

Becoming an Informed Purchaser of Legal Services

Helping In-house Counsel get the most out of their external legal spend...

Legal clients are leading the demand for lawyers to change their ways of working to deliver more effective client outcomes, on time and on budget!

This is the first in a series of two articles on the Legal Informed Purchaser framework. It is designed to support in-house counsel with the planning of strategic legal services, and when making purchasing decisions for external legal services. It covers the first three stages in the Leading Practice Procurement Process framework developed by the NSW Attorney General's Department (NSWAGD).

The concept of being an 'Informed Purchaser' or an 'Informed Buyer' started to appear in the late 1990's and early 2000's in relation to the procurement of engineering services by government. It has recently become a key concept in relation to the purchasing of legal services by both federal and state governments in Australia.

This trend started with the Australian National Audit Office's (ANAO) Better Practice Guide released in August 2006 and titled – Legal Services Arrangements in Australian Government Agencies. The concept was further refined and solidified by Beaton Consulting's Report on the Legal Services to Government Panel Contract for the Victorian Government. And it has been expanded into 9 detailed training modules by the (NSWAGD), available for download [here](#).

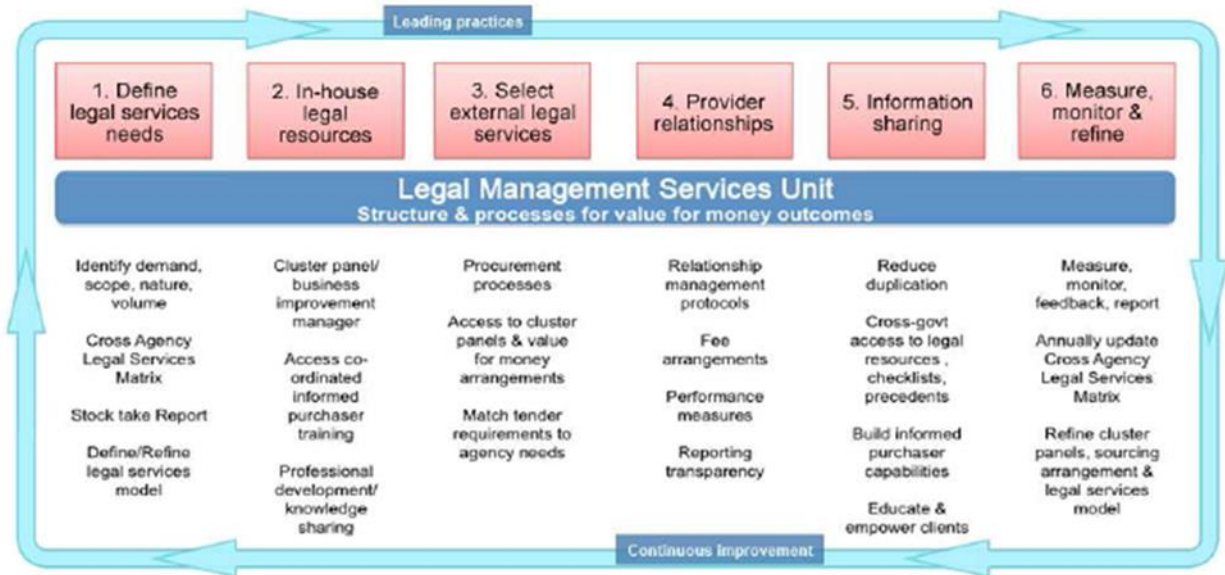
The training is extremely comprehensive and whilst it was designed primarily to support In-house Legal Teams and Procurement Specialists in Government Agencies, it is equally applicable to other legal purchasing contexts.

"The central role of the informed purchaser is management of the allocation of all legal work, monitoring of the quality of legal services delivered, management of legal risk and management of legal costs and value for money." NSWAG Informed Purchaser Training Module 1

Best Practice Legal Services Procurement Process

The NSWAGD's Leading Practice Procurement Process has six stages –

1. Defining Legal Services Needs
2. Establishing in-house legal resources
3. Select external legal services
4. Manage provider relationships
5. Information sharing
6. Measure, monitor and refine



This diagram has been published with the permission of the NSW Attorney General's Department.

This information can be applied by in-house counsel in any major organisation (government, private sector and not for profit) to assist in the efficient management of internal legal services and the effective engagement of external legal services.

It is also beneficial for external counsel to understand these concepts so they can build better relationships with their in-house counsel clients and achieve a greater understanding of game changing new expectations in the legal services market.

Defining Legal Services Needs

In order to determine the legal model that will best support an organisation's needs, General Counsel and senior executives need to understand both the broad operational legal services requirements as well as the more specific project based or ad-hoc requirements.

This specifically requires the definition of the scope of the legal work; the demand for legal services; understanding the nature of the work; and understanding the volume of the work. Best practice concepts such as capacity planning and workforce planning can be beneficial to this planning process. These can be applied from **Legal Portfolio Management** -a framework and set of disciplines that is closely related to Legal Project Management. Find out more here – [Understanding Legal Portfolio Management](#)

In-house and External Counsel Benefits

The following table outlines the particular benefits associated with using in-house legal resources and also external legal resources.

Benefits for using different legal resources

In-house Counsel	External Counsel
<ul style="list-style-type: none">• The General Counsel or Chief Legal Officer can add significant value to the governance and strategic decision making of the organisation• In-house counsel may have particular expertise in advising on organisation and industry specific legislation, regulations, standards and statutory obligations• The overall costs are often lower when using in-house counsel• In-house counsel are often more immediately available and can be more responsive as they don't need to juggle multiple external clients	<ul style="list-style-type: none">• External counsel may have particular expertise in advising on commercial law or specialist areas of legal practice that are infrequently considered by in-house counsel• External counsel may have deeper expertise in the conduct of major litigation• External counsel is perceived to have deeper and more up to date legal expertise in specific areas• It can be faster to supplement in-house legal resources with external resources for urgent needs rather than undertaking recruitment processes• It can be cost effective to engage external counsel for specific short pieces of work rather than carrying full time head count in the internal department

In-house Legal Resources

It is possible to gain significant process efficiencies and quality improvements within a large in-house legal team by applying the following concepts and techniques –

- **Legal project management** - considering internal traditional project management frameworks and adapting these for application on legal matters and legal projects
- **Internal client and stakeholder requirements** - seeking to understand the needs of internal clients and senior management when defining and delivering legal services
- **Demanding improved legal project delivery** of external legal providers and managing these relationships more closely
- **Legal Portfolio Management** - undertaking resource planning and allocation across the portfolio of legal matters to ensure that all critical deadlines can be met
- **Creating legal project management precedents** and best practice examples for use on similar matters
- **Reinforcing the importance of knowledge management** to improve efficiency and quality

Selecting External Legal Services

The NSW Government has defined a six step procurement process that can be applied to the sourcing and selection of any external service, including legal services –

1. **Needs Analysis** – defining the requirement to be fulfilled and determining that the optimal approach is to procure from outside the organisation
2. **Funding Approval** – determine the scope of the procurement and prepare the rational or justification for the purchase
3. **Project Procurement Plan** – determine the approach to the market (e.g. type of tender, preferred supplier selection etc) and plan for the procurement activities
4. **Service Provider Selection** – determine selection criteria and detailed requirements; prepare and issue the request for tender; undertake the selection process; award the contract
5. **Contract Management** – manage the provision of the selected services in accordance with the terms of the contract
6. **Procurement Evaluations** – manage the relationship with the provider and review the on-going performance

Common selection criteria to be considered when assessing external providers includes –

- Expertise and coverage of required practice areas
- Consistency of service and past performance
- Alignment of management styles and culture
- Capacity to upscale and downscale as required
- Ability to handle peak volumes
- Resourcing approach and flexibility
- Footprint and regional capability if required
- Professional indemnity insurance
- Conformance with standards and quality frameworks
- Ability to comply with Government policy
- Technology, data security and confidentiality
- Conflicts of interest
- Methodologies for risk management and legal project management
- Knowledge management and information sharing
- Additional services such as knowledge transfer and provision of CLE/CPD
- Value for money, pricing models and fee structures
- Disbursement charging approach

Defining Requirements and Different Types of Advice

Under an informed purchaser model, the client becomes more sophisticated in understanding their own requirements and managing external providers to deliver on those requirements. One best practice technique is to clearly define the expectations with respect to different categories of advice. There is a useful table that provides an example of this concept from the NSWAGD's Informed Purchaser Training Workbook pages 62 and 63. Access the workbook [here](#).

It details the delivery methods and service expectation for the following types of advice –

- Simple
- Standard
- Complex
- Highly complex
- Urgent

About the author...



This article was written by Therese Linton, Founder and Principal Consultant of The BASALT Group® encompassing The Positive Lawyer® and the Academy of Legal Leadership®. She is a global leader in the field of Legal Project Management and literally wrote the book. She also has unique expertise in Legal Portfolio Management, Legal Process Improvement, Legal Transformation and Legal Operations.

As a leading global expert in Legal Project Management, she has worked with thousands of lawyers to develop their capabilities and skills. As part of this work, she supports lawyers to improve their communication and leadership skills to improve their impact and success.

Next steps...

Find out more about the NSWAGD's Informed Purchaser Training and access the materials [here](#). This is an incredibly useful framework for both in-house and external counsel. **You cannot afford NOT to know about these concepts!**

You might like to check out other articles [here](#) or subscribe to our monthly articles and other insights [here](#) so that you stay informed about critical skills to make you a better lawyer.

My aim is to inspire you to achieve great things and I look forward to joining you on your journey! Cheers....T

