

# Complex Criminal Case Barrister Panel Policy

## Purpose

The purpose of this document is to establish a Legal Aid Queensland Complex Criminal Case Barrister Panel.

This policy only applies to complex criminal case matters. Barristers who are not on the Complex Criminal Case Barrister Panel may be briefed for all other legally aided matters where a grant of legal assistance exists to brief counsel.

## Background

On 15 June 2016 the Legal Aid Queensland Board approved the establishment of a single panel of barristers for complex criminal case matters (the panel) as set out in this policy for use by preferred supplier law firms and in-house lawyers.

## Complex criminal cases

For the purposes of the panel, a complex criminal case matter is a:

1. committal,
2. trial,
3. sentence,
4. Mental Health Court hearing,
5. appeal, or
6. a matter under the *Dangerous Prisoners (Sexual Offenders) Act 2003*

in respect of which an expensive case grant of legal assistance has been sought or issued or is likely to be sought or issued.

In-house lawyers and preferred suppliers are required to brief barristers on the panel for complex criminal case matters except in exceptional cases and with the approval of the Chief Executive Officer.

Barristers not on the panel may be briefed for committals, trials, sentences, Mental Health Court hearings, appeals or matters under the *Dangerous Prisoners (Sexual Offenders) Act 2003* where only standard or extraordinary grants of legal assistance have been issued or are likely to be issued and where no application for an expensive case grant of legal assistance will be made.

## Selection criteria for panel membership

To be considered for membership of the panel, a barrister must meet the following selection criteria:

1. Hold a current unconditional Queensland practising certificate as a barrister;
2. Have at least five years' experience as counsel and/or solicitor advocate in criminal law matters, unless there are exceptional circumstances determined by the selection committee;
3. Demonstrate an established professional reputation as a competent advocate with specialist knowledge of criminal law, evidence, procedure, and ethics and high level written and verbal communication skills;
4. Not be or have been the subject of:
  - a. adverse findings arising from professional disciplinary action taken against the applicant;
  - b. significant adverse findings or comments regarding the conduct of the applicant by any court or tribunal;
  - c. findings of guilt for any criminal offences other than minor traffic infringement offences against the applicant;
  - d. investigations of suspected or alleged criminal conduct on the part of the applicant; or

for any other reason, in the view of the selection committee, be unfit to practice as a barrister in complex criminal cases.

## Application

The selection criteria should be addressed in writing of up to one A4 page but additional length may be provided where the applicant is addressing a claim of exceptional circumstances or addressing selection criteria 4.

If an applicant does not have at least five years' experience as counsel and/or solicitor advocate in criminal law matters the applicant is required to set out the basis of their claim of exceptional circumstances in the application.

The application should include at least one written reference from an experienced criminal lawyer addressing selection criteria 3.

Applicants must provide full disclosure of any relevant information relating to criteria 4.

## Selection committee

The selection committee will consist of:

- the Public Defender (or where the Public Defender has a conflict of interest, a Deputy Public Defender as their nominee);
- the Criminal Law Services Director (or where the Criminal Law Services Director has a conflict of interest, an Assistant Criminal Law Services Director as their nominee);
- a nominee of the Bar Association of Queensland; and
- a nominee of the Queensland Law Society.

The Public Defender will chair the committee.

The Bar Association representative should have practiced in criminal law for at least five years.

The Law Society representative should be a member of the society's Criminal Law Committee.

The Bar Association and Law Society representatives may be changed by the association and the society from time to time.

Members of the committee have a duty to declare any actual or potential conflict of interest which may be seen to unduly advantage or disadvantage an applicant and must withdraw from considering the application/s in respect of which the conflict of interest arises. Where a member withdraws due to a conflict of interest, a replacement nominee will take their position on the committee.

To receive a positive recommendation from the selection committee, an application must be supported by at least three members of the committee.

Assessment of the selection criteria will be based upon the information provided by the applicant in the application, information held by Legal Aid Queensland, including information from stakeholders, information relating to previous conduct of legally aided matters by the applicant and complaints received by Legal Aid Queensland concerning the applicant, information held by members of the selection committee and information from publicly available records including court transcripts and judgements and any other matters deemed relevant.

## Indemnification of selection committee members

Legal Aid Queensland will indemnify members of the selection committee who are not employees of Legal Aid Queensland in respect of any civil liability arising out of their membership of and participation in the selection committee provided the conduct of the member was engaged in good faith and without gross negligence.

## Selection process

Decisions about appointment to the panel will be made by the Executive Director, Information, Advice and Partner Services on the recommendation of the selection committee following consideration by the

committee of the applications, referees comments where sought and the committee's own knowledge of the applicants.

Applicants who are unsuccessful in appointment to the panel will, on request, be provided with feedback by a member of the selection committee. Unsuccessful applicants may seek internal review of the decision. The Chief Executive Officer will assess applications for internal review. Unsuccessful applicants may re-apply after 12 months of the date of refusal.

## Membership of the Panel

Whilst a member of the Panel, a barrister may be briefed in complex criminal cases by preferred supplier law firms and Legal Aid Queensland in-house lawyers. Membership of the Panel provides eligibility but not entitlement to be briefed in complex criminal cases. Membership of the Panel does not confer any entitlement on the barrister to be briefed generally or in any particular matter and does not place any obligation upon Legal Aid Queensland or preferred supplier law firms to brief the barrister generally or in any particular matter.

Members of the Panel undertake to notify Legal Aid Queensland immediately upon any changes to their circumstances relevant to the selection criteria for membership of the panel, including but not limited to:

- a. that they no longer hold an unconditional Queensland practising certificate as a barrister;
- b. adverse findings arising from professional disciplinary action taken against the applicant;
- c. significant adverse findings or comments regarding the conduct of the applicant by any court or tribunal;
- d. findings of guilt for any criminal offences other than minor traffic infringement offences against the applicant;
- e. current investigations of suspected or alleged criminal conduct on the part of the applicant; and
- f. any other matter relevant to the applicant's fitness to practice as a barrister.

A member of the Panel who no longer satisfies the selection criteria for membership of the Panel may be removed from the Panel by the Executive Director, Information, Advice and Partner Services. A barrister who has been removed from the Panel may seek internal review of the decision. The Chief Executive Officer will assess applications for internal review.

## Related documents

- Application guidelines for new appointment- Complex Criminal Case Barrister Panel