

# **MODULE 6**

## **Panel Management**

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## 6 Panel Management, Information Sharing and Review

The **objectives** of this Module are:

- To list the roles and attributes of panel manager of government legal services panels
- To describe what informed purchaser relationship management tools are available and how these can be utilised to improve the performance of panel firms
- To explain the different types of advice that may be sought, and in what cases each of these should be requested
- To understand the role of benchmarking and KPIs in improving panel firms' performance
- To appreciate the importance of standardisation, for comparison purposes, across firms' invoices and cost estimates
- To identify the reasons why regular panel meetings improve legal services providers' performance
- To give examples of how to increase competitive tension between panel firms with the objective of improving service levels
- To discuss the importance of educating non-legal agency staff on informed purchasing principles
- To explain how regular monitoring and refining of the legal panel is necessary to realise the ongoing benefits of informed purchasing.

**Key learning concepts** to be covered in this Module are:

- The panel manager, as well as being an informed purchaser, is also the project manager responsible for allocating tasks to the panel firms
- The panel manager must design, procure and manage the legal services for government according to informed purchasing principles
- It is important to be clear from the outset what is expected in the relationship management of panel firms
- It is important for the informed purchaser to understand the legal problem so that he/she may request the appropriate style of advice for that problem
- Benchmarking panel firms and sharing the results of this benchmarking among panel firms is a powerful tool in improving panel firm performance
- Standardisation of scopes, fee rates, and invoices allows for meaningful comparisons to be made between panel firms
- Sharing information between panel firms through regular panel meetings improves providers' performance and creates a sense of working toward common agency objectives
- The informed purchaser must adopt tools and processes that generate competitive tension between firms on legal services panels
- That non-legal agency staff may need training in informed purchasing for it to be effective
- That informed purchasing is a continuous improvement cycle that must be regularly monitored and refined for ongoing benefits.

## 6.1 Introduction to panel performance management

Panel performance management is the process whereby the tools and methodologies put in place at the procurement stage are actioned by the informed purchaser, and the benefits are realised. It identifies what needs to be put in place so that the informed purchaser of legal services knows what to expect from their panel firms, and what to do if they are not getting that level of service.

This Module also examines the tools that assist with identifying and monitoring the performance of panel firms. By setting, monitoring and comparing key performance indicators (KPIs), the informed purchaser encourages the competitive tension that drives better service. It also allows the purchaser to identify which panel firms are not performing, and to implement strategies to counter this.

## 6.2 The panel manager as an informed purchaser

The panel manager is the person (or people) whose role it is to plan for, select and manage a panel of external legal service providers. The general counsel of the agency hosting the panel may be the panel manager, but it is usually a separate role. The panel manager may be a single person, or the role may be conducted by a number of agency legal staff.



Throughout this Module, the term 'panel manager' refers to the skill set required by anyone engaging external legal service providers - not just the person holding that role.

In the NSW Government context, the key informed purchasing role is played by the panel manager. The panel manager must crucially design, procure and manage the legal services panel according to the principles and practice of informed purchasing, as outlined in this Module.

### 6.2.1 Ten key functions of the informed purchaser panel manager

#### 6.2.1 1. Be an informed purchaser and manager of legal services

The panel manager must be an informed purchaser, an individual (or group), with good knowledge of agency 'business' and the law and legal practice. He/she may obtain expert external advice to assist with this as required from time to time. The informed purchaser will:

- Coordinate all legal service arrangements
- Link strategic decisions to their daily implementation
- Obtain value for money legal services.

#### 6.2.2 2. Follow NSW Government purchasing and probity requirements

The panel manager will inform the agency and its legal services providers of their responsibilities under the NSW Procurement Framework and the various Premiers' Memoranda requirements for the acquisition and delivery of legal services. He/she will have due regard for directions and guidance, and adopt appropriate compliance monitoring processes. He/she will apply NSW Government probity requirements, be aware of perceptions and treat all external legal service providers and panellists fairly and equally.

### 6.2.3 3. Actively monitor agreed fees and analyse, review, report on legal services costs

The panel manager will actively monitor the charging of fees agreed with external providers. They will scrutinise invoices and have a process for addressing fees charged that are outside the agreed fee estimate. They base management decisions on sourcing of legal services on full costing of internal and external legal services. Legal services purchasing, including expenditure, is recorded and monitored by the panel manager. Agency expenditure data is reviewed periodically to identify trends, changes or anomalies.

### 6.2.4 4. Manage uncertainty and risk

Using the agency's risk policies, methods and procedures, the panel manager will identify, assess and manage the agency's legal risks in program delivery and its legal services risks.

### 6.2.5 5. Use In-house legal capacity to best advantage and in harmony with the panel

The panel manager will understand the areas of speciality developed in-house and use those specialities to their best capacity. He/she will know when to draw upon other providers with specialist knowledge for overflow work.

### 6.2.6 6. Manage relationships

The panel manager will:

- Adopt relationship management methods that include sufficient reporting and monitoring
- Provide clearly understood service delivery standards and immediately query any unsatisfactory services
- Implement agreed protocols for interaction between providers and clients
- Implement performance measures (including regular feedback)
- Regularly discuss the overall relationship with the external providers
- Cultivate alternate providers.



#### ***Ten key functions of the informed purchaser panel manager***

- 1. Be an informed purchaser and manager of legal services*
- 2. Follow NSW Government purchasing and probity requirements*
- 3. Actively monitor agreed fees and analyse, review, report on legal services costs*
- 4. Manage uncertainty and risk*
- 5. Use in-house legal capacity to best advantage and in harmony with the panel*
- 6. Manage relationships*
- 7. Manage individual work assignments under the panel*
- 8. Educate clients*
- 9. Adopt effective knowledge-management and information systems*
- 10. Review performance and service arrangements.*

### 6.2.7 7. Manage individual work assignments under the panel

The panel manager will use the procedures in the panel arrangements including instruction sheets and scoping procedures. He/she should take particular care that the scope of services is clear and appropriate - that the agency's required outcomes are clear and understood. The panel manager must consider the full range of fee options appropriate to the nature, scope and volume of services required, including volume rebates and learning discounts. He/she should also facilitate a clear understanding between the client and the provider on the nature and scope of work and the agreed basis for charging.

### 6.2.8 8. Educate clients

The panel manager will define responsibilities of both the client and the provider. He/she will educate clients through guidance notes, informal communications and legal services newsletters. Requests from clients should be quickly acknowledged, coordinated and ranked. The panel manager should be included in senior management meetings. He/she will re-assess agency needs periodically through corporate planning and reporting, and share relevant information with providers (both internal and external).

### 6.2.9 9. Adopt effective information and knowledge-management systems

The panel manager will adopt an information management system to respond consistently to requests for legal services (which enables any matter to be picked up and taken forward by any legal unit staff member). He/she will gain any benefits from the existing legal knowledge base and gain maximum value from services provided previously. Using the system according to agreed protocols and creating enough flexibility to accommodate changing needs is another key role of the informed purchaser panel manager.

### 6.2.10 10. Review performance and service arrangements

The panel manager should regularly review the agency's legal service sourcing arrangements (in consultation with stakeholders and clients). He/she must be clear why the arrangements are being reviewed, as this will affect the objective and scope of the review.

## 6.3 Managing the relationship with panel firms

Value for money will only be achieved with transparency and clarity on the relationship between purchaser and legal service provider, along with a candid exchange of views.

Some of the panel firms may have had a long history as a service provider to government and longstanding personal relations may have been developed. Some reviews dealing with the supply of professional services to government have shown that a comfortable relationship between purchaser and supplier is not always reflected in value for money.

It is vitally important that the agency makes clear what it requires from the relationship at the commencement of the panel and steers the direction of that relationship throughout the course of the panel.

This is achieved by:

- Assessing the needs of the agency and the means by which the agency can best drive the best outcomes through an effective relationship
- Achieving consistency with the relationship strategy in place with the members of the internal legal unit
- Developing positive modifications to the agency's preferred relationship model throughout the evaluation and induction processes of your panel members
- Establishing further improvements based on observation of and feedback from panel members.

### 6.3.1 Setting the relationship structure

The ground rules established on panel start up including the values, methodologies and processes you implement will govern how you lead your colleagues, your agency and your external legal service provider relationships.

To be an effective and informed purchaser there is a need to both establish and maintain an effective professional relationship with each of the panel firms.

Panel firms must accept the need to be transparent in their dealings and respectful of the agency's requirement to obtain ongoing value for money from their services.

It is important to be clear from the outset what is expected in the relationship management of panel firms, and for this to be stated unambiguously. The planning and mechanisms, processes and tools required for induction and management of external firms should have been carefully considered, designed and largely put in place as part of the Request for Tender design and drafting, as described in Section 5 of this Module.

### 6.3.2 Inducting panel firms

Inducting panel firms allows for firms to commence the relationship with a good working knowledge of the agency and its requirements. Some firms may see the ongoing panel role as a continuance of the status quo. Other firms may be new to the role.

In inducting the firms, it is necessary to clearly articulate the NSW Government's cluster panel arrangements and to clearly describe the differences from the previous arrangements, as they may affect the panel firms. It is important to outline the contractual differences but it is also important to highlight cultural and administrative differences.

A key differential to also consider is the capacity of agencies to select the panel of their choice within the RFQ process. Where a particular panel is not meeting performance benchmarks, RFQs may be extended beyond that panel, and this may impact adversely on the demand for services from that panel's firms.

### 6.3.3 Implement your relationship model

The relationship model depends on the culture and objectives of each agency, those of the service provider, the nature and volume of the legal services required and the relationship that has commenced through the approach to the market and selection process.



The relationship model should also include lessons learned from the RFT evaluation process and the final selection meetings, presentations or workshops, in addition to relevant matters detailed in the RFT.

The relationship model should include administrative minimums that will be required of the external panel for an effective ongoing relationship. This may include some or all of the following:

- Contact personnel
- Requirements by the provider to notify details of relevant team changes
- Clear initial scoping of the work and the means by which variations are to be agreed reporting on matter progress
- Billing arrangements
- Review meetings.

It is important for consistency and certainty that a similar process applies for both internal and external legal service providers. These procedures and policies should be as simple as possible.

There should be full transparency and you should treat, and be seen to be treating, all firms (including the internal team) equally. No firm should be unequally treated or perceived to be so.

Competition is productive, but there is a need to carefully manage the competition between the internal legal service providers and the external providers to drive the best value for money for the agency.

It is important that all processes are properly followed for internal and external providers, particularly any regular relationship meetings. Social networking and other informal meetings may be appropriate as part of the initial induction process, when new members join teams and similar occasions.

All relevant stakeholders should be aware of and committed to the arrangements with the external legal services providers. If line management is permitted to have separate meetings and communications with panel firms, make sure roles and responsibilities are clearly outlined.

If strategic planning or matter management is part of the legal work or legal transactions, make sure this is covered in your documentation. This is especially important in the panel contract, official orders and or relationship protocols.

It may also be useful to clearly identify roles and develop a roles matrix early on in the relationship, as given in the example below.



**Table 6: Example Roles Matrix**

Engagement partner	Agency account manager
Enlist firm's senior management support	Handles day-to-day program related tasks and challenges
Has influence within the firm	Educates others
Allocates resources	Applies technology
Negotiates fee structures	Serves as primary network communications interface
Leverages the relationship	Participates in the annual review
Serves as foremost external advocate	Engages in network activities
Seizes marketing opportunities for the firm	Initiates collaboration with other law firms and service providers
Provides strategic thinking	Assists engagement partner with advocacy of the program within and elsewhere
Promotes technology investment	Supports supplier usage

#### 6.3.4 Relationship management protocol

Agencies can formalise their dealings with panel firms in a document. A relationship management protocol can set out the minimum standards that the firm and agency have agreed around how their relationship will operate.

Unlike contract terms, which apply for the full term of the panel, a relationship management protocol is a flexible document that may change over the term of the panel. It should be regularly reviewed throughout the panel term to determine if it is still relevant, and meeting the needs of the agency.

#### 6.3.5 Type of advice sought from panel firms

Being clear with panel firms about the type and extent of advice being sought is another way for the agency to clearly articulate its legal needs and achieve best value for the legal spend. It is important that the informed purchaser understands the issue for which they are seeking advice, and the potential ramifications of that advice. If the advice has wide ranging application or high reputational risk, a more detailed and complex level of advice should be sought. If it is routine, a simpler form of advice is more appropriate.

The informed purchaser of the advice should be able to more clearly specify the type of advice (including the level of complexity and the method of delivery) and tailor the style of advice to the legal problem.

The table below demonstrates this concept:





**Table 7: Seeking and Delivering Different Types of Legal Advice**

Type of advice	Appropriate delivery method	Characteristics of client legal issue (for which advice is being sought)	Characteristics of legal response (the advice being given)	Level of assured quality	Escalation: what happens if client unhappy with advice given
<b>Simple</b>	Oral advice (no more than 20 minutes)	Highly fact specific or limited application Likelihood and consequences of financial loss or legal liability very low Routine advice with no interpretation required	Informal advice File note taken by in-house lawyer	None	None
<b>Standard</b>	Email	Limited applicability beyond the facts presented Limited interpretation required Minimal impact to operations, reputation or practices Low to medium risk of financial penalties or legal liability	Basic, simple legal advice requiring limited documentation reviewed by external legal service provider	Limited or no review Supervising partner awareness in accordance with its internal quality requirements	Agency deputy general counsel or practice group (team) leader
<b>Complex</b>	Written advice	Non-routine situations Interpretations that are more significant and have broader implications than above Potentially significant impact to operations, reputation or practices Medium or substantial risk of financial penalties or legal liability	Detailed and sophisticated written advice Requires external legal service provider to expend more than five hours to produce advice	Supervising partner or as otherwise agreed with the agency	Review and approval by senior leadership team member, eg agency deputy general counsel or members relevant to significantly affected line areas Senior leadership team member may use discretion to escalate to relevant senior executives
<b>Highly Complex</b>	Comprehensive	Broad application and implications beyond immediate situation Major impact to operations or	Highly detailed and sophisticated answers Expert advice with significant	Senior external legal service provider peer	Review and approval by agency deputy general counsel or agency general

	formal written legal advice	major legal, reputational or financial risk Highly significant issue: possible government or organisation-wide implications	judgment and experience required taking broader consideration of operations, environment and risk, with options, risks identified and recommendations given	review	counsel required
<b>Urgent</b>	Oral or email	Urgent situation where advice is required at great speed Unfamiliar territory: need external input to confirm on track Advice on any broader considerations not yet considered	Expert advice with significant judgment and experience required taking broader consideration of operations, environment and risk, with options, risks identified and recommendations given	Senior external legal service provider peer review	Review and approval by agency decision-maker

## 6.4 Ongoing post-induction legal services panel management

In building an effective post-induction relationship, there needs to be a clear focus in what is to be achieved in ongoing communication with the service provider.

Start up communication is vital. Depending on the number of firms on the panel, this process may commence with a series of separate firm, team or business meetings - although the legal seminar conference method may be the best method of communication.

Some important factors to consider in establishing communication processes are:

- Review how the agency shares information and why
- Understand and list what is vital and what is desirable to communicate
- Determine what value-add the agency requires or wants (but do not set up an overly bureaucratic process)
- Review your internal procedures and determine what should apply to external relationship.

Use an agreed process for communication. If this has not been determined already in relationship protocols included at the RFT stage, work with the panel firms to determine how this will work in practice and make refinements as required. Face to face meetings will be an essential part of the process.

In all cases where there is any concern about quality, it will be necessary to be pro-active – to act quickly and decisively and to convey the message in a face-to-face meeting if possible.

Formal communication, including annual or six-monthly reviews, should be established under the panel and implemented with refinements made through relationship meetings and the reviews.

Consider incorporating the following into formal, annual, written communication:

- Inter agency annual corporate strategy
- Any changes to the agency missions and vision
- Key personnel profiles (agency and firm)
- Contact points
- Changes to authority levels
- Meeting dates and key agency dates
- Reports and changes in structures
- Technology plans including use of intranet and extranet facilities
- Service level summaries of key performance indicators
- Any reviews of relationship management protocols
- Public announcements and processes for dealing with media.

## 6.5 Regular panel meetings

Providing opportunities for clear and transparent reporting and exchange of information between panel providers is of high importance in delivering better value for the agency and the government. Sharing information between panel providers through regular panel meetings creates a collegiate atmosphere of working towards a common goal (the agency's goal) and

reduces costly duplication. Also, regular information sharing sessions with panel firms can be used to discuss initiatives to improve business practices within the agency. Individual firms are often reluctant to share information with their competitors, but there are important reasons why there should be joint panel meetings.

As agencies will be free to choose which panel they direct work to, the new cluster panel model should drive a more collegiate approach by panel members. There will be a real incentive for the panel members to share improvements that may raise the profile and standing of the panel as a whole.

It will also assist in driving better performance by each panel firm.

The regularity of panel firm meetings will depend on the nature of the work. For example, where there is a large volume of legal work that is outsourced to the panel and there is a requirement to tightly control the relationship, a meeting every one or two months may be appropriate. Where the work is not high volume it may be more appropriate for meetings to be held every six months, or even annually.

The best outcome is achieved when meetings are held with all panel firms and senior internal legal service providers. If meetings are held regularly, usually the panel firm lawyers with whom the agency has the most contact would be required to attend. Senior lawyers from the agency should also attend. With less frequent meetings, more external firm lawyers would attend, (preferably with the same number of lawyers from each panel firm), along with all the in-house lawyers plus a representative selection of key users of legal services from across the agency.

Such meetings could cover:

- Role definition
- The agency, its environment and special issues, constraints, rules
- Emerging or hot issues
- Firm profiles
- Firm roles
- Reporting and review
- Communication
- Protocols
- Matter management
- Survey and feedback
- Possible agency business improvement initiatives (every firm to present).

## 6.6 Competition or collegiality?

One of the challenges facing the informed purchaser is the seeming paradox of the need to generate competitive tension between panel firms (to deliver higher performance levels) contrasted with the need to have panel firms communicating regularly and working together as a team to meet the agency's objectives.

In one sense, panel firms need to cast aside competitive rivalry and put the agency's interests above their own firm's interests. One of the most effective ways to promote this mindset shift among firms is through the use of regular panel firm meetings at which specific issues/problems/challenges facing the agency are discussed as a group. Arising from this, panel firms are given responsibility to work on specific projects – together. Using the meetings to develop 'projects' enables firms to work together on value-adding activities on the client's

behalf. In addition, if panel firms are receiving a fair share of the work, the sense of collegiality will grow.

In the insurance sector – where panels have been in place for almost 20 years – this tradition of panel meetings is well established. Senior panel firm representatives attending regular meetings with the panel manager and these meetings are used as genuine brain-storming/problem solving sessions.

The first few meetings may not immediately adopt a collegiate atmosphere between firms. However, the discipline of having the meetings develops a sense of genuine collaboration around problem solving and knowledge-sharing. Panel firms will have different strengths. Just as importantly, it reduces duplicated effort that can be a major legal service cost.

Giving panel firms the responsibility to schedule the meetings and arrange the venue (rotated among the panel firms) helps reduce the administrative burden on the agency and also builds ownership of the meeting process.

Individual meetings with panel firms still occur and are used to discuss firm-specific issues.

## 6.7 Dealing with problems with panel firms

It is the work done in the RFT stage and the early stages of establishing a new panel that provides the tools and processes that can be used to address problems with external firms.

Ensuring that external providers are clear on the agency's service and relationship management expectations, even before they win a place on the panel, is crucial to providing the panel manager with the basis for addressing problems.

The processes outlined in this section (including panel induction programs, regular panel meetings) provide a framework for addressing these concerns.

By having these tools and processes in place before the problem arises, the informed purchaser can address concerns and problems with panel firms within an already agreed framework. It is more effective to raise concerns within the framework of an agreed document or protocol, than to do so without any agreement or protocol on which to rely.

Exercise 10 below outlines some of the problems that purchasers of legal services may face. Following that exercise, strategies for enhancing firms' performance (and addressing repeat and continued low performance) through KPIs and benchmarking are discussed.



## Exercise 6

**Read the scenarios below and answer the questions in the spaces provided, drawing from the information provided in this section of the Module.**

This morning Maricar settles in at her desk – extra strong cappuccino at hand – to tackle the admin that’s been piling up in the last few days. On top of the pile is the first bill on a matter that she has been working on pretty intensively with Robert, a senior associate at one of the panel firms.

What catches Maricar’s attention straight away is the amount of the bill, which is much higher than she would have expected at this stage of the litigation. Taking a big swig of coffee, she settles in for a closer look at the itemised description of services. Maricar notices:

- Several items that appear to be double ups – conference calls and meetings where two (and, in one case, three) lawyers from the firm attended
- That Robert has billed ten hours for preparing the brief to counsel – a surprising number given that her team prepared the brief just before deciding to send the matter over to the firm.

Maricar’s head starts to throb. Caffeine headache or billing headache? It’s anyone’s guess.

**What should Maricar do?** (Online answers provided at [http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed\\_purchaser\\_answers.doc](http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc))

**What, if anything, could Maricar have done to prevent this billing surprise?** (Online answers provided at [http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed\\_purchaser\\_answers.doc](http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc))

### A telephone discussion

**Connie, senior partner at panel firm** *Hi Claudio. It's Connie Chin. Listen, I'm just calling to let you know where we're up to on that Part 21C matter we're doing for you. Did you get the draft Statement of Facts and Issues I emailed you this morning?*

**Claudio, agency litigator** *I did, thank you. And one thing I wondered about was...*

**Connie** [Interrupting] *Look, I know that our version may not be what you were expecting. I've had my guys digging into that tricky evidentiary issue – they were here until all hours last night - and based on their research I think we'll be able to run the first issue in quite an interesting way. My senior associate is putting the finishing touches on an advice that sets it all out for you. Do you want me to get her to send you copies of the key cases as well, or would you prefer to just find them online?*

**Claudio** [Taken aback] *Umm...sure. I mean...well... no. [Pause] I guess what I am a bit unsure about is how relevant that first issue really is to this case. Your Statement of Issues doesn't really reflect the Department's position at all.*

**Connie** [Briskly] *Yup. Yup. Can I ask you to just wait, though, until you've been through the advice. We should have it to you in a couple of more days, and then maybe you and I can talk again.*

**Claudio** *Sure. [They sign off. Claudio sighs with frustration, then mumbles to himself.] Why didn't I just draft the Statement of Facts and Issues myself?*

**What is going on here?**

**What should Claudio do now?**

**Could Claudio have done anything to have prevented this conversation? If yes, what could or should he have done?**

(Online answers provided at [http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed\\_purchaser\\_answers.doc](http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc))

## 6.8 Performance measures: KPIs, benchmarking

There is an opportunity to drive better results from the engagement of external legal service providers through standardising and continuously improving the performance regimes applied to external legal service providers, recognising that the KPIs and service levels will vary between areas of legal specialty.

As well as driving better results, benchmarking of KPIs can assist agencies to remove firms from panels if they are not performing to requisite standard.

The key issues to be addressed in establishing a performance measurement program are:

What will be rated?

- Where will the rating come from?
- How will the assessment be undertaken?

- How frequently will they be assessed?
- How will the results be used?

### 6.8.1 What will be rated?

A simple way of generating a set of KPIs is to ask the following questions:

- What is important to you in choosing a law firm?
- What makes a law firm outstanding to work with?
- What aspects of a law firm's performance have disappointed you most in the past?

The KPIs selected should be comprehensive (that is, cover all key dimensions that are important to you) while not being overwhelming to complete or review. These are likely to include issues of service, communication, technical expertise and pricing. A way of testing if the KPIs selected are comprehensive is to check whether a firm performed well on all the selected KPIs, and see if there would be any occasion where you would still rate their overall performance poorly. If so, this reason should be included. Duplication and overlap should be avoided where possible (such as charge a fair price, provide good value for money).

The KPIs should point to areas where firms are serving you well and other areas where they can improve their performance in serving you. They can also provide clear guidance to firms on how they compare to other firms you use.

### 6.8.2 Where will the ratings come from?

Some KPIs can be obtained from management systems (e.g. the proportion of matters delivered to estimate). Other ratings are subjective and require obtaining the views or opinions of those involved. The most comprehensive approach to obtaining subjective data is to ask all lawyers who have used the legal panel to rate each firm they have used in the preceding period. Generally, the broader the input, the more valuable the results.

However some consideration should be given to whether each opinion is of equal value. For example, the opinions of an instructing in-house lawyer who only uses firms a few times a year may not be as relevant as the opinions of a senior in-house lawyer whose primary role is managing matters with law firms.

### 6.8.3 How will the assessment be undertaken?

It is generally recommended that the assessment be undertaken using an online survey (as there is no need for separate data entry). Simple tools such as SurveyMonkey can mean this is a highly cost-effective and efficient method. Where the evaluation relies on just a few individuals, a pen and paper evaluation may suffice.

### 6.8.4 How frequently will panel firms be assessed?

It is recommended that the measurement should be undertaken at a minimum on an annual basis, while six-monthly assessments are common. Where high volumes of legal instructions are involved, quarterly assessment may be more appropriate.



### 6.8.5 How will the results be used?

It is recommended that the results be shared with firms to enable them to understand their performance and identify opportunities to improve. Where sharing results with firms:

- The focus should be on how outcomes can be jointly improved (i.e. the future) rather than a detailed review of past performance
- It is suggested that the names of the other firms on the panel should be masked so that it is not made public if a firm is under-performing.

It is also useful to have a session with all firms present to explore their views on how performance of the panel and outcomes for the client can be enhanced.

### 6.8.6 Examples of KPIs and benchmarks used in government legal context

Listed below is a standard set of KPIs that may be relevant:

- Adherence to contract terms
- Adherence to fee structure
- Provision of value-adds
- Business improvement initiatives
- Value for money
- Quality of legal advice
- Speed of response
- Understanding of your business
- Strong relationships
- Good communication
- Proactive approach
- Practical advice / solutions.

Depending on the nature of the work and the relationships the following may also be relevant:

- Consistent performance
- Provision of accurate estimates
- Innovative pricing approaches
- Effectively managing third-party stakeholders
- Integration with our processes
- Resourcing matters effectively
- Seeking to resolve matters early
- Cost consciousness.

Below is a sample of a KPI and rating scorecard:



**Figure 2: Sample KPI Rating Scorecard**

**Performance Survey**

Agency:	Law Firm:
Evaluator:	Date:

Please assess the priority of each criteria to the agency on a scale of 1 to 3. Then provide a performance rating on how well you believe the law firm has performed on each criterion on a scale of 1 to 5.

Priority:      1 – Standard                      2 – High                      3 – Critical  
 Performance: 1 – Unsatisfactory      2 – Needs improvement      3 – Satisfactory  
                          4 – Exceeded expectations      5 – Excellent

Criteria	Importance to Agency	Law Firm's Performance	Total
<b>1. Service Quality</b>			
• Demonstrated subject knowledge and experience			
• Provides practical real world advice and solutions			
• Provided accurate and effective scoping documentation and fee estimates			
• Demonstrated innovation in achieving goals			
<b>2. Program/Delivery</b>			
• Project plan milestones met			
• Documents and advice produced in accordance with scope and instructions			
• Requests for further instructions made in a timely manner			
• Appropriate resources assigned to project			
<b>3. Cooperation/Teamwork</b>			
• Built relationships of trust			
• Used legal resources effectively			
• Explained proposed actions			
• Readily resolving billing or cost issues in a fair manner			
<b>4. Communication</b>			
• Accessible for discussion/meetings			
• Responsiveness to emails and telephone calls			
• Providing timely communication of arising issues			
• Clear communication of key risks			
<b>5. Commercial</b>			
• Demonstrated an understanding of the business requirements			
• Provided practical legal solutions to meet the business requirements			
• Added value to the business			
• Gave you the information needed to comply with your legal requirements			
<b>6. Financial Management</b>			
• Effective planning of legal costs			
• Provided sufficient transparency of information on costs			
• Work undertaken at the right level			
• Demonstrated commitment to manage costs			
<b>7. Network Firm Relationship</b>			
• Demonstrated commitment to Legal Protocol			
• Demonstrated commitment to values			
• Showed an interest beyond the specifics of the task			
• Offered additional services at no extra cost			
<b>8. Overall Rating</b>			



### Exercise 7

**Read the following scenario of a legal services panel. Using the information provided in this section, design a performance measurement program to meet the organisational objectives.**

#### Panel scenario

A panel of law firms has been established to handle high volume matters in an enforcement area. The matters are not identical and the costs of each matter vary based in part on the complexity of the matter and the approach taken by the offender. That said, the majority of matters are relatively small and quite similar in requirements.

The department's objectives are to:

- Minimise the cost of enforcement
- Minimise adverse outcomes
- Deal with offenders (most of whom are voters) promptly and respectfully.

Each matter is allocated to one of fourteen full-time case management officers. You have had various complaints from these case management officers that some firms are too expensive for basic matters, some are difficult to deal with, some are insensitive in the way they deal with offenders and some are incompetent. Interestingly, different case officers appear to have different views regarding the panel firms.

**Design a performance management program to address the above with consideration of:**

- 1. What will be rated?**
- 2. Where will the rating come from?**
- 3. How will the assessment be made?**
- 4. How frequently will they be assessed?**
- 5. How will the results be used?**

(Online answers provided at [http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed\\_purchaser\\_answers.doc](http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc))

## 6.9 Measuring and monitoring legal expenditure: the importance of standardisation

A recurring issue in measuring and monitoring legal expenditure – and comparing providers' performance – is the lack of consistency between scoping documents, charges and invoices across firms. It is often very difficult to 'compare apples with apples' when there is an absence of standard documentation. One of the keys to achieving value for money in procurement of legal services is achieving standardisation: so that scopes, charges, prices, invoices – and ultimately performance – can be compared across panel firms.

### 6.9.1 Standard scoping documents

Standard scoping documents can help both the instructing staff from the agency and the firms, as they come to know what the agency will provide.

Below is a sample scoping document that could be used as a template, or modified as required.



**Table 8 Standard scoping template**

#### Standard scoping template

##### 1. Why are external legal services required?

- Expertise and experience beyond agency's capacity (capability)
- Second counseling – peer review of agency's opinion (risk-assurance)
- Resource required/agency's capacity including due to urgency (capacity)
- Risk-assurance reasons – brand name comfort, insurance, risk transfer, assurance, size, complexity
- Non-core/inefficient to perform in-house.

##### 2. Briefly state context, important facts [relevant legislation, policy, constraints]

##### 3. Describe agency objectives and outcome required

##### 4 Provide your instructions ie what are you asking the law firm to do; what do you want?

##### 5. Key expected deliverables

Examples include:

- Case plan
- Written advice with advantages, disadvantages, options and recommendations
- Acquisition successfully completed within schedule
- Project management plan or methodology
- Policies reviewed and report with recommended action [recommendations].

Deliverables	Quality KPI	Timing KPI	Price KPI

##### 6. Nominated personnel and contacts

(list by role and contribution)

Person	Role	Contribution	Contact	Escalation

## 7. Cost estimate linked to key deliverables or milestones and timetable

ID	Milestone Deliverables	Responsibility	Cost	Timing

### 6.9.2 Standard invoice

Required standards for invoicing should be set out at the RFT stage. As a minimum, invoices from firms should have the following details:

- The legal service order file number
- The service provider's name and contacts
- The name and contacts of the instructing officer from the agency
- The words 'tax invoice' prominently stated
- The external legal service provider's Australian Business Number (ABN)
- The agency's ABN and address
- The date of issue of the tax invoice
- Reference to the panel contract and any relevant sub-panel or area of legal service
- Details of fees, disbursements, including the items to which they relate
- The agreed narrative including the level of lawyer providing the advice, the amount of time spent (if an hourly rate invoice), the hourly rate (if an hourly rate invoice) and the amount that work effort cost
- The total amount payable (including GST) and the GST amount listed shown separately.

All allowances for disbursements must be supported by receipts or other documentation that clearly substantiate the external legal service provider's entitlement for reimbursement of those disbursements.

Governmental better practice is that disbursements for anything other than pre-authorised third party payments should be included in the hourly rates or other agreed fee basis.

Depending on the agency's procedures, the invoices should be addressed to the panel representative or panel manager.

### 6.9.3 Standardised reporting format

As a guide, the following should be included in standardised reports on matters from firms:

- Identifying number (eg agency and cost centre number)
- File name
- Type of work
- Name of agency person instructing
- Name of firm's lawyer acting (responsible lawyer)
- Fee estimate
- Revised estimate
- Estimate variance
- Total fees (at file close)
- Expected outcome
- Risk assessment (high, medium low)

- Current status
- Work done to date, future action required, and recommendations
- Date file opened
- Date file closed
- File debriefed
- Performance evaluation.

#### 6.9.4 Scenario 1

A federal government department is responsible for payment of all work related injuries sustained by federal employees. The department has a panel of five firms and the external legal spend is in excess of \$15 million per year. A significant proportion of this spend is in relation to appeals to the Administrative Appeals Tribunal, from determinations made in the first instance by the department. At the monthly panel firm meeting, the skilled informed purchaser panel manager has a standing agenda item requiring the panel firms to discuss business improvement initiatives that might lead to increased efficiencies.

Rania Browne, partner at Haggis Associates, noted that the appeals were largely successful, which meant that the determinations being made in the department may not be well thought through. She suggested that the panel firms look at training the staff that were making the initial determinations to assist in improving their skill sets. This pilot was agreed to by the panel manager and was seen to be very successful. The panel manager subsequently outsourced the determinations to the panel firms and there was a significant decrease in matters being appealed to the AAT.

### 6.10 Driving competitive tension on the panel

#### 6.10.1 Criteria for equal distribution of work

A key tool to use in driving performance of panel firms is the criteria for distribution of work between panel providers. An initial period (suggested at least six months) of equal distribution of work between panel firms can be applied. Then, if sensible, allocation of work based on performance could apply. This process drives up the competitive tension between the firms.

Consider these two scenarios:

#### Scenario 1

An agency has had a legal services panel in operation for five years, and the panel was recently retendered. The agency had historically allocated most of the work to two of the five firms, who were by now very familiar with the business of the agency. The rates of these two firms jumped significantly during the retender, and two of the other three firms did not retender. Two new firms were successful and offered competitive rates. However the agency continued to allocate most of the work to the experienced firms. This was at higher rates than these firms offered during the previous panel term and higher than the other firms on the panel.

## Scenario 2

An agency retendered its five-firm legal services panel. It was a pre-condition in the RFT that each firm be allocated a close to equal distribution of the agency's external legal work over the first six months of the panel's four-year lifecycle. During this time, each firm's performance would be measured and benchmarked against the others. After the first six months, allocation of work would be made on merit, according to the benchmarking of the first six months' performance. During the first six months, three firms performed particularly well according to key indicators. During the second six months, more work (but not all work) was allocated mostly to these three firms. After a further six months, the firms were benchmarked again against each other, and one of the original lower performing firms was now performing best. This firm was then allocated more work and the lower performing firms were offered less. This monitoring, benchmarking, feedback and merit-based allocation of work cycle continued throughout the panel's term.

The two scenarios demonstrate the power of competitive tension.

It is the role of the informed purchaser to create the competitive tension between panel firms. By monitoring and benchmarking each panel firm's performance, sharing that information with all firms, and allocating work based on performance, panel firms are driven to perform better - in order to get a large share of the work.

Conversely, by allocating all or most of the work to one or two firms, there is little competitive incentive created. The opportunity for competitive tension here is lost twice. The competitive tension is lost the first time in failing to drive improvements in the performance of the firms that are regularly allocated work – because they know they will get more work without trying hard for it. The competitive tension is not captured a second time with the firms that are not regularly allocated work. Here, the agency is losing the competition that could be created by offering these firms an incentive to work harder and better – the incentive of increased referrals.

By equally allocating work at the start of a panel's cycle, the informed purchaser is creating the conditions to drive competitive tension right throughout the panel term.

### 6.10.2 Review and refresh arrangements

Another tool that drives competitive tension are review and refresh arrangements.

The following case study was provided in Section 2 of this Module. It described the process of review and refresh arrangements. Consider this part of the earlier case study:





### Case study

In the RFT documentation and the panel induction process, they explained that the Department was taking a new approach to purchasing external legal services as follows:

- For the first six months of the panel's term, the firms would receive an equal distribution of the Department's work
- During this initial six months, the firms' performance would be measured against a series of performance measures that had been clearly specified in the RFT documentation
- As outlined in the RFT, those legal firms that performed best (according to the performance criteria) would be allocated the most work. It was also made clear that if ever a firm failed to meet the performance criteria in two consecutive quarters, it would be dropped from the panel
- The firms were to be ranked relative to each other every three months over the three-year term, and each firm was to be shown those rankings (with the other firms' names masked)
- Monthly panel meetings were to be held with all the firms present, where they would be asked to update on their work, share information and suggest ways in which their own firm's performance could be improved.

As a result of this approach, the Department reduced its legal spend by 25 per cent over the three years of the panel and reported greater levels of agency satisfaction with the services from the external providers, compared to the previous panel. Ultimately, during the three-year term, no provider was dropped from the panel.

## 6.11 Educating non-legal agency staff in informed purchasing

It is part of the informed purchaser's role to educate internal business managers on the role of the legal unit and informed purchasing. They must also understand what may be referred externally and what can be dealt with internally, and the processes for doing so. This is the role of the Legal Management Services Unit, as discussed in Module 3. However, the individual informed purchaser can also play a role in educating the non-legal agency staff by referring them to this Module and other informed purchasing tools.

## 6.12 Measure, monitor and refine

An informed purchaser must not only collect and share information about the performance of panel firms; they must also use this information to incorporate lessons learned into future panel tendering and management processes. Where a panel firm's performance has been superior, this information must be recorded and analysed, and inform the next re-tender of the panel. Specifically, the processes used to promote the superior performance should be replicated.

Where a firm or firms' performance has been suboptimal, the lessons learned from the steps taken to address the low performance must also be incorporated into future panel tenders and performance management processes.

It is the informed purchaser's role to gather, analyse and utilise this information to generate improved performance in the current and future legal services panels.

The performance of law firms on a panel may be suboptimal for a range of reasons:

- The firms may not sufficiently understand the agency's objectives
- The firms may not have sufficient experience
- The relationship between the firms and the department may be inhibiting effective transfer of information
- The firms may not be allocating appropriate resources to assist the agency.

The challenge is to create an environment whereby all parties are continually focused on improving outcomes. It should also be recognised that over time the needs and priorities of the department may change. This section introduces a framework for creating this environment.

### 6.12.1 Measure

Even with the best intentions from all parties, any discussion on what needs to be improved and how it should be improved will often stumble if no evidence is presented. For example, if a panel manager believes one firm is not behaving in a cost-effective manner and meets with the firm to discuss the issue, it is unlikely that the firm will accept that it is acting inappropriately unless evidence is provided. Measuring what is important is the starting point for understanding and improving performance.

### 6.12.2 Monitor

Measurement provides the base data. However it is not sufficient to measure performance at a point in time then walk away. This data needs to be monitored on a regular basis to determine if performance is improving or declining, to assess performance against targets and to identify performance that does not meet expectations.

It is through continuously monitoring performance that we can track and demonstrate improvement.

### 6.12.3 Feedback

Having obtained regular information on performance, this information should be shared with key stakeholders including those within the agency and the law firms. The feedback forms the basis for a discussion on:

- The priorities for the coming period, and
- What specific actions should be taken to realise these priorities.

This in turn may lead to the establishment of specific performance targets.

### 6.12.4 Report

The panel manager should report on the priorities and actions agreed. This should be documented and contribute to the subsequent feedback sessions.

It is through this process of measure, monitor, feedback and report that objectives are set, priorities agreed and actions taken to improve performance. The measurement and monitoring should in turn reinforce progress, while recognising that further improvements are always possible.