

MODULE 4

Management of Outsourced Legal Work

4 Management of Outsourced Legal Work

This module focuses on the processes involved in managing work that is being undertaken by external lawyers. It is relevant to those who are involved in providing instructions to external lawyers.

4.1 Objectives:

- To explain the approach to scoping legal work
- To list the steps in project management
- To demonstrate the process of developing a project strategy
- To identify areas where costs can blow out as a result of misalignment of expectations
- To outline the role that clear communications plays in ensuring performance of panel firms, and how these should be established at the point of procurement.

4.2 Key learning concepts:

- Procurers of goods and services for NSW Government must be aware of and operate in the NSW procurement framework
- Standard form tenders can drive significant savings for government
- Innovative informed purchaser arrangements must be encouraged at the point of procurement – it is most often too late to do so after the panel is formed
- Significant savings can be achieved by encouraging or mandating innovative fee arrangements/value-adds/competitive rates through the tender process
- Informed purchasers must be clear about service level expectations at the point of procurement
- Different types of firms with different attributes are suited to different types of legal matters – understanding what kinds of firms an agency requires for its legal work is a key role of the informed purchaser.

4.3 Scoping, expectations and communication

The informed purchaser understands the importance of communication in managing outsourced legal work:

- Communicating the scope of the work required at the time of procurement
- Communicating expectations regarding service levels, and how the work is to be conducted both at the time of procurement and throughout the engagement
- Communicating what is seen as a successful outcome, and how the work impacts on the business, to enable development of a strategy for conducting the work

- Developing a communications strategy at time of procurement to enable the law firm to provide regular updates, and there are clear lines of communication between the internal team and the external lawyers (including counsel)
- Regular communications from the external lawyers providing updates to enable the client to properly manage and control the matter, make appropriate decisions, and take action in a timely manner.

If there are a number of persons within the Agency involved in a particular matter, it can be useful to develop a Responsibility Assignment (RACI) Matrix to establish the levels of involvement of each person in each significant task. An example of such a matrix is set out below.

The RACI Matrix sets out levels of responsibility

Responsible (R) - Person responsible for the work/task. There can be a number of persons with this role.

Accountable (A) – Person ultimately responsible for the task/deliverable, having final sign off. There is only one person accountable for each task or deliverable.

Consulted (C) – Person whose opinions or advice is sought. The In-house counsel generally fills this role, but the business manager, counsel or an expert may also fill the role.

Informed (I) – Persons who are required to be kept informed of progress, but who otherwise have no input into the matter.



Table 4: RACI Matrix

	Agency Lawyer	Agency Business Manager	External lawyer partner	External lawyer solicitor
Instructions for issue of proceedings	I	C	A	R
Preparing statement of claim	C	I	A	R
Reviewing discovery	C	R	A	R

4.4 Cost Management

Cost management has two facets: cost budgeting (including case planning), and matter management to keep the costs within budget. In other words, it requires the application of some basic project management skills. Effective cost management also requires a change of mindset for many lawyers: acceptance of the maxim "better is the enemy of good".

In managing any project, small or large, there will be a number of steps. The amount of work that goes into each step will vary depending on the complexity of the matter. On a practical basis, there is no point in spending hours in planning and managing a matter that is only going

to involve a couple of hours work. But even for the smallest matter, a little time spent planning will reap benefits.

This where the mantra “better is the enemy of good” comes into play. The difference in terms of cost and time in improving a document from 90% to 95% perfect is often not justified.

4.5 Steps in Project Management

- Define the project. Understand and scope what needs to be done – agree the objective and what “done” looks like. In project management terms, this is the project charter and statement of work
- Risk Management - Identify risks and gaps and plan how to deal with the major ones
- Developing the strategy - plan what work needs to be done to achieve the objective. In project management terms, this is developing the work breakdown structure (WBS)
- Developing the roadmap - Plan who will do the work, when the work will be done and assign tasks. In project management terms, this is the critical path
- Establish the budget – price the work, taking risks, assumptions and contingencies into account
- Agree a communications strategy – for the client, and for the project team
- Manage the projects – in time, to agreed quality and to budget
- Identify and negotiate changes in scope
- Review the matter at conclusion for lessons learned.

4.6 Scoping the work

Careful scoping of the work is vital for a successful project, and mandatory if a fixed fee is to be charged. Accurate scoping involves the informed purchaser providing comprehensive instructions about expected legal and business outcomes and cost expectations.

4.6.1 Identify the objective

Agreeing the objective is the starting point for scoping the work and ensuring that the outcome meets the client’s expectations.

The following questions help define the objective:

- What does the client want?
- Why does the client want this?
- What is the problem to be solved?
- What does the client need (may be different from what they want)?
- What outcomes are possible?
- What outcomes are acceptable?
- Does the client have a budget or expectation about the level of cost?
- Are there deadlines?
- What is a realistic schedule?

- Who is the final decision maker at the client?
- How does the client define value?

This latter question can lead to a discussion about the value the law firm is delivering.

In large, complex projects there may be separate objectives for each stage of the project.

4.7 Developing the Strategy – what needs to be done, how and when?

Once the objective(s) and acceptable outcomes are defined, a strategy can be developed to achieve those objectives and outcomes. Flowing from this strategy is the work plan and tasks required. In any large matter, the work should be broken into phases.

In planning work, it's easiest to identify the principle steps and then break these into subtasks. Using a building analogy, identify the rocks and fill in the gaps with the pebbles, sand and cement.

Litigation Case Study

Rocks	Pebbles	Sand	Cement
<ul style="list-style-type: none"> • Initial instructions. 	<ul style="list-style-type: none"> • Receive and review initial instructions • Undertake preliminary review • Identify crucial documents and witnesses • Plan the matter and create a budget. 	<ul style="list-style-type: none"> • Open new file, create database information for use with practice management software • Provision of advice to the client about possible options to enable them to provide instructions about what to be included in the client • Provision of advice regarding possible settlement options to be explored prior to proceedings being issued • Possible work in settlement negotiations. 	<ul style="list-style-type: none"> • Project management time – team meetings, strategic planning • Internal conferences • Delegation and supervision work • Reporting work.

Rocks	Pebbles	Sand	Cement
<ul style="list-style-type: none"> • Preparing pleadings. 	<ul style="list-style-type: none"> • Interviewing the client to take instructions for a statement of claim • Reviewing documents to the purpose of drafting statement of claim • The initial draft of the statement of claim • Second review of the statement of claim • Preparing a brief to counsel to settle the statement of claim • Reviewing the statement of claim settled by counsel • Sending a settled statement of claim to the client • Discussions with the client to confirm the statement of claim • Reviewing the final draft • Filing with the court • Arranging service on the defendant. 	<ul style="list-style-type: none"> • The initial draft of the statement of claim • Any research on points of law • Going back to the client to clarify instructions • Identifying further people who need to be spoken to obtain instructions • Going back to the documents to clarify aspect • Identifying any precedents which may be of use • Making arrangements to interview witnesses • Possibly a second interview required after review of documents provided or to clarify initial instructions • Obtaining the relevant documents from the client • Identifying and obtaining missing or additional documents required • Collating the documents so that they are in a useful order. 	

Tasks must be specific and descriptive of a specific outcome. The task “research” is non-specific. The task “research the interpretation of ‘controlled waste’ as defined in Module 3(1) of COPA – dot point memo” is far more meaningful for the team.

4.8 Creating the Roadmap – Creating your team and assigning tasks

Once tasks are identified, you can create the roadmap, which is a plan of when the tasks are to be undertaken. This plan of tasks helps identify where parallel tasks can be undertaken, sequencing of tasks, priorities and dependencies, and ways in which a schedule is best managed. It provides a realistic schedule by highlighting what tasks cannot be commenced until prior tasks are completed. The major advantage of creating this road map and sequencing tasks is identifying dependencies and possible resource constraints, both of which can have significant impacts on a schedule. Predecessor tasks can be prioritised to avoid delay with dependant tasks.

The roadmap/critical path is the blueprint for the project and should be distributed to the whole team (including client and counsel), and reviewed at all team meetings. It will be the reference point to judge progress and a means of alerting the team when the project is going off track.

4.9 Manage the projects – time, quality and to budget

Keep in mind the big picture and the overall objective! Don't get caught up chasing rabbits down burrows. Do a quick review of the roadmap/critical path at every team meeting.

Make sure the team is aware of possible roadblocks and the plans to avoid these. Set clear expectations about deadlines. If necessary, discuss with team members how they are going to meet the deadline, given other workloads.

Manage the matter – track cost against budget, and progress against timelines. Identify early if things are going awry and work out a solution. If there is a change in scope, discuss this with the client and renegotiate the fee.

4.10 Identify and negotiate changes in scope

Keep the statement of work in mind and review frequently, so you can quickly be aware of change in scope. However, you need to be pragmatic about when you seek to negotiate a change in scope. Is it a true change of scope or a risk that you did/should have identified?

4.11 Lessons learned

End of matter audits are powerful ways of improving case management, by identifying what went wrong, what went right, further training required for team members, particular skills identified which could be used in future, and issues with the client which need to be identified as future risks.