

MODULE 2

Defining Legal Needs

2 How do you define Legal Needs and identify what work you should do In-House?

This module explains how a government agency determines its legal work requirements, and then decides whether that work is best undertaken in-house or should be outsourced to external lawyers. This knowledge is useful for all government lawyers, as it provides a basic grounding on the decision making process.

2.1 Objectives

- To explain the importance in identifying the demand, scope, nature and volume of legal work, when planning for a legal services panel
- To provide a checklist for identifying legal services needs
- To self-reflect on what steps you would take in identifying the agency's legal services needs
- To explain the need for understanding the capabilities of the in-house legal resources.

2.2 Key learning concept



Determining legal services needs of an agency in terms of demand, scope, nature and volume of legal work is fundamental to adopting an informed purchasing approach.

2.3 Identify demand, scope, nature and volume of legal work

The first step to take in planning for a legal services panel is to identify the demand, scope nature and volume of the legal work of the agency. How is this done?

Consider the following case study:

Case study of a review of internal and external resources and legal spend

A government agency manages a property portfolio of over \$1 billion and has legal expenditure of about \$3.5 million per annum. It has a panel of nine legal service providers. Legal expenditure is not centrally managed, with the various divisions of the agency having significant autonomy.

To identify the demand, scope, nature and volume of legal work in this agency, the legal unit undertook the following:

- Persons were interviewed about demand, scope, nature and volume of legal work, using a standardised interview questionnaire:
 - Agency CEO
 - Executive Directors
 - Legal Services Manager
 - Business Managers
 - Procurement Manager
 - Sample of people utilising the service.

- Agency documents were reviewed, including the corporate plan, guidelines for engaging external legal service providers, the position description of the legal services manager, the legal panel engagement documentation and several legal case files.

A clear picture emerged:

- Almost all of the agency's legal service needs were met by external providers. Any line management within the agency was able to instruct external providers without any central oversight
- Nearly half of the external legal work was on major projects, with three quarters of this work going to a single top tier firm
- Two fifths of the work was property and asset management legal services, involving routine high volume leasing and property management work
- Most of this work was undertaken by a single top tier panel firm. The remaining work was corporate services and other miscellaneous legal work.

What does this case study tell us?

It highlights the importance of understanding the current system of legal work allocation in an agency in order to take an informed purchasing approach.

It gives an example of the type of research and investigative work that needs to be undertaken to clearly identify an agency's legal service needs. The work involves talking to people, reviewing files, data analysis, policy research and consolidation of the results.

It highlights the need for impartial review of demand, scope, nature and volume of work in-house, rather than reliance on assumptions.



It is important to get as much information as possible from as many sources as possible to obtain a complete understanding of the demand, scope, nature and volume of legal services work. It is equally important to set an appropriate time limit on the review, and a deadline for delivery of its findings.



Checklist 1: Identifying demand, scope, nature and volume of legal work

- Prepare interview questionnaire including:
 - Background and objectives
 - What legal services work is undertaken and by whom?
 - Likely new areas, expansions or contractions in work areas
 - Ability to use alternative service provision through boutique or mid tier firms, unbundling services or offshoring
 - Levels of satisfaction with the services provided
 - Any areas of concern with allocation and performance of legal work
 - Who else should be interviewed?
 - What other issues should be included?

(A sample interview questionnaire is attached at [Appendix 1.](#))
- Conduct desk research including reviews of:
 - Agency corporate plan or strategic plan
 - Agency procurement guidelines
 - Performance management data, including expenditure data
 - Anything else?
- Arrange and conduct internal interviews with key agency staff including:
 - CEO
 - Board chairman
 - Corporate secretary
 - Head of legal services/general counsel
 - Heads/solicitors of legal divisions (if any)
 - Heads of all major business divisions
 - Chief financial officer
 - Chief procurement officer
 - Can you suggest others?
- Arrange and conduct external interviews with key stakeholders including:
 - Managing partners of panel firms
 - General counsel of other agencies that have legal services requirements
 - Representatives from agency stakeholders
 - Can you suggest others?
- Review files and documentation including:
 - Sample legal files for major litigation
 - Sample legal files for routine work
 - Position descriptions for key legal team positions
 - Can you suggest others?
- Analyse relevant data including:
 - Internal versus external legal spend
 - Historical analysis of external and internal legal spend (past five years)
 - Internal spend by legal area

- External spend by legal area
 - External spend by panel firm
 - External spend by panel firms versus independent bar/external firm (not on panel).
- Consolidate information into the following sections:
- Areas of legal services required
 - Future legal services demand
 - Current legal services expenditure (internal, external, combined, by legal area)
 - Current legal services management and procurement
 - External legal service provision
 - Internal legal services provision
 - Areas for improvement.
- Identify an appropriate timeline and report deadline.



Exercise 3

By reference to [Checklist 1](#), how would you identify your agency's legal needs? If you have previously undertaken a review of legal needs, are there any additional avenues to identify need that you have not previously used?

(Online answers provided at
http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc)

2.4 Determining what legal work will be conducted in-house



Once the legal services needs of the agency are established, the next task of the informed purchaser is to determine the division of legal work to be conducted in-house and through the external panel firms. To do this, the informed purchaser needs to look at the skills and resources available in-house and how these are best utilised. He/she also needs to consider what resources are available for purchasing external legal services and determine the optimum division between in-house and external panel firms.