

# Resources

## 10 Further Reading and Resources

### 10.1 Government legal services resources

- *Review of Commonwealth Legal Services Procurement*, 8 January 2010.
- Legal Service Panel: Victorian Government Procurement
- <http://www.vgpb.vic.gov.au/CA2575BA0001417C/pages/state-contracts-legal-government-legal-services>
- Commonwealth Common Form Tender Package – Legal Services  
[www.ag.gov.au/www/agd/agd.nsf/page/legalservicestoGovernment\\_CommonFormTenderPackage](http://www.ag.gov.au/www/agd/agd.nsf/page/legalservicestoGovernment_CommonFormTenderPackage)
- ANAO Better Practices Guide: *Legal Services Arrangements in Australian Government Agencies*, 10 August 2006
- ANAO Better Practices Guide: *Developing and Managing Contracts*, 2 February 2007
- ANAO Better Practice Guide: *Fairness and Transparency in Purchasing Decisions: Probity In Australian Government Procurement Decisions*, August 2007

### 10.2 Further reading

- Baggett, Byrd, *Dare to Lead*, Cumberland House Publishing, 2004
- Fisher, Roger and Sharpe, Alan, *Getting it Done*, Harper Collins, 1998
- Heller, Robert, *Communicate Clearly (Essential Managers Series)*, Dorling Kindersley, 1999
- Heller, Robert, *How to Delegate (Essential Managers Series)*, Dorling Kindersley, 1999
- Honey, Peter, *101 Ways to Develop Your People Without Really Trying*, Peter Honey Publications, 1994
- Honey, Peter, *Explore Your Values*, Peter Honey Publications, 2000
- McCormack, Mark, *The Terrible Truth About Lawyers: How Lawyers Really Work and How to Deal with Them Successfully*, Harper Collins, 1987
- McDermot, Ian and Jago, Wendy, *The NLP Coach*, Piatkus, 2001
- Maister, David M, et al, *The Trusted Advisor*, Free Press, 2000
- Maister, David M, *Practice What You Preach*, Free Press, 2001
- Maister, David M, *True Professionalism*, Free Press, 1997
- Maslow, AH, *Motivation and Personality*, Harper, New York, 1954
- Mayson, Stephen, *Making Sense of Law Firms*, Blackstone Press, 1997

- Speechly, Chris and Wheatley, Ruth, *Developing a Culture for Diversity*, Institute of Management, Hodder and Stoughton, 2001
- Templar, Richard, *The Rules of Management*, Pearson Prentice Hall Business, 2005 *The Competitive Edge – The Growing Power of the DuPont Legal Model*
- Thomas, Neil and Adair, John Eric, *Teambuilding and Motivation*, Thorogood, 2004
- Whitmore, Sir John, *Coaching for Performance*, Nicholas Brealey Publishing, 2003
- Corporate-Governance Committee, *Reconciling the Irreconcilable*, published by C&I Group Services, 2004

### 10.3 Networking groups

- Australian Corporate Lawyers Association ([www.acla.com.au](http://www.acla.com.au))
- Association of Corporate Counsel ([www.acca.com](http://www.acca.com))
- CLO (Chief Legal Officer Programme) ([www.cloprogramme.com](http://www.cloprogramme.com))
- Commerce and Industry Group ([www.cigroup.org.uk](http://www.cigroup.org.uk))
- GC100 (for the FTSE 100)
- General Counsel Roundtable ([www.generalcounselroundtable.com](http://www.generalcounselroundtable.com))
- Institute of Chartered Secretaries and Administrators ([www.icsa.org](http://www.icsa.org))
- Institute of Paralegals ([www.InstituteofParalegals.org](http://www.InstituteofParalegals.org))

### 10.4 References

- Australian National Audit Office, *Legal Services Arrangements in Australian Government Agencies: Better Practice*, Canberra, August 2006
- Beck, S and Orey, M, *The American Lawyer*, September 1991 'Skaddenomics: the ludicrous world of law firm billing'.
- Blunn, A and Krieger, S, *Report of the Review of Commonwealth Legal Services Procurement*, Canberra, 2009
- Lawlink *Department of Attorney General and Justice Legal Services Coordination*  
<http://www.lsc.lawlink.nsw.gov.au>
- Federal Court of Australia Glossary  
<http://www.fedcourt.gov.au/aboutct/ar2009/Glossary.pdf>
- Page, A and Tapp, R, *Managing External Legal Resources*, ICSA Publishing, London, 2007
- Government of NSW, *NSW Procurement Guidelines: Tendering Guidelines July 2010*, 2010

The Modules will be reviewed and updated regularly as the recommendations from the government's strategic review are implemented.

For further information about the Modules and their contents, contact:

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## 11 List of Abbreviations and Acronyms

ABN	Australian Business Number
ADR	Alternative Dispute Resolution
Agency	Any NSW Government department or agency, including state-owned corporations
ANAO	Australian National Audit Office
CLE	Continuing Legal Education
DJAG	NSW Department of Justice and Attorney General
GIPA Act	<i>Government Information (Public Access) Act 2009 (NSW)</i>
GST	Goods and Services Tax
KPIs	Key Performance Indicators
LSC	Legal Services Coordination
OCR	Optical Character Recognition
PPP	Public Private Partnership
RFQ	Request for Quote
RFT	Request for Tender
SLA	Service Level Agreement
TMF	Treasury Managed Fund

## 12 Legal Terms Glossary<sup>8</sup>

<b>Appeal</b>	An application to a higher court to review a decision of a lower court or tribunal. For example, an appeal from a decision of a Federal Magistrate may be made to the Federal Court, and a decision of a single judge of the Federal Court may be the subject of an appeal to the Full Court of the Federal Court.
<b>Appellate jurisdiction</b>	The power given to a court to hear appeals in certain matters.
<b>Applicant</b>	The individual, organisation or corporation who/which applies to the Court to start legal proceedings against another person or persons. Also known as 'plaintiff' in admiralty and corporations matters and in some other courts.
<b>Application</b>	The document that starts most proceedings in the Federal Court.
<b>Cross appeal</b>	An application by a respondent in an appeal also seeking a review of the lower court or tribunal decision and made in response to the appeal. A cross appeal is not required if the respondent is simply seeking that the decision of the lower court or tribunal be upheld.
<b>Cross claim</b>	A claim made in a proceeding by one party against a co-party, such as the first respondent (or defendant) against the second respondent (or defendant). However if the claim in the proceeding is by one party against an opposing party, such as the respondent (or defendant) against the applicant (plaintiff), it is called a counter claim. A cross claim has to be closely connected to what is in dispute in the original claim or a counter claim.
<b>Directions</b>	Orders made by the Court or a judge in relation to the conduct of a proceeding. Before the trial or hearing of a matter a judge may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.
<b>Discovery</b>	A process by which the parties involved in a legal proceeding must inform each other of documents they have in their possession and which relate to the matters in dispute between the parties.
<b>Docket system</b>	A system by which each case is allocated to a particular judge who will then see the case through to completion. In the Federal Court the system is called the Individual Docket System (IDS).

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<sup>8</sup> Adapted from the Federal Court of Australia glossary at Federal Court of Australia <http://www.fedcourt.gov.au/aboutct/ar2009/Glossary.pdf>

<b>Exhibit</b>	A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.
<b>Filing of documents</b>	The process of the Court accepting a document or documents lodged by a party to a proceeding.
<b>First Instance</b>	A proceeding heard in the Court's original jurisdiction.
<b>Hearing</b>	That part of a proceeding where the parties present evidence and submissions to the Court.
<b>Interlocutory Application</b>	Interlocutory proceedings are for dealing with a specific issue in a matter - usually between the filing of the application and the giving of the final hearing and decision. In the Federal Court interlocutory issues are usually brought before the Court by a 'notice of motion' or an 'interlocutory process'. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).
<b>Judgment</b>	The final order or set of orders made by the Court after a hearing, often accompanied by reasons which set out the facts and law applied in the case. A judgment is 'reserved' when the Court postpones the delivery of the judgment to a later date to allow time to consider the evidence and submissions. A judgment is 'ex tempore' when the Court gives the judgment orally at the hearing or soon after.
<b>Jurisdiction</b>	The extent of legal authority or power of the Court to apply the law. The Federal Court has jurisdiction under more than 150 Commonwealth Acts and has original and appellate jurisdiction.
<b>Litigants</b>	Individuals, organisations or companies who/which are the parties to a proceeding before the Court.
<b>Mediation or (Assisted Dispute Resolution)</b>	A process in which an impartial third party assists the parties in an attempt to bring about an agreed settlement or compromise, without requiring a decision of the Court.
<b>Notice of Motion</b>	The document filed by a party to an existing proceeding which asks the Court to make orders that were not included in the original application.
<b>Original Jurisdiction</b>	The authority or legal power of the Court to hear a case in the first instance.

<b>Parties</b>	People involved in a court case. Applicants, appellants, respondents, defendants, are generally called 'parties'.
<b>Proceeding</b>	The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.
<b>Quantum</b>	The amount of monetary damages being sought in legal proceedings.
<b>Regulations</b>	The Federal Court of Australia Regulations 2004 which prescribe the filing and other fees that must be paid in relation to proceedings in the Federal Court.
<b>Respondent</b>	The individual, organisation or corporation against whom/which legal proceedings are commenced. Also known as a 'defendant' in admiralty and corporations matters and in some courts. In an appeal it is the party who/which did not commence the appeal.
<b>Rules</b>	Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules, Federal Court (Corporations) Rules 2000 and Federal Court (Bankruptcy) Rules 2005.
<b>Self Represented Litigant</b>	A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.



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- Figure 2: Sample KPI Rating Scorecard
- Figure 3: Sample Commercial Project Fees Estimate 1
- Figure 4: Sample Risk Matrix 1
- Figure 5: Sample Commercial Project Fees Estimate 2
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### 13.2 Tables

- Table 1: Comparison of Leading Practice Model and NSW Procurement Process
- Table 2: Common Attributes of Different Types of Firms
- Table 3: Different Types of Fee Arrangements and Their Application
- Table 4: RACI Matrix
- Table 5: Invitation to Tender Framework and Informed Purchaser Considerations
- Table 6: Example Roles Matrix
- Table 7: Seeking and Delivering Different Types of Legal Advice
- Table 8: Standard Scoping Template
- Table 9: Appropriate Fee Structures for High Volume Legal Work
- Table 10: The Benefits and Constraints of Different Styles of Blended Teams

## 14 Checklists

### 14.1 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.

## 15 Appendices

### 15.1 Appendix 1 Sample Stakeholder Interview Questions

#### Legal Services Needs

- Have you conducted any research into your legal services needs?
- What are your key legal service needs?

#### Process for meeting legal needs

- Is there an existing panel?
- How many firms are on the panel?
- What panel rates/other value-adds do you have in place?
- How do you review / monitor the work and legal fees of external providers? Do you use any tools?

#### Potential sub-panels

- Are there any appropriate sub-panels (i.e. service areas in which individual firms may be able to provide good services even if they are not able to provide all services that may be required across the breath of a cluster panel)?

#### Documents required

- Any current contracts with legal service providers (and what you think could be improved)
- Any formal procedures for engaging external legal service providers, including work orders (and what you think could be improved)
- Any previous RFT documentation or other panel approaches to the market for engaging and managing legal services (including tender response schedules)
- Your current monitoring and reporting arrangements (and what you think could be improved)
- Any formal lessons learned relating to these processes
- Details of current service providers, including which firms do which category of work
- Any information regarding overall legal expenditure, expenditure by legal category or expenditure by firm.

#### Matter management

- Who chooses the firm for a specific matter (how many instructors)?
- How do you manage matters?
- What reporting is used?
  - Do you have standard report (or instructing) guidelines and formats?
  - Do you have any comments on them?
- To what degree do you use of alternative fee arrangements?
- What alternative dispute resolution processes, if any, do you have in place in relation to your disputes?

#### Panel management

##### For those agencies that do have a Panel

- If there is a panel arrangement, does the agency have any views / suggestions on composition (i.e. top tier, mid tier, smaller, number on panel, general or specialist

appointments) and distribution of work (i.e. does it need to be equal, can there be performance criteria, matter bidding, etc)?

- Are any mechanisms in place to track performance of firms?
- Are any mechanisms in place to improve processes with firms?
- Do you have KPIs or do you benchmark the performance of firms – do you have any ideas about useful KPIs or ways of benchmarking firms or sharing performance information about firms?
- Please provide us with the rates currently charged to you by each panel firm.

### **Innovation**

- Which THREE of these PEOPLE/ RELATIONSHIPS CRITERIA do you consider MOST IMPORTANT in selecting and maintaining an effective relationship with a law firm?
  - Size of firm/ location of offices
  - Past relationship
  - Expertise in specialist areas – the firm
  - Expertise in specialist areas – lawyer(s)
  - Reputation – the firm
  - Reputation – lawyer(s)
  - Experience & judgment of lawyer(s)
  - Understand our business/ industry/ sector
  - Willing to invest in the long term relationship
  - Innovative/ creative/ problem-solving capability
  - Effective teamwork within the firm & with us
  - Reliable & responsive
  - Proactive
  - Ease of doing business with
  - Cost conscious
- Please rank the SERVICE CRITERIA in the table below in order of importance in selecting and maintaining an effective relationship with a law firm.

<b>Service Criteria</b>	<b>Ranking 1 – 10</b>
Hourly rates	
Delivery to budget/ fee-level expectations	
Overall cost/ value for money	
Identify value-add from outset	
Effective co-ordination/ project management	
Efficient staffing levels	
Quality of documentation	
Commerciality of advice	
Predictive accuracy	
Optimal outcomes	

- What value-add services can be provided by external providers, and how do you measure their value? How can they be better harnessed?

### **Other**

- What would you like to see come out of the panel establishment?
- Are there any other relevant issues you would like explored?

## 15.2 Appendix 2 Sample Case Management Plan and Budgeting Tool

### Note

***This draft Case Management Plan is for continual development between the agency and panel firm. Each stage is to be agreed with the agency as soon as practicable. The work on each case is to be conducted in accordance with that set out in the plan.***

Date:

### GENERAL INSTRUCTIONS

- Set out an accurate and thorough presentation of the agency view/objective.
- To ensure efficient and effective conduct of law.
- To work collaboratively with the agency.
- Adherence to Legal Services Directions.
- Consider the potential for dispute resolution at each stage of the proceeding.
- To ensure professional management of the case, efficient and quality work and value for money for the agency.

### AGENCY OBJECTIVES

- Set out an accurate and thorough presentation of the agency objective (to be drafted by agency and settled in meeting with panel firms).

### CURRENT STATUS (agency to provide)

For example:

- The Applicants lodged objections against deemed assessments.
- The objections were disallowed in full on <insert details>. The Applicant filed Part IVC applications in the Federal Court at <insert details> on <insert date>.
- The Applicants have instructed <insert firm name> to act as their solicitors in the proceedings.

### DISPUTE RESOLUTION

**ADR is to be considered at each stage of the proceeding to determine whether it is appropriate for the matter to be the subject of an ADR process. In this context ADR is not limited to mediation by the Court.**

**Agency to insert steps/discussions taken to date for all dispute resolution including formal ADR**

**In discussion, insert further DR potential avenues and stages where they should be considered.**

### ADDITIONAL ISSUES ARISING FROM THE APPEAL (in discussion)

These appeals involve the following issues:

<insert details>  
Insert agency view



**TABLE OF STAGES IN THE CASE (Legal services provider)**

**CONSIDER DISPUTE RESOLUTION AT EACH STAGE**



**STAGE - (X)**

TASKS	RESPONSIBILITY	ESTIMATED DUE DATE	DATE ACHIEVED	ESTIMATE FOR EACH STAGE
	<insert firm name>/agency/ Counsel  <insert details> hours			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
	<insert firm name>/agency/ Counsel  <insert details> hours			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<i>Cost Estimate for Stage 1</i>				<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Stage 1 Subtotal</b>				<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Stage 1 Total</b>				\$
	<insert firm name>/agency/ Counsel			<Panel firm> \$



TASKS	RESPONSIBILITY	ESTIMATED DUE DATE	DATE ACHIEVED	ESTIMATE FOR EACH STAGE
	<insert details> hours			<Counsel> \$ <Witnesses> \$ <Other disbursements> \$
	<insert firm name>/agency/ Counsel  <insert details> hours			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Cost Estimate for Stage 2</b>				<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Stage 2 Subtotal</b>				<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Stage 2 Total (sum of Stage 1 &amp; 2)</b>				\$
	<insert firm name>/agency/ Counsel  <insert details> hours			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
	<insert firm name>/agency/ Counsel			<Panel firm> \$ <Counsel>

TASKS	RESPONSIBILITY	ESTIMATED DUE DATE	DATE ACHIEVED	ESTIMATE FOR EACH STAGE
	<insert details> hours			\$ <Witnesses> \$ <Other disbursements> \$
<b>Cost Estimate for Stage 3</b>	<b>Cost Estimate for Stage 3</b>			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Stage 3 Subtotal</b>	<b>Stage 3 Subtotal</b>			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Stage 3 Total (sum of Stage 1,2 &amp; 3)</b>	<b>Stage 3 Total</b>			\$
	<insert firm name>/agency/ Counsel  <insert details> hours			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
	<insert firm name>/agency/ Counsel  <insert details> hours			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Cost Estimate for Stage 4</b>	<b>Cost Estimate for Stage 4</b>			<Panel firm> \$ <Counsel> \$

TASKS	RESPONSIBILITY	ESTIMATED DUE DATE	DATE ACHIEVED	ESTIMATE FOR EACH STAGE
				<Witnesses> \$ <Other disbursements> \$
<b>Stage 4 Subtotal</b>	<b>Stage 4 Subtotal</b>			<Panel firm> \$ <Counsel> \$ <Witnesses> \$ <Other disbursements> \$
<b>Stage 4 Total (sum of Stages 1,2,3 &amp; 4)</b>	<b>Stage 4 Total</b>			\$
<b>TOTAL ESTIMATED COST</b>				\$



**Annexure A to Case Management Plan  
Summary of Cost Estimate**

Name of Case:

State:

Type of action:

Counsel:

Panel firm:

LSB Officer:

STAGES and anticipated completion dates (detail to be added)	PANEL FIRM ORIGINAL ESTIMATED COST	PANEL FIRM REVISED ESTIMATED COST	PANEL FIRM ACTUAL COST	COUNSEL ORIGINAL ESTIMATED COST	COUNSEL REVISED ESTIMATED COSTS	COUNSEL ACTUAL COST	WITNESSES ORIGINAL ESTIMATED COSTS	WITNESSES REVISED ESTIMATED COSTS	WITNESSES ACTUAL COSTS	OTHER ORIGINAL ESTIMATES (e.g. Disbursements)	OTHER REVISED ESTIMATES	ACTUAL OTHER	TOTAL (ORIGINAL ESTIMATED)	TOTAL (REVISED ESTIMATED)	TOTAL (ACTUAL)
Stage 1 (<insert date>)													\$		\$
Stage 2 (<insert date>)													\$		\$
Stage 3 (<insert date>)													\$		\$
Stage 4 (<insert date>)													\$		\$
Stage 5 (<insert date>)															
Stage 6 (<insert date>)															
<b>TOTAL</b>	\$		\$	\$		\$				\$			\$		\$

**Consider Dispute resolution at each stage**

**NOTES: (e.g. explanation of variations)**