



Australian Government

Department of Education, Employment and Workplace Relations

BSALLG501A Assist with the discovery process

Release: 1

Modification History

Not Available

INTRODUCTION

This Unit covers locating, preparing and collating documents involved in discovery and arranging any necessary meetings to inspect opposing party's discoverable documents.

Note: It is illegal for a person without a current legal practice certificate to provide legal advice, to sign off on legal work and to receive trust account monies. It is also illegal for persons to misrepresent their qualifications (ie. claiming to be a lawyer or acting as a lawyer when they are not qualified to do so). Contravening these conditions is illegal and compromises a firm's professional indemnity insurance. Accordingly all litigious work must be supervised by 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 clients or parties are contacted on behalf of instructing legal practitioner, own identity and position must be clearly stated and contact must proceed according to the legal practitioner's advice.

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

Element of Competency Performance Criteria

Assist with interlocutory process

- Meeting is arranged with instructing legal practitioner to discuss and arrange pre-trial actions and diarise critical dates
- Client is contacted on behalf of instructing legal practitioner and purpose of discovery, discovery process and associated legal obligations are explained in clear and simple language
- In conjunction with instructing legal practitioner relevant documents are identified and arrangements are made to retrieve them
- Non-discoverable documents are excluded

Collate discoverable documents

- Self or other is organised to collate discoverable documents
- Discoverable documents are checked for the following:
 - documents requested are provided in full
 - the correct number of copies are present
 - signatures are present where necessary
- Self or other is organised to prepare table of contents
- Self or other is organised to prepare lists of all documents involved in matter according to standard legislative procedures

Deliver list and collation to

- List is reviewed and amendments are made if necessary

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|--|---|
| instructing legal practitioner | <ul style="list-style-type: none">• Final list and documents comprising Part I of first schedule are presented to instructing legal practitioner for review |
| Assist with process of discovery in relation to opposing party's documents | <ul style="list-style-type: none">• Opposing party is contacted on behalf of instructing legal practitioner to request opposing party's discoverable documents• Appointment is made with opposing party's solicitor for pre-trial inspection of opposing party's list of documents and opposing party's discoverable documents• If requested by instructing legal practitioner support is provided at inspection of opposing party's discoverable documents |

RANGE OF VARIABLES

- | | |
|---|--|
| Issues which need to be covered in initial meeting include: | <ul style="list-style-type: none">• timelines• identifying relevant documents• which documents are no longer in a firm's possession• obtaining documents from client• obtaining documents from<ul style="list-style-type: none">- hospital- medical practitioner- other expert• which documents are privileged and which documents are not available for inspection• how to compile the list• the reasoning behind the construction of the list• background to the legal matter• the opposing party's case• the court/tribunal in which the case is to be heard• contacting the client and information to be communicated to the client• contacting the opposing party and information to be communicated to the opposing party• possible interrogation questions |
| Arrangements to retrieve | <ul style="list-style-type: none">• instructing support staff to retrieve documents• contacting clients and requesting documents to be forwarded to |

documents may include: instructing legal practitioner

Explanation to client
regarding the purpose of
discovery may include:

- the philosophy of discovery
- legal obligations involved in discovery
- which documents can be included in a court hearing
- purpose of first and second schedule
- purpose of Part I and Part II in first schedule
- why documents can be reserved for client-solicitor legal privilege

Legal obligations may
include:

- explaining process to client
- listing all documents involved in pleading
- listing and making available all discoverable documents (First schedule, Part II)
- listing but withholding specific documents from inspection (First schedule, Part II)
- listing all documents inspected but no longer in a firm's possession (Second schedule)
- maintaining confidentiality and security procedures throughout the entire process

Listed documents may
include:

- file notes
- previous dealings with client or relevant third party
- previous case histories/Common Law
- letters
- transcripts from supervisor's notes
- agreements
- opinion letters
- memorandums of law
- original research
- medical reports
- clinical reports
- hospital discharge summaries
- media
 - television
 - video
 - audio
- articles
 - academic

	- online - newspaper - journal
Non discoverable documents may include:	• a client's medical history • a client's psychological history • financial information - specific to firm - specific to another firm - specific to client • file notes • instructing legal practitioner's notes • confidential statements reserved for client-solicitor legal privilege • confidential letters solicitor/client letters • transcripts of conversations reserved for client-solicitor legal privilege • information not permissible in court • confidential government documents • documents protected by commercial in confidence legislation • witness statements • briefs to counsel • schedule II documents/content of non-discoverable documents
Support provided at discovery may include:	• attending discovery of opposing party's documents • attending discovery of client's documents • assisting with the inspection and interpretation of documents
A firm's policies and procedures may include:	• liaising with opposing party • discovery procedures • using checklists • office procedure manual • security/confidentiality/privacy procedures • time recording procedures • verifying and authorising information • recording information • emergency procedures
Nature of the legal matter may include*:	• commercial law • corporate law

- criminal law
- family law
- industrial relations
- 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
- governing legal practice Acts in each State/Territory
- the client and a firm (eg. Client Legal privilege, Consumer Credit Code, Privacy Act, secrecy laws, Codes of Practice, common law and Statutory Duties of Care involving financial relationships)
- the area of law
- discovery
- Freedom of Information legislation
- tort, equity and Statute law
- commercial in confidence

EVIDENCE GUIDE

- Critical aspects:
- evidence of understanding of scope of own responsibility and others involved in the matter
 - evidence of understanding of the pre-trial litigation process – (including the purpose composition of pleading documents, discovery interrogatory questions, the pre-trial conference and the Certificate of Readiness)
 - instructing legal practitioner and own diary is kept up to date and reminders are issued pending critical dates
 - instructing legal practitioner is kept up-to-date with all actions, activities and outcomes
 - instructing legal practitioner's instructions are followed
 - any irregularities, uncertainties or difficulties are referred immediately to instructing legal practitioner for resolution
 - concepts such as subpoena and Client-Solicitor Legal Privilege are understood
 - issues pertaining to confidentiality, security and discretion are comprehended and attended to
 - clients are kept up to date
 - 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 staff work at a high standard
 - ensuring that documents are collated and corrected correctly
 - checking that list and table of contents are correct
 - 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
 - interactions with opposing party are conducted efficiently and courteously
 - evidence of what is and is not disclosable in general and related to the case in particular
 - non-disclosable information is not communicated and where any doubt exists as to the information's status it is not disclosed
 - non-disclosable information may include:
 - dates
 - addresses
 - names

- a firm's other clients
- fees
- content of non-discoverable documents
- all activities, actions and outcomes are documented on file notes and time is recorded
- all activities and outcomes may include:
 - exchange of information
 - financial transaction
 - consulting experts
 - verbal communication with external parties
 - non-response
 - documents which cannot be located despite efforts to retrieve them
 - contact with representative from opposing party
 - contact with client
 - dates
 - dates on which own/opposing party's documents were inspected
- file/matter number is attached to relevant documentation and such documentation is filed appropriately
- record of time is processed for client invoicing purposes
- 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 discovery and to assisting clients • workplace manuals and reference materials such as company policy, procedural manuals, checklists and legal dictionaries • appropriate technology such as computers with relevant software, photocopiers
Consistency in performance:	This unit of competency will require evidence to be collected across a range of events, eg. dealing with different legal 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).
- flexible delivery methods used by training providers to cater for distance education students

Evidence gathering methods may include:

- questioning
- workplace performance
- simulation
- oral presentation
- third party reports

Underpinning knowledge and skills

Knowledge

- purpose of discovery
steps involved in interlocutory procedure
- what is and is not discoverable
- conflict resolution techniques
- relevant legal process
- broad knowledge of general legal terminology and in depth knowledge of terminology relating to litigation and the area of law
- relevant current legislation
- indemnity insurance

Skills

- literacy: reads and interprets intricate legal procedures and texts; demonstrates well developed writing skills; uses legal vocabulary and grammatical structures to achieve precise meaning
- research: assembles and evaluates relevant documents and evidence; decides on degree of accuracy and identifies misleading, inaccurate or ambiguous information
- provides clear written and oral sequenced instructions to instructing parties
- communication: participates in sustained and complex transactions; questions to clarify information
- problem solving: chooses appropriate methods of solution; uses developed estimation skills to check accuracy and relevance
- numeracy: collate documents; accurate recording of documents, analysing and presenting statistical data; accurate time estimation skills
- conflict resolution skills
- developed proofreading and editing skills
- liaison and negotiation: liaises with internal and external contacts
- use of technological support tools such as databases for document management

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
2	3	3	3	1	2	2

Performance levels:

Level 1	Level 2	Level 3
- carries out established processes - makes judgements of quality using given criteria	- manages processes - selects the criteria for the evaluation process	- establishes principles and processes - evaluates and reshapes processes - establishes criteria for evaluation of processes