applicants' responses and the department's assessment remain confidential under the terms of AGD APP 2023-24-003 and in accordance with the Department of Finance's Commonwealth Procurement Rules Guidance on [confidentiality throughout the procurement cycle](#) (**Attachment A**) and [sharing of confidential information](#) (**Attachment B**).

## Background to the Panel

In 2019 the Commonwealth established a whole of government legal services panel to drive value for money and efficiency in the procurement of legal services by:

- a) improving the quality, consistency and efficiency of legal services purchasing through the use of standard terms and conditions and a performance management framework;
- b) providing standardised fee structures for legal services providers, noting that a legal services provider's fees across previous panels could vary significantly for the same types of services;
- c) supporting cost savings and efficiencies for industry by reducing administration and tendering efforts; and
- d) reducing the time and effort for Commonwealth entities and for industry participants to establish contracts.

The panel arrangements:

- a) mandate the use of the Panel by non-corporate Commonwealth entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
- b) make the use of the Panel optional for other entities that are subject to the PGPA Act;
- c) do not prevent Commonwealth Entities purchasing or acquiring legal services from the Australian Government Solicitor, who will not be part of the Panel; and
- d) enable Commonwealth Entities to purchase legal services from any other service provider not on the Panel in accordance with the Panel flexibility mechanisms:
  - I. for up to ten percent of the relevant Commonwealth Entity's total expenditure on external legal professional fees in a financial year; or
  - II. with an exemption for special circumstances granted by the department.

### ***Re-establishment of Panel Arrangement***

On 21 November 2023, the Commonwealth through the department released an open approach to market (**Attachment C**) to establish the current Panel.

The market was approached to provide legal services in some or all of the following areas of law:

1. Workplace, Industrial Relations and Compensation;
2. Public Law;
3. Corporate and Commercial (General);
4. Corporate and Commercial (Specialist);
5. Property and Environment; and
6. Legal Support Services.

### ***Evaluation Process***

Tender responses were evaluated by a Tender Evaluation Team led by the department and supported by 70 additional specialist volunteer evaluators from 30 different Commonwealth entities with subject matter expertise in legal services and legal practice management. The Tender Evaluation Team comprised officers from Executive Level 1 through to Senior Executive Service Band 2.

The Tender Evaluation Team evaluated responses in order to identify the respondents that it considered were able to provide the offered services in a manner that achieved the best value for money for the Commonwealth, in accordance with:

- a) the evaluation criteria set out in the RFT;
- b) the Commonwealth Procurement Rules, including procurement policies (as applicable); and
- c) the process described in the RFT.

RFT response evaluations were conducted using a staged process:

<b>Evaluation Stages</b>	<b>Description</b>
<b>Stage 1</b>	Initial screening for compliance
<b>Stage 2</b>	Detailed Evaluation against Evaluation Criteria
<b>Stage 3</b>	Financial Analysis
<b>Stage 4</b>	Value for money assessment
<b>Stage 5</b>	Final determination
<b>Risk assessment</b>	Conducted throughout the evaluation process

<b>Verification Activities</b>	Were able to occur at any stage of the evaluation process
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### **Stage 1: Initial Screening for Compliance**

Each response was initially assessed to determine:

- a) its compliance with the Conditions for Participation; and
- b) its compliance against the Minimum Content and Format Requirements.

Only Tenders that were assessed as compliant proceeded to Stage 2 – Detailed Evaluation.

### **Stage 2: Detailed Evaluation**

The Tender Evaluation Team undertook detailed assessments of the information provided by each respondent to assess their capability, capacity and demonstrated experience to provide services in each relevant area of law.

Tenders were assessed against the following weighted Evaluation Criteria:

- a) the extent to which the Respondent demonstrated its capability and capacity to provide the Offered Services for the relevant area of law being assessed to the Australian Government (40%);
- b) the extent to which the Respondent demonstrated its experience in providing the offered services for the relevant area of law being assessed to the Australian Government, State/Territory Governments and/or large corporate organisations (60%), which took into account;
  - I. the examples provided to demonstrate the Respondent's experience and how the experience related to the definition of Legal Services;
  - II. demonstrated experience of key personnel in relation to each of the Offered Services for tendered areas of law (where relevant); and
  - III. the referee endorsements submitted for the Respondent and the extent to how these support the Respondent's claimed experience.

The Tender Evaluation Team also considered any risks inherent in the Respondent's response and the results of any verification activities.

The detailed evaluation resulted in a rating being applied in relation to each area of law for which the Respondent applied.

### **Stage 3: Financial Analysis**

The Tender Evaluation Team considered:

- a) the fees submitted by each Respondent, including any omissions or apparent errors in the pricing; and
- b) the result of any verification activities (if relevant).

In assessing if each Respondent's fees contributed to a value for money outcome, the Tender Evaluation Team undertook a comparative analysis of Respondents' fees, and:

- a) categorised Respondents by organisation size;
- b) considered whether any other component of the Respondent's Tender may impact on pricing;
- c) where possible, compared pricing against other current or previous Commonwealth entity arrangements for legal services, including applying an adjustment for the Wage Price Index; and
- d) undertook considerable modelling to quantify benefits for the Government.

#### **Stage 4: Value for Money Assessment**

In determining value for money, the Tender Evaluation Team considered each Respondent's:

- a) assessment outcomes from Stage 2 and Stage 3 of the evaluation process, which included an assessment of identified, perceived or known risk;
- b) the results of any verification activities (if relevant);
- c) the level of compliance with Commonwealth legislation and policy;
- d) commitment to continual improvement of environmental sustainability;
- e) economic benefits to the Australian economy;
- f) the extent to which the Respondent demonstrated its commitment to meeting the National Pro Bono Target, including the Respondent's previous performance (if known);
- g) supporting Indigenous participation in the Australian economy, including the Respondent's status as an Indigenous organisation; and
- h) any other matter that the department or the Tender Evaluation Team considered relevant and allowed to be considered under the RFT.

#### **Stage 5: Final Determination**

The final determination process considered the outcomes of the value for money assessment and previous stages.

The Tender Evaluation Team considered the number of service providers selected for the Panel according to Government's expected requirements under each area of law which resulted in identifying:

- a) Successful Respondents that were to be offered a Head Agreement to sign;
- b) Preferred Respondents that proceeded to negotiations where it was considered that negotiations could improve the value for money outcome; and
- c) Unsuccessful Respondents.

The process undertaken by the department in assessing the suitability of legal firms to be appointed to the Panel was extensive, robust and met all Commonwealth Procurement Rules.

We trust that the information contained in this submission assists the committee to better understand the processes the department applied when assessing the suitability of legal firms to be appointed to the Panel.

In establishing the new Panel the department undertook a large and complex body of work to improve various contractual provisions within the Panel Head Agreement in particular, but not limited to, the new Head Agreement includes bolstered security and data protection provisions, governance and compliance, to ensure they meet current standards, including:

- a) new Cyber Security Provisions including requirement for Cyber Security Incident response plans;

- b) enhanced Data Security provisions;
- c) new Harmful Code provisions;
- d) enhanced Privacy provisions,
- e) enhanced Protective Security Policy Framework requirements;
- f) enhanced Conflict of Interest (COI) provisions, including requirement for a COI plan;
- g) clearer and more elaborated provisions setting out performance and compliance requirements;
- h) enhanced Performance Management Frameworks,
- i) Supplier Code of Conduct; and
- j) new suspension and enhanced termination provisions.

### **Parliamentary privilege**

The department administers the *Parliamentary Privileges Act 1986* (Act). The Act declares some of the powers, privileges and immunities of each House of the Parliament and of the members and committees of each House.

Section 16(3) of the Act limits the use of privileged material in courts and tribunals. The limit applies where evidence is proposed to be ‘tendered or received, questions asked or statements, submissions or comments made’ concerning ‘proceedings in Parliament’ in proceedings in a ‘court or tribunal’ (defined in section 3) in a prohibited way or for a prohibited purpose.

The actions taken by the Department of Parliamentary Services in the provision of documents, communications or technology to a third party, which are the subject of this inquiry, do not appear to have involved providing material to a ‘court or tribunal’.

Under section 4 of the Act, conduct does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member’s duties as a member.

### **NACC Memorandum of Understanding**

In relation to sub-paragraph (b)(i)(C) of the Committee’s terms of reference, the department notes that [a memorandum of understanding](#) (MOU) (**Attachment D**) signed by the President of the Senate, the Speaker of the House of Representatives, the then Attorney-General, and the National Anti-Corruption Commissioner was tabled in Parliament on 28 November 2024. The MOU relates to the exercise of the Commission’s investigative powers where parliamentary privilege may be involved. The MOU is consistent with section 274 of the *National Anti-Corruption Commission Act 2022* (NACC Act), which provides that the NACC Act does not affect the powers, privileges and immunities of each House of Parliament, its members and committees. That is, parliamentary privilege is explicitly preserved.