

# NATIONAL COMMISSION OF AUDIT

## SUBMISSION

By Yarris Pty Ltd

Yarris submission focusses on the area of improving the efficiency and effectiveness of government expenditure through adoption of new and emerging technologies in service delivery and within government and potential improvements to productivity, service quality, and value for money across the public sector and to provide options to manage expenditure growth, including through reviewing existing policy settings, programs and discretionary spending in particular for government spending on legal services and other professional services.

Yarris has gained significant insight into the way government and private sector manage the delivery of professional services (including legal services) and how the technology provided by Yarris has improved

- Visibility
- Financial Accountability
- Service delivery
- Performance and Contract management
- Capturing buyers experience and knowledge

and thereby achieving value for money outcomes.

Yarris firmly believes that the adoption of technology is one of the most effective means to improve the value for money outcomes for the procurement of legal and other professional services.

### *Current state assessment*

The Australian government legal expenditure is more than \$600m per year of which approximately \$339.5m<sup>1</sup> is on external legal service providers. The Office of Legal Service Coordination (OLSC) within the Attorney-General's Department administers the policies and operations of the procurement of legal services. OLSC relies on data from each of the government agencies of their legal expenditure. There is no whole of government system that captures this expenditure in a standardised way. The data on the expenditure and use of external legal services:

- is not categorised in any uniform manner

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<sup>1</sup> OLSC Legal Expenditure Report 2011-12

- does not provide the government's expected or outstanding costs (budget v expenditure to date)
- does not provide the average cost and time per matter (for a basis of comparison)
- does not show the amount spent on law firms and counsel
- does not show the performance of law firms against standard KPIs and the level of satisfaction of the legal services being provided (through surveys)
- does not provide the level of compliance to any contractual requirements i.e. professional indemnity insurance, public liability insurance, workers compensation
- does not provide the expertise that resides within the law firms
- does not leverage the buying power of the government to promote access to justice outcomes, for example provision of pro bono to those disadvantaged

The Australian government moved to a multi-user list from 1 July 2013 after a 12 month period for transition from existing panel arrangements. Compared with the setting up of a formal panel, the cost of setting up and getting on the multi-user list is much less. However the cost of procurements under the multi-user list remains high as any matter more than \$80,000 must go through a (limited) tender process.

Anecdotally, the fee rates being offered under the multi-user list is not as competitive as expected given the Australian government's buying power. This is due to the lack of certainty of obtaining work under this arrangement and the requirement to go through another competitive process (estimate/quote/tender) to obtain work under the arrangement.

Technology is not being utilised to support the multi-user list arrangement for either the client agencies, law firms or the administrators (OLSC).

### *Future State*

Having utilised its buying power within the legal market, Australian government agencies are able to consider and compare the fee rates, performance, compliance to contractual obligations, the expertise within the firms and their capacity to handle the work. The fee rates are very competitive and represents at least 15% discount on commercial rates. Fixed or event based fee arrangements are in place for a range of legal work. The structure and composition of the multi-user list/panel has been based on the data from the technology system that allows analysis of expenditure, performance and overall health of the arrangement. OLSC has access to a range of reports and information to better administer the arrangements and analysis of the spend having

implemented a whole of government technology solution. OLSC and all agencies and law firms can access data on demand.

The technology solution is linked with payment systems therefore providing an end to end process, with workflows that can be configured to support a range of operational needs and structures. All engagements with external law firms have an agreed budget that is monitored in real time. Alerts are provided to client agencies and law firms when invoices reach 80% of the budget which allows for active management of cost. All significant documents relating to the engagement are uploaded onto the system. The technology is the source of 'truth' on expenditure.

Client agency in-house legal capability has the informed purchaser competencies and skills to manage not only the legal issues but also the risks associated with the procurement of external legal services. The informed purchasers within the client agency are supported by the technology, aligning the legal needs with the expertise on the multi-user list/panel.

#### *Strategies to achieve the future state*

To achieve the outcomes outlined in the future state the Australian government must invest in technologies that support and drive the changes in approach. The investment in technology will always involve change management processes. To pave the way for the implementation of technology to better manage the procurement of legal services, sometime needs to be devoted to preparing the client agency for the change in approach. Much of this is covered by the ANAO Better Practice Guide<sup>2</sup> that sets out the role and function of the in-house capability and development of the informed purchaser.

Client agencies need to undertake an extensive analysis of their legal spend to better understand their existing legal needs. Dialogue with their business areas is necessary to:

- confirm the findings from the analysis of the existing legal needs
- better understand how these legal issues arise
- identify any emerging legal issues that are not captured in the existing legal needs
- understand business direction, strategic plans and outcomes
- how the provision of internal and external legal services is used to manage their business –upstream and down stream

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<sup>2</sup> ANAO Better Practice Guide 'Legal Service Arrangements in Australian Government Agency' 10 August 2006

Having identified their legal needs, consideration needs to be given to the legal market and how it is structured and able to respond to those legal needs. This is a process of aligning the agency's legal needs with the legal market that will provide value for money outcomes.

The analysis of the legal spend should include identification of legal work that can be procured using pricing other than the hourly rate. An understanding of the different procurement pathways to the legal market for different types of legal work is essential in achieving value for money outcomes. Whilst there are some clear examples of this, buying/selling of property, renewal of leases and licences, or renegotiation of operational contracts for service or goods, there are other less obvious legal work that can be priced on a fixed or event based approach.

Technology solutions make this process much easier as the data is available on demand and can be interrogated. The technology should be able to provide the client agency data about the cost, time and performance in the provision of a legal service with the ability to compare the outcomes across their providers. Knowing which law firm is providing the better value for money outcomes for a particular type of legal work arms the client agency to make better procurement decisions.

By investing in technology solutions does focus client agencies on their work and procurement processes, ensuring seamless integration and identifying efficiencies. Our experience is that a similar phenomenon occurs within the law firm. The technology gives them visibility of their value and this tends to drive efficiencies in the way they handle instructions. Our experience with implementing a technology solution for the procurement of legal services, law firms actively monitor their performance against KPIs which drives efficiencies and ensuring they are providing value.

The technology should be interactive not a reporting portal. That is the client agency, law firm and multi-user list/panel managers are linked through technology. Every engagement is made through the system thereby capturing data in real time. Each engagement builds a rich picture and provides valuable information and knowledge.

From a multi-user list/panel manager perspective, they do not have to rely on going to each agency to collect data; it is available to them on demand. It opens up opportunities to better manage significant legal matters and issues, transfer and sharing of knowledge as well as a better understanding of the government's legal needs and costs.

Transparency and visibility will bring about more accountability of the client agency and law firm. Ultimately all these aspects are working together to achieve value for money outcomes for government.



We understand that an investment in technology comes at a cost, however given the amount spent on external legal services each year an outlay of between 1-2% of those costs will be recovered by the savings in legal expenditure going forward.

We have attached a case study<sup>3</sup> of our experience with the Victorian Government, which invested in a whole of government technology solution for their procurement of legal services. Interest in their approach is wide spread with of State governments considering adopting similar technology and arrangements.

Note that while the focus has been on legal services, technology solution would benefit all procurements of professional services including consultants, subject matter experts and financial service providers.

If you have any questions in relation to this submission, please contact me on the number below.

Yours sincerely

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<sup>3</sup> Attached Case Study: The Victorian Government - Yarris comprehensively changes the procurement and management of legal services