



# Legal Office Engagement Manual

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## Purpose

This operational manual provides reference for the Legal Office when engaging in their daily tasks and for general University Employees when engaging with the Legal Office. It should be read in conjunction with the Legal Services Policy and Procedure.

This is a strictly confidential internal document and is not intended for external use. The capitalised terms used in this document have the same meaning as the definitions in the Legal Services Policy and Procedure.

## Role of Employees

### Legal Administration Officer

The Legal Administration Officer is usually the first point of contact for University Employees engaging Legal Services. The Legal Administration Officer is responsible for opening files, allocating files to University lawyers or External Lawyers as directed by the Director (Legal Services) and managing the files internally, including through bring-ups, archiving, closing files or more. The Legal Administration Officer role is currently FTE 0.6 and therefore some administrative duties are shared with the Senior Paralegal.

### Senior Paralegal

The Paralegal is responsible for assisting the University Lawyers in their provision of legal services to the University. This may involve different tasks, including legal research, template management, file searches, document review or organising meetings.

### University Lawyers

University Lawyers are responsible for the provision of legal services to the University. They review and advise on matters as allocated by the Director or Legal Administration Officer and engage the resources of the Paralegal as required. The University has two Senior Lawyers.

### External Lawyers

Matters may be referred to external law firms at the discretion of the Director. Due to the cost associated with the engagement of law firms, matters are only referred where specialist legal skills are required. External briefing is discouraged for matters that would otherwise be capable of being handled internally but for existing workload, and it is therefore necessary to constantly reassess the relative urgency of current files.

Only the Legal Office is authorised to engage External Lawyers and any exceptions must be approved by the Vice-Chancellor. Once external counsel have been engaged by the Legal Office, all instructions and communications between the Employee seeking advice and the External Lawyer should flow through internal lawyer appointed within the Legal Office to manage the engagement, unless the Legal Office or the Vice-Chancellor has indicated otherwise.

## **Director**

The Director (Legal Services) is responsible for the management of all University legal matters and all legal advice provided internally and externally. The Director has various regulatory and reporting responsibilities to the University and Council.

## **Miscellaneous Appointments**

The Legal Office may from time to time have short-term employees or secondees for assistance with administrative duties such as archiving.

The Legal Office may also host unpaid legal internships where time and availability allows. These legal internships are primarily aimed at University of Southern Queensland law graduates and are only available at the Toowoomba campus. The purpose of these internships is typically to help legal graduates achieve the practical legal training required for admission into the legal profession.

## **Role of the Legal Office**

The Legal Office advises University Employees on a broad range of legal issues and matters which might arise out of its academic, research, community engagement or commercial activities.

The Legal Office helps by supporting senior management to achieve the University strategic objectives, providing legal assistance on the University's major projects, assisting University personnel to identify and manage legal risk, managing disputes with external parties or students and Employees (when external bodies have become involved) and providing decision-makers with tools that allow them to assess legal risks and how best to mitigate those risks.

Any legal services requested from the Legal Office or from External Lawyers must relate to the business and interests of the University. The Legal Office does not provide legal services or advice of a personal nature to Employees or students.

The Legal Office may provide services to subsidiary companies or other entities owned or controlled by the University where there is no conflict between the interests of the University and that of the controlled entity in relation to the matter.

## Role of Lawyers under Law Society Rules

All of the University Lawyers are admitted to practice in Queensland and hold current Practising Certificates in the category of an employee legal practitioner. As a result of strictly enforced Queensland Law Society Rules, the following general principles apply to all University Lawyers:

- A University Lawyer's primary duty is as an Officer of the Supreme Court, which means that, for example, they are unable to mislead a Court, Tribunal or other legal adjudicator even if directed to do so by their employer.
- University Lawyers must remain independent of the Employees of the University in order to ensure that the legal advice they provide is objective and impartial and for the benefit of the University as a whole, as required by their professional and ethical obligations imposed under Law Society rules.
- University Lawyers are only licensed to advise on the laws of the State of Queensland and Commonwealth laws that apply in Queensland.
- The Lawyers are only licensed to advise the University as their employer and may not give or appear to give legal advice to any other person or organisation, including Employees or students of the University.
- The Lawyers must at all times act in the best interests of the University as a whole, even if that is contrary to the interests of a particular client, such as an individual Employee or Division. If a University Lawyer forms the view that his or her ability to provide impartial legal advice may be compromised, he or she must immediately inform the Director of Legal Services, the Deputy Vice Chancellor, Enterprise Services Division, or the Vice Chancellor.
- University Lawyers must strictly protect the confidential information of the University, usually to a standard higher than that imposed on other Employees.
- Information provided by University Employees to Lawyers holding a current Practising Certificate may be subject to legal professional privilege, meaning that the University cannot be compelled to reveal that information in any court process (however, the laws governing legal privilege are extremely complex and privilege only attaches in certain prescribed situations; see further on this topic below).

External Lawyers hold different Practising Certificates with additional rules which enable them to provide legal advice to members of the public for a fee.

## When legal advice is required

The Legal Office must always be engaged when:

- There are legal proceedings before a court or tribunal, or there has been a complaint made to an external regulator or other government agency.

- There is a substantial risk of liability or damage to the reputational or financial standing of the University.
- An external regulator is undertaking any kind of investigation of the University.
- Any document or contract requires the signature of the Vice-Chancellor.
- Any transaction which has a total value of more than \$250,000 (including transactions which may be entered into in separate stages or tranches, including by way of separate agreements which, when finally combined, will have a value in excess of \$250,000).
- Any matter or transaction where the other party is represented by a lawyer.

Legal advice is generally not mandatory where:

- None of the above criteria are met.
- The University is proposing to enter into a memorandum of understanding or similar document which is clearly expressed not to be legally binding; does not meet any of the above criteria for mandatory review; does not require the payment of any money or the making of any commitment; and only sets out broad principles to guide the relations of the parties prior to entering into a formal contract.\*
- An unamended University Contract Template issued by the Legal Office is used.
- A University Lawyer advises that the matter does not require legal review.

\*The Legal Office strongly recommends that it still review any proposed memorandum of understanding to ensure that the document does not inadvertently make legally binding commitments or establish a position that will be difficult to resile from in the future. This is particularly important if the ultimate transaction under contemplation is likely to be of high value, prominence or importance to the University, in which case the MoU must be signed by the Vice Chancellor, triggering mandatory legal review.

## Referral of legal matters

Matters may only be referred to the Legal Office for advice if such referral is approved by a Category 4 member of University management, or above.

It is the responsibility of the person seeking legal advice to ensure that the commercial purpose and effect of the contract has received approval from the all appropriate stakeholders within the University, for example:

- if an agreement is proposed with an international business partner or institution, that the International Division has been given an opportunity to consider whether the contemplated arrangement is acceptable from a risk and reputational point of view and is compliant with the University's international strategic plan;

- if an agreement is proposed that affects educational matters or course material, that the Academic Division has been given an opportunity to consider whether the agreement complies with the University’s educational strategic plan; or
- if the matter represents a strategic procurement for the University, that Procurement has been engaged to prepare a strategic procurement plan.

## Types of Legal Services

### Documents – Forms and Structure

The Legal Office can advise the form of documents required for particular court or governmental purposes, such as government agency filings, taxation document such as for stamp duty, applications or legal proceedings, or will obtain external advice where necessary.

It can also provide a recommended general structure for commercial contracts, as contract law in common law jurisdictions is governed by case law which means that the requirements for a legally binding contract are not found in any particular legislation or code. The Legal Office provides guidance as to the general principles, drafting, terminology and components that have been developed through many years (sometimes centuries) of case law which provide the backbone for legally binding commercial arrangements.

### University Contract Templates

The Legal Office prepares and maintains University Contract Templates for use by the University for its most common types of transactions. These can be located in the Contract Management Framework SharePoint site. The Legal Office does not manage or control the SharePoint site or the Contract Management System, but can assist any Employee to locate the most appropriate University Contract Template. The Legal Office regularly develops new documents to add to the Contract Management System.

<https://intranet.usq.edu.au/sites/cmf/SitePages/Pre-approved%20Contract%20Templates.aspx>

The University Contract Templates are designed to:

- establish a set of minimum terms upon which the University is prepared to enter into agreements with third parties;
- ensure consistent use and promotion of the University’s brand through the use of standardised, professional looking legal documentation; and
- allow University Employees to be able to use legal documentation in full confidence that it complies with both the law and the University’s regulations and compliance obligations.

University Contract Templates are only produced for high-volume repetitive transactions and are very time consuming to create as they must be “one size fits all”, that is, cover every possible eventuality that might arise in transactions of the kind that they address. For less common transactions, the Legal Office is able to assist with precedents from prior similar transactions.

It should be borne in mind that there is a considerable difference between a “template”, which only needs to be populated with the relevant information such as the other party (“counterparty”) and a description of the goods or services being bought or sold, and a “precedent”, which is simply an example of a contract that has been used in a previous transaction. Precedents nearly always need substantial modification before they are suitable for use in a new transaction as they may have been modified through negotiation with the previous counterparty, or were originally used in lieu of an available template due to the particular requirements of that transaction.

In some instances an entirely new form of contract is required and the Legal Office will draft that from scratch. Naturally, the creation of bespoke contracts is much more time-consuming than using a University Contract Template or using a precedent as a starting point.

## **Contracts – Commercial and Technical Information**

The role of the Legal Office is limited to the provision of legal advice and not commercial or technical advice. This means that the commercial or technical advisors to a particular transaction must ensure that, in the case of contracts, the written contract correctly reflects the commercial arrangement (including who gets what, for how much, when, where and how) and the technical details (such as specifications, service levels, maintenance schedules and warranties).

However, the University Lawyers may advise on how the commercial and technical content is expressed in writing in order to ensure that those provisions are legally binding. It is a long standing principle of the common law (applicable in all English law based jurisdictions, including Australia) that the law will not write the contract for the parties, meaning that if something is unclear or could be open to several different interpretations, then that part of the contract will be declared “void for uncertainty” and, if that section is essential in order for the contract to work, then the whole agreement will be null and void.

Accordingly, the Legal Office will generally advise, in relation to commercial or technical content, that:

- Where words and phrases are defined, that the defined terms are used consistently throughout all parts of the contract, including schedules, and no other terminology is used for those same concepts;
- That acronyms are spelled out or defined the first time they are used;
- That technical information is not just understandable as between the parties to the contract, but are expressed in such a way so that they would be readily understood by a reasonable third party with no history of

the particular arrangements in question and only a moderate understanding of the subject matter of the contract. This is the legal standard applied to determine whether or not a provision is void for uncertainty.

## Signing and Management of Contracts

The Legal Office arranges for signing of contracts by the Vice Chancellor, but does not otherwise control or have responsibility for the University's Delegation Policy or for arranging for agreements or other legal documents to be signed by the relevant delegates. Final signed contracts should be sent to the Legal Office for secure storage and the contract owner should also send a scanned copy to Corporate Records.

Electronic signing of contracts is permitted in certain circumstances, as detailed in the University's Electronic Signing Policy.

Ongoing contract management and record-keeping is the responsibility of the Employee who is the owner of the transaction as recorded in the Contract Management System. Often, appropriate contract management during the life-cycle of a document requires considerable Employee resources and so it is advisable to make a list of important milestones and actions required at different times under the terms of the contract.

## Disputes

The Legal Office can assist with any dispute that may result in a legal claim between the University and any third party. It is important to engage with Legal Services as soon as an Employee becomes aware of a dispute, even if the matter is still far from becoming a court matter. Early engagement may be essential for:

- establishing privilege over internal communications or investigations;
- determining whether the University insurers ought to be notified (late notification can entitle an insurer to deny cover);
- determining whether mandatory reporting to one or other government bodies may be necessary;
- ensuring that any Court-mandated deadlines are met, or appropriate measures taken to extend them; and
- obtaining specialist External Lawyer advice.

The Legal Office can also assist with early correspondence, establishing relevant facts, protecting crucial information or data, keeping the matter confidential and ensuring that it is handled in compliance with internal policies and procedures.

It should be noted that formal court or tribunal proceedings always have absolute deadlines that, if missed, can result in a summary judgement being recorded against the University, along with an order to pay the other party's costs. It is therefore essential that as soon as any notice of a potential claim is received that it be brought to the attention of the Legal Office.

Note that all claims against the University must be notified to the Legal Office, even for minor matters. A claim can comprise a letter of demand from an individual or organisation, a letter from an external regulator, the mere threat of legal action, or a formal statement of claim issued by a court or tribunal. It is important that all claims be recorded for insurance and audit and risk reporting purposes, even if a University Lawyer subsequently advises that no further involvement of the Legal Office is necessary.

## Claims, Court Proceedings

In the event that an Employee is faced with a process server or other individual trying to serve the University with any formal legal document, such as a warrant, subpoena, writ or similar, please notify the Legal Office immediately.

Always ask a person attempting to serve documents to provide official photo identification before engaging with them.

Subpoenas and notices to produce must be dealt with promptly, as failure to comply with a subpoena is a serious matter that can result in being charged with contempt of court. The subpoena must be correctly addressed to the University and clearly identify the documents or category of documents to be produced, the date, time and place for production, and whether copies of the documents are acceptable. It is the University's preference where possible to provide copies rather than original documents.

The Legal Office must be engaged to assess whether the subpoena has been validly issued in accordance with court procedure. It will also assess whether the request for documents is appropriate, as often the terms of the subpoena are so wide as to impose excessively onerous obligations on the University. The Legal Office may attempt to negotiate a reasonable compromise with the issuing party or challenge the subpoena in court.

The Legal Office may also challenge a subpoena if it hasn't been served on the University in sufficient time to allow the collection of documents and delivery to the court. The due date must be not less than five working days from the date of issuance, although courts can in rare circumstances order a shortened period.

The subpoena should also be accompanied by "conduct money" by way of a cheque from the issuing party, which is intended to cover the University's reasonable expenses in complying with the subpoena.

If the Legal Office is satisfied that the subpoena is valid, appropriate, served within time and accompanied by appropriate conduct money, then Corporate Records will liaise with the relevant senior staff members and be responsible for collating and delivering the documents to the Court within the specified time limit.

In the event that the subpoena captures a very large number of documents, on request, Corporate Records can write to the solicitors for the issuing party requiring more time to produce the documents. If University does not have the

documents required by the subpoena, Corporate Records will write a letter to the court and the issuing party to inform them of this fact.

## Raids

In the event that a representative of a government authority attends on campus seeking access to University premises or information, known colloquially as a “dawn raid” (although they always take place during business hours), first seek formal identification and then politely ask the officer to wait until they can be seen by a University Lawyer or a senior manager from the Enterprise Services Division. It is perfectly acceptable to ask an official to wait a reasonable amount of time before being given access to the material they seek, except in the case of the execution of court warrants by police officers.

It is important to ensure that the search is limited to only the documents or information covered by the warrant or other process being executed by the government agency and that they do not obtain access to information which is subject to legal professional privilege.

## General Legal Advice

The Legal Office is also available for general legal advice for any aspect of the University. It is strongly recommended to seek advice if in doubt about the best way forward in any given matter. Such general or preliminary advice does not require, for example, creation of a record in the Contract Management System prior to seeking the advice, but does need to be directed to the Legal Office through the web-based request system.

It may be that other parts of the University, such as Human Resources, Student Services, Campus Services or Finance have recently faced similar issues or sought legal advice for a similar situation and the Legal Office can build on previous advice or act as a conduit to external advisors or between different sections of the University.

## Costs

The Legal Office does not charge for in-house legal services provided to academic or professional units of the University. The Legal Office has a budget for the engagement of External Lawyers, but in some cases the relevant business unit may be responsible for payment of external legal costs, such as when the business unit has an approved budget for legal expenses (whether generally or for a specific project), or when the business unit has directly briefed the matter out to External Lawyers without going through the Legal Office.

Generally however, unless the Vice-Chancellor approves otherwise, all engagements of External Lawyers must take place via the Legal Office, with ongoing Legal Services oversight.

Translation of legal agreements into or from other languages must only be undertaken by accredited legal translators and the cost will be charged to the

business unit requesting the work. The Legal Office will only approve a document or signing which has been translated by an accredited legal translator who provides a certificate of translation.

## Accessing Legal Services

### Web request/USQHub

The preferred method by which University Employees can make contact with the Legal Office is through a "USQHub ", accessible at <https://usq.saasitau.com/Default.aspx?Scope=SelfService&CommandId=NewServiceRequestByOfferingId&Tab=ServiceCatalog&Template=B331E1E685054BFDB2748D86EBAB4B02#1592785346683>. The other major route for obtaining legal advice is by requesting legal review within the Contract Management System. In due course, the latter process will be redirected to a USQHub request, but currently the University Lawyers receive requests via both systems.

These systems are strongly preferred because the processes underlying them have inbuilt document retention and archiving systems which do not capture direct approaches to the Legal Office via email or phone.

In emergencies, contact Security before contacting the Legal Office (x2222), and the Legal Office can be reached through the Legal Administration Officer (x 2686) or the Director of Legal Services (x 2631), or email [director.legal@usq.edu.au](mailto:director.legal@usq.edu.au).

### Required Background Information

Regardless of the means used to request Legal Services, the Legal Office will always require very detailed information about each matter. This is because our legal system does not provide for outcomes or remedies in generalities but is very focused upon the individual facts and circumstances, in contrast to civil law jurisdictions where individual circumstances are often placed into a general categories with similar outcomes.

For example, the same type of incident, such as a person injuring themselves on campus, or a termination of a contract for the provision of services, may have entirely different outcomes for the University depending on small details surrounding the injury or the termination. The same applies for all commercial disputes; sale or purchase of goods, services or property; obtaining of government funding; and almost every other incident, event or transaction for which the University might require Legal Services. Accordingly, the more information supplied to the University Lawyers in the beginning will result in more precisely calibrated drafting or advice, which in turn reduces turnaround time and cycles.

## Maintaining Legal Privilege and Confidentiality

The Legal Office will at all times attempt to properly maintain Legal Professional Privilege and confidentiality. All legal files, both hard copy and electronic, must be restricted to the Legal Office and not be made accessible to others within the University.

Legal professional privilege protects the confidentiality of communications made between the Legal Office and Employees of the University that are made for the dominant purpose of seeking or giving legal advice, or obtaining information for use in actual or threatened legal proceedings. Communications covered by legal professional privilege do not need to be disclosed to external parties, such as pursuant to a subpoena or during an investigation by an external regulator or under the disclose or 'discovery' process of a court action. Therefore, legal privilege is a very important right that should be carefully protected.

The purpose of legal professional privilege is to enable Employees to provide full and frank disclosure to the Legal Office without fear that this information will be used against them or the University's interests. Ensuring open and honest legal communications is important because it is in the University's best interests to be able to freely disclose all relevant facts in order to get the most comprehensive legal advice possible.

The University may waive privilege if it acts in a way which is inconsistent with confidentiality, such as when Employees circulate legal advice internally or where there is voluntary disclosure of the substance of legal advice to people outside the University. Therefore, legal advice should never be forwarded to any third party under any circumstances.

Privilege cannot apply retrospectively, that is, before the Legal Office was engaged to provide advice. Therefore, when seeking any external advice, such as from an expert, the expert's engagement and other communications should only come from the Legal Office and the correspondence should clearly state that the primary purpose of the engagement is for the purpose of providing legal advice to the University. Such correspondence must be marked "privileged and confidential" or similar.

All Employees should therefore ensure that:

- any document requesting legal advice should be marked as "Confidential" or "Legal Professional Privilege Applies";
- the Legal Office is engaged for advice as soon as there is any indication of a dispute or an internal investigation, not just when it formally becomes "legal";
- no correspondence received from the Legal Office is forwarded to any person outside the University; and
- documents and emails subject to legal professional privilege are not circulated wider than necessary within the University, as internal

circulation to anyone other than those with a 'need to know' can destroy legal privilege.