



Australian Government

Department of Education, Employment and Workplace Relations

BSALPP502A Draft legally binding documents

Release: 1

Modification History

Not Available

INTRODUCTION

This Unit covers the drafting of a variety of legally binding documents to meet particular legal matter requirements under the instruction of a qualified legal practitioner.

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. An instructing legal practitioner must supervise the tasks covered in this unit as they are legally responsible for the document (through the signing off process). Therefore, the instructing legal practitioner must review all documents before they are forwarded to clients. This unit is positioned at AQF Level 5 due to the broad knowledge of legally binding documents it requires and the substantial knowledge of client files, the legal process and legislation. It requires application of theoretical skills to drafting a range of documents as well as planning and taking responsibility for the work of others.

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

Element of Competency	Performance Criteria
Identify purpose of document	• Client file is reviewed and client needs are identified • Meeting is arranged with the instructing legal practitioner to discuss document requirements and future actions • Client is contacted and scope of own responsibility, document implications and its uses are clearly explained to client • Existing precedents are reviewed as a basis for drafting new document
Draft document	• Research is carried out to ensure compliance with relevant legislation and/or regulations • Self-education is arranged with firm and pursued when necessary • Document is drafted to comply with legal requirements and client needs
Evaluate document	• Draft document is self-checked to ensure it meets the client's needs, particular legal requirements and includes relevant legislative excerpts • Any gaps or deficiencies are rectified • Meeting is arranged with instructing legal practitioner to review document and file and any suggestions or amendments are implemented

- Amended document is forwarded to instructing legal practitioner to facilitate signing off process
- Forward document to client
- Document is forwarded to client for approval
 - Client's amendments are forwarded to instructing legal practitioner and integrated as directed by instructing legal practitioner
 - Signatures are obtained, witnessed and dated as required and appropriate follow-up action is undertaken

RANGE OF VARIABLES

Candidates must demonstrate competency in at least six (6) of the following. Documents may include:

- letter
- dictatyped not drafted
- leases
- mortgage
- contracts
- transfer of shares
- wills
- conveyancing documents
- agreements
- memorandums of law
- briefs
- pleadings
- caveats

Clients may include:

- a small business
- individual
- large organisations
- third party
- insurance company
- community organisation
- financial institutions
- international companies

Details pertaining to the matter may include the following under the instruction of a qualified legal

- reading file notes
- reading supervisor's notes
- obtaining information from

practitioner:

- a client
- a representative of opposing party
- an external party
- a government department
- firm's procedural manuals
- guidelines/checklists

Legal matter may include:

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

The precedent bank may be:

- in-house
- external
- on-line
- stored pre-printed forms

Precedent documents may be relevant to the following areas of law:

- 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.

Range of new legally binding document may include:

- single purpose documents
- multi-purpose document
- document links with existing precedents
- document provides limited options for inserting individual clauses

Format requirements may include:

- bound
- letter layout
- court document
- contract layout
- will
- correct margins
- correct spacing
- dual column system
- presence/absence of a backup sheet
- presence/absence of a cover sheet
- placing of headings
- usage of keycaps and font features
- table of contents
- paragraph numbering
- correct use of referencing
- specific sign off clauses
- appropriate use of letterhead
- use of document footers
- list of enclosures
- spaces for signature and date of:
 - client
 - witness/es
 - other party/ies

Relevant sources of information may include:

- clients
- files
- documents
- other staff or legal personnel
- database
- government departments
- libraries
- on-line information services
- a firm's policies and procedures
- relevant State/Territory/commonwealth legislation

Appropriate information used in drafting the document may include:

- standard legal phrases
- particular Acts/legislation/regulations

Legislative requirements in relation to drafting the document 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
- schedule of fees and duties payable

Deficiencies may include:

- inappropriate language
- inaccurate terms
- ambiguity
- inappropriate legislation
- incorrect interpretation of legislation
- grammar
- spelling
- missing words

Following obtaining signatures on document, appropriate follow-up action may include:

- getting document stamped
- lodging copy with a government agency/department
- forwarding a copy or the original to the client
- forwarding the document to another party
- processing and storing the document
- on the firm's information system
- for
 - client records
 - client's beneficiaries
 - later date

A firm's policies and procedures may include:

- information sources
- time recording procedures
- security/confidentiality/privacy procedures
- verifying and authorising information
- recording information
- style/layout guide

Search for precedent documents may include:

- precedent document management systems
- precedent book

EVIDENCE GUIDE

- Critical aspects:
- instructing legal practitioner's instructions are followed
 - format, content and range of new document is determined in consultation with instructing legal practitioner
 - client and instructing legal practitioner are kept up-to-date with progress of matter and any questions are clearly answered
 - summaries of work performed and duties payable are forwarded to client on a regular basis and according to a firm's policies and procedures
 - information is extracted and notes, summaries and/or photo-copies are made throughout the research process
 - deficiencies in draft document are rectified through further research and drafting as required
 - legal process, legislative requirements, purpose of document and legal terminology are explained to client in clear and simple language
 - correct legal terminology is used in appropriate sections of document
 - precedents are adapted where appropriate
 - document is prepared correctly within agreed timelines
 - produced document is assessed to ensure that it meets the requirements of legislation, legal matter and client needs
 - problems or questions outside own area of responsibility are promptly referred to instructing legal practitioner
 - ancillary notes explaining document are forwarded to client where appropriate
 - file/matter number is attached to all relevant documentation and relevant documentation is filed appropriately for future reference
 - all activities, actions and outcomes are documented and time is recorded
 - 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, drafting legally binding documents and the area of law for which the document is intended
 - 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 legally binding documents, 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
- 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).

Evidence gathering methods may include:

- demonstration
- questioning
- workplace performance
- projects/assignments
- written tests
- skills portfolio
- third party reports

Underpinning knowledge and skills

Knowledge

- various types of legally binding documents and their purposes
- security, confidentiality and privacy
- legal terminology
- application of a firm's policies and procedures required in the full range of tasks covered
- knowledge of statute and common law relevant to the area of law for which the document is drafted

Skills

- literacy: reads and interprets intricate legal documents; demonstrates well developed writing skills; uses legal vocabulary and grammatical structures to achieve precise meaning; understands and interprets

relevant legislation and regulations

- research and analytical: interprets, selects and investigates relevant information
- follows and provides clear written and oral instructions
- proofreading and editing skills
- communication: participates in sustained and complex transactions; conducts meeting with clients to clarify issues and problem solve
- problem solving: uses developed estimation skills to check accuracy and relevance; demonstrates flexibility and a range of interactional strategies for the purposes of maintaining and developing relationships; exploring issues; or problem solving
- word processing and document management software

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	2	2	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