



Australian Government

Department of Education, Employment and Workplace Relations

BSALC501A Run a file

Release: 1

Modification History

Not Available

INTRODUCTION

RUN A FILE

This Unit covers the duties carried out by a fee-earner as she/he manages the conduct of a file under the instruction of a qualified legal practitioner. This includes: establishing a file for the legal matter at hand, developing and obtaining appropriate documents, negotiating with clients, costing the file and file closure procedures.

Note: It may be illegal for a person without a current legal practice certificate to provide legal advice, to sign off on legal work and to receive trust monies. It may also be illegal for persons to misrepresent their qualifications (ie. claiming to be a lawyer/conveyancer or acting as a lawyer/conveyancer when they are not qualified to do so). Accordingly, persons without a current practice certificate must make their status clear to the other party and must act under the instructions of a qualified legal practitioner. Whenever work is carried out on behalf of an instructing legal practitioner, the work must be first checked by the instructing legal practitioner. Whenever a client or other party/ies are contacted on behalf of the instructing legal practitioner, the caller must identify themselves and their position and contact must occur according to the instructions and advice of the instructing legal practitioner. The legal practitioner must be kept up to date with the file's progress. Problems of a legal nature must not be resolved without consulting the instructing legal practitioner and resolutions which emerge from such discussions must be complied with.

This unit can be assessed alone or in combination with other units making up a job role.

Element of Competency

Performance Criteria

Initiate preliminary file activities

- Meeting is arranged with instructing legal practitioner to discuss new file and plan and prioritise preliminary work
- Details of the legal matter are obtained from client according to a firm's policies and procedures
- A quote in line with a firm's fee structure is developed and forwarded to instructing legal practitioner for approval
- Quote and instructions for establishing a trust account are forwarded to client on behalf of instructing legal practitioner
- Terms of engagement are clarified with instructing legal practitioner and client and mutual expectations are agreed upon and documented
- Initial file documentation is prepared

Carry out conflict of interest check

- Self or other is organised to carry out conflict of interest check
- Results of conflict of interest check are recorded on preliminary file notes and any areas of potential conflict are discussed and resolved

- Open file
- Relevant information for initiating files is located, accessed and extracted
 - Support staff are selected to assist on file in consultation with instructing legal practitioner and briefed on matter
 - Confirmation of instructions, details of those working on the file, a summary of work to be performed and associated timelines are forwarded to client on behalf of instructing legal practitioner
- Determine appropriate legal process and steps to facilitate the process
- Work is planned in conjunction with instructing legal practitioner, staff are assigned to tasks and resources are allocated
 - Relevant background information is obtained and relevant legal documents are prepared and checked by instructing legal practitioner
 - Relevant legislation and cases are identified and relevant legal requirements are clearly outlined to the client and questions are answered or referred to instructing legal practitioner for follow-up
 - Summary of future activities and preliminary work already performed are signed off by instructing legal practitioner and forwarded to client within agreed timelines
- Contact other persons in regard to the file
- Liaison is undertaken with other persons and statements are obtained if necessary
 - Liaison with experts undertaken where appropriate
 - File notes are updated detailing all activities, actions and their outcomes and time is recorded
- Undertake legal process according to plan
- Legal process as planned with instructing legal practitioner is carried out
 - Instructing legal practitioner is kept up to date on progress of matter
 - Issues or problems outside own range of responsibility are referred immediately to instructing legal practitioner for resolution
 - Client is kept up to date on progress of matter through progress reports and where necessary meetings with instructing legal practitioner
 - Trust account is monitored to ensure sufficient monies and instructing legal practitioner is contacted to facilitate the transfer of additional funds if necessary

- Meeting is arranged with instructing legal practitioner to present report on work undertaken and to facilitate instructing legal practitioners sign off on the matter
- Facilitate file administration and closure
- Organise self or other to reconcile time records with costing
 - Organise self or other to undertake final costing
 - Organise self or other to prepare invoice
 - Meeting is arranged with instructing legal practitioner to review final invoice and relevant documentation in order to facilitate sign off before forwarding same to client
 - File notes are updated and completed
 - Trust accounts are checked for zero dollar balance and any outstanding disbursements are resolved
 - File is closed and archived according to a firm's policies and procedures

RANGE STATEMENT

Legal matter may include:

- settling a dispute
- agreements
- contracts
- disputing a claim
- mediated disputes
- protecting rights
- initiating litigation
- trademarks

Client may include:

- third party
- individual
- business
- insurance company

Initial file documentation may involve:

- recording relevant client matter details
- assigning file/matter number to client
- attaching file/matter number is attached to all relevant documentation

Client requirements in relation to the matter requirements* include, but are not exclusive of:

- an estimate of the total legal costs
- billing frequency
- charge out rate
- reporting frequency
- bill narrative
- information about avenues for challenging invoice
- name and address of RPA (recognised professional association) which regulates the firm or the practitioner

* These requirements are legislated and may differ from state to state

Relevant background material and additional information may include:

- open file
- relevant legislation
- previous dealings with client or relevant third party

Conflict of interest check may include:

- searching files
- past working history of supervisor
- databases

- accounting package
- Conflict of interest may include:
- representing relative
 - representing other party
 - vested interest in outcome
- Terms of engagement may include:
- fee contingent on success of case
 - pro bono work
 - union agreement
 - referral arrangement
- Fee structure may include:
- fixed quote
 - fee by hour
 - scale of costs
 - tender
 - special rates
- Appropriate documentation may include:
- leases
 - mortgages
 - contracts
 - transfer of shares
 - wills
 - a firm's templates
 - information for client
 - letters
 - internal correspondence
 - transcripts from supervisor's notes
 - agreements
 - opinion letters
 - memorandums of law
 - briefs
 - pleadings
 - precedents
 - statements
 - bank statements
 - other financial documentation
- Relevant legislation and cases may
- statutory law
 - constitutional law

- include:
- common law
- Experts may include:
- medical practitioner
 - psychologist
 - psychiatrist
 - social scientist
 - historian
 - parole officer
 - social worker
- Other persons with whom liaison may occur may include:
- experts
 - opposing party/ies
 - government departments/agencies
- Appropriate resources may include:
- time
 - staff
 - venues for liaison and meetings
 - services
 - office materials
 - access to experts
- Relevant documentation to be forwarded to client may include
- certificates
 - letters
 - experts reports
- All activities and outcomes may include:
- exchange of information
 - discovery
 - consulting experts
 - verbal communication with external parties
 - failure to return call
- A firm's policies and procedures may include:
- office procedure manual
 - information sources
 - information specific to the firm
 - telephone protocol
 - initiation of files
 - accessing files
 - updating files

- security/confidentiality/privacy procedures
- contingency management
- time recording procedures
- interviewing
- verifying and authorising information
- recording information
- protocol for accommodating special client needs, eg. case manager, social worker, parole officer
- protocol for contacting clients, eg. translator, interpreter
- conflict of interest check
- providing quotes
- fee structure
- terms of engagement
- instructing legal practitioner supervisory procedures

The area of law may include*:

- commercial law
- corporate law
- criminal law
- family law
- industrial relations/employment laws
- property law
- tax law
- litigation
- wills and probate

* These are nine common areas of law. The area of law is not restricted to this list; other areas of law may be applicable.

Legislative requirements may relate to:

- relevant State/Territory/Commonwealth legislation
- the client and a firm (eg. Consumer Credit Code, Privacy Act, secrecy laws, Codes of Practice)
- the area of law
- schedules of fees and duties payable
- trust accounts
- taxation and banking requirements
- Australian Tax Office regulations
- tort, equity and statute law

Problems and issues which may be

- ensuring that support staff are adhering to security,

within own range of responsibility
to resolve may include:

- confidentiality, privacy and timeline requirements
- technical difficulties
- difficulties with accessing requirement information

Disbursements may include:

- filing fees
- photocopying
- postage
- cost of duty stamps
- court costs
- billable hours
- hiring experts
- hiring services

EVIDENCE GUIDE

- Critical aspects:
- evidence of understanding scope of own responsibility and roles and responsibilities of all relevant people involved in the matter
 - background legal implications are understood
 - evidence of understanding problems which may arise and approaches to resolving them
 - evidence of understanding what is and is not disclosable in general and in particular to the matter
 - appropriate information is given to clients
 - non-disclosable information is not communicated and where any doubt exists as to the information's status it is not disclosed
 - where instructing other, instructions are clear with adequate explanation to allow the task/s
- to be completed
- where instructing other, supervision is provided throughout the task/s in relation to:
 - providing advice and assistance with resolving problems
 - ensuring that work is completed within timelines
 - ensuring that confidentiality and security of information is maintained
- ensuring that work of others meets required standards
- legal actions and legislative requirements are explained to client in simple language where appropriate
 - client special needs are accommodated promptly, courteously and with discretion
 - documentation required at different stages of the legal process is identified and purpose is understood
 - relevant non-litigious solutions are understood and are applied where appropriate
 - detailed negotiation/conflict resolution is attempted to client's and firm's satisfaction
 - court appearances are executed professionally and efficiently according to instructions and relevant legislation regarding the appearance of persons without legal practice certificate
 - file/matter number is attached to all relevant documents and such documentation is filed and file is culled for unwanted drafts
 - evidence of knowledge of archiving procedures and appropriate file retention period
 - all activities, actions and outcomes are documented
 - time is recorded whenever work on matter is performed
 - trust account monies are used for all matter expenses and not for any other purposes

- excess trust account monies are returned to client
- appropriate invoicing methods are employed
- all work is conducted within accepted codes of conduct including those relating to: maintaining confidentiality, use of company property, duty of care, ethical behaviours, privacy, non-discriminatory practice, conflict of interests and compliance with reasonable direction

Resource implications:

The assessor must have access to appropriate documentation and resources normally found in the work environment and required to allow the job or task to be properly performed. These may include:

- appropriate legislation and regulations relevant to assisting clients, appearing in court, trust accounts and solicitor obligations
- workplace manuals and reference materials such as company policy, procedural manuals and checklists
- appropriate technology such as computers with relevant software

Consistency in performance:

This unit of competency will require evidence to be collected across a range of events, eg. dealing with different clients, different matters, and over a period of time to ensure that situational variables are consistently achieved.

Context of assessment:

Evidence of competency can be met in different situations, including:

- on the job assessment
- off the job assessment
- placement in an enterprise
- use of a Practice Firm or simulated work environment
- Recognition of Prior Learning, Recognition of Current Competencies (in skill areas where there has been no significant change to work practice in recent times)

Evidence gathering methods may include:

- observation of performance
- obtaining client feedback
- work samples
- questioning
- discussion

Underpinning knowledge and skills

Knowledge

- relevant legal process
- relevant current legislation

- stages involved in the legal process
- broad general knowledge of legal terminology and in-depth knowledge of legal terminology specific to the area of law
- application of a firm's policies and procedures required in the full range of tasks covered
- court process
- a firm's invoicing procedures

Skills

- literacy: follows intricate legal procedures; reads and interprets legal documents; uses legal vocabulary and grammatical structures to achieve precise meaning
- research and reporting writing: assembles and evaluates background information and critical documents
- follows and provides clear written and oral sequenced instructions
- classifies and sorts information; maintains accurate records of all relevant activities
- communication: participates in sustained and complex transactions; questions to elicit and clarify information
- numeracy: monitors and finalises accounts; accurately records files
- contingency planning skills
- organisational: establishes timelines and criteria for managing staff performance

KEY COMPETENCIES

Utilisation of the Key Competencies required in the performance of this unit

Communicating ideas and information	Collecting, analysing and organising information	Planning and organising activities	Working with others in a team	Using mathematical ideas and techniques	Solving problems	Using technology
3	2	3	3	1	2	1

Performance levels:

Level 1	Level 2	Level 3
<ul style="list-style-type: none"> carries out established processes makes judgements of quality using given criteria 	<ul style="list-style-type: none"> manages processes selects the criteria for the evaluation process 	<ul style="list-style-type: none"> establishes principles and processes evaluates and reshapes processes establishes criteria for evaluation of processes

PERFORM LEGAL RESEARCH AND PREPARE REPORTS TO MEET IDENTIFIED NEEDS

This Unit covers establishing legal research requirements, identifying sources of information and data, evaluating the quality of the information and data, preparing drafts and producing final reports.

Note: It may be illegal for a person without a current legal practice certificate to provide legal advice, sign off on legal work and to receive trust account monies. It may also be illegal for persons to misrepresent their qualifications (ie. claiming to be a lawyer/conveyancer or acting as a lawyer/conveyancer when they are not qualified to do so). Contravening these conditions is illegal and compromises a firm's professional indemnity insurance. Finalisation of reports, research and other legal work must be undertaken by the instructing legal practitioner via the review and signing off process.

This unit has been adapted from BSACOM501B: Initiate, research and prepare specific data/information to facilitate communication flow.

This unit can be assessed alone or in combination with other units making up a job role.

Element of Competency

Performance Criteria

Identify specific legal data/information requirements

- Specific legal data/information needs are identified and criteria are established to assess proposed researchers ability to meet the identified needs
- Research proposal/brief is prepared and activities are planned and prioritised
- Resources and technical requirements are identified

Supervise others to perform research

- Staff are selected and meeting is arranged
- Purpose of research, ensuing activities and presentation requirements are clearly outlined to staff
- Options for obtaining the legal data/information are discussed and sources of legal data/information are identified
- Timelines are assigned to tasks and tasks are delegated to staff

Review research

- Information is checked to ensure that extracted details are acknowledged and recorded for copyright and other legal requirements
- Legal data/information is analysed for relevance
- Legal data/information is edited and collated to fit research and any relevant legal/ethical requirements

Prepare drafts

- Document is drafted in appropriate format taking into account precedent documents using appropriate language
- Legal data/information is presented according to a firm's policies and procedures and legal requirements
- Draft is evaluated against previously identified criteria and action is taken to address any identified gaps or deficits
- Meeting is arranged with instructing legal practitioner to review document
- Amendments are made where necessary

Prepare final draft

- Key points are identified and executive summary prepared, where appropriate
- Instructions are provided to staff to prepare appendices,

bibliography and Table of Contents as required

- Final draft is self-checked and then presented to instructing legal practitioner for review and sign off
- Instructions are provided to staff to copy, collate and disseminate report as required

RANGE OF VARIABLES

Resources and technical requirements may include

- staff
- rooms
- computers
- paper
- telephone
- fax
- monies
- access to experts
- access to legislation

In order to achieve competency in this unit, the candidate must demonstrate competency in the following:

- journal article or internal briefing paper and in one of the following:
- oral presentation or report formatted according to court requirements

Sources of legal data/information may include:

- a firm's library
- court library
- internet
- on-line information services
- specialist texts
- government publisher
- precedent back

Relevant background material and additional information may include:

- open file
- relevant legislation
- statistics (ABS/other)
- previous case histories/Common Law
- non-legal reports
- market research information
- financial information
 - specific to firm

- specific to another firm
- state
- federal
- international
- original research
- media
 - television
 - video
 - audio
- articles
 - academic
 - online
 - newspaper
 - journal
- specialist texts
- letters
- internal correspondence
- transcripts from supervisor's notes
- agreements
- opinion letters
- memorandums of law
- briefs
- pleadings
- precedents
- other bodies
- other libraries

Reports may include:

- marketing report
- report discussing change in legislation and/or new legislation
- financial report
- report of work undertaken
- report for presentation
 - at a conference/seminar
 - in a journal

Appropriate language may include:

- plain language
- technical language
- legal language

- A firm's policies and procedures may include:
- academic language
 - report format
 - information sources
 - time recording procedures
 - security/confidentiality/privacy procedures
 - verifying and authorising information
 - recording information

- The area of law may include*:
- commercial law
 - corporate law
 - criminal law
 - family law
 - industrial relations/employment law
 - property law
 - tax law
 - litigation
 - wills and probate
- * These are nine common areas of law; the area of law is not restricted to this list. Other areas of law may be applicable.

- Appendices may include:
- photos stamped as true and correct
 - certificates stamped as true and correct

- Legislative requirements may relate to:
- relevant State/Territory/Commonwealth legislation
 - the client and a firm (eg. client solicitor privilege, Consumer Credit Code, Privacy Act, secrecy laws, Codes of Practice)
 - the area of law
 - schedules of fees and duties payable
 - Freedom of Information legislation
 - copyright and intellectual property

EVIDENCE

- Critical aspects:
- evidence that purpose of research is understood
 - instructing legal practitioner is kept up to date regarding all activities, actions and outcomes
 - where instructing other, instructions are clear with adequate explanation to allow the task/s to be completed
 - where instructing others, supervision is provided throughout the task in relation to:
 - providing advice and assistance with resolving problems
 - ensuring that work is completed within deadlines
 - ensuring that report/correspondence is formatted correctly
 - ensuring that filing requirements are fulfilled and that a copy/ies of report/correspondence is stored appropriately
 - ensuring that confidentiality and security of information is maintained
 - tasks are delegated according to staff availability and abilities
 - document is drafted in an appropriate format and using appropriate language
 - text is written using clear and concise language
 - spelling, punctuation and grammar are correct
 - sources are acknowledged according to appropriate legal footnoting system and page numbers are included where appropriate
 - contents are organised logically and reflect the original requirements of the request
 - all sources cited in the body of the report are listed alphabetically by author's surname, initials, date of publication, document title, document type, and relevant chapters or pages and additional sources consulted but not cited are included in the bibliography
 - report is collated ensuring that all requisite sections are present and in the correct order
 - reports are produced within agreed timelines
 - activities, actions and outcomes are documented
 - time is recorded and billed where appropriate
 - relevant notes and documents have file/matter number attached and are filed appropriately
 - all work is conducted within accepted codes of conduct including those relating to: maintaining confidentiality, use of company property, duty of care, ethical behaviours, privacy, non-discriminatory practice, conflict of interests and compliance with reasonable direction

Resource implications: The assessor must have access to appropriate documentation and resources normally found in the work environment and required to allow the job or

task to be properly performed. These may include:

- appropriate legislation and regulations relevant to assisting clients, intellectual property and copyright
- workplace manuals and reference materials such as legal dictionary, company policy, procedural manuals and checklists
- appropriate technology such as computers with relevant software

Consistency in performance:	This unit of competency will require evidence to be collected across a range of events, eg. dealing with different research requirements, and over a period of time to ensure that situational variables are consistently achieved
Context of assessment:	<p>Evidence of competency can be met in different situations, including:</p> <ul style="list-style-type: none">• on the job assessment• off the job assessment• placement in an enterprise• participation in a New Apprenticeship (traineeship) arrangement• use of a Practice Firm or simulated work environment• flexible delivery methods used by training providers to cater for distance education students• Recognition of Prior Learning, Recognition of Current Competencies (in skill areas where there has been no significant change to work practice in recent times) <p>Evidence gathering methods may include:</p> <ul style="list-style-type: none">• work samples• oral presentation• projects/assignments• work-based research assignments• third party reports• questioning• discussion
Underpinning knowledge and skills	<p>Knowledge</p> <ul style="list-style-type: none">• format for presenting written and oral reports and appendices• sources of legal data/information• legal terminology• application of a firm's policies and procedures required in the full range of tasks covered <p>Skills</p> <ul style="list-style-type: none">• literacy: reads and critically evaluates intricate legal documents; demonstrates well developed writing skills; uses legal vocabulary and grammatical structures to achieve precise meaning• research and analytical: interprets, selects and investigates relevant information• report writing: analyses information, identifies contradictions (conflict of interest); summarises data in a logically coherent structure, uses support materials effectively

- uses and follows academic procedures regarding copyright laws
- proofreading and editing skills
- communication: participates in sustained and complex oral transactions; provides clear sequenced oral instructions to others; explores ideas in discussion; builds on other's ideas to advance discussion and questions others to clarify ideas; encourages feedback
- numeracy: collates documents; accurately records documents; analyses and presents statistical data

THE KEY COMPETENCIES

Utilisation of the Key Competencies required in the performance of this unit

Communicating ideas and information	Collecting, analysing and organising information	Planning and organising activities	Working with others in a team	Using mathematical ideas and techniques	Solving problems	Using technology
3	3	3	3	0	2	2

Performance Levels:

Level 1	Level 2	Level 3
<ul style="list-style-type: none"> • carries out established processes • makes judgements of quality using given criteria 	<ul style="list-style-type: none"> • manages processes • selects the criteria for the evaluation process 	<ul style="list-style-type: none"> • establishes principles and processes • evaluates and reshapes processes • establishes criteria for evaluation of processes