

Chapter 4

The Planning and Management of Projects



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Chapter 4 considers the planning and management of projects. It starts by looking at how project teams are formed, and then considers the basic elements of project management – a timeline and a budget; evaluation of progress; co-ordination of inputs; and risk management. The chapter goes on to discuss key mechanisms for project management. These include task lists, the identification of responsibilities, dependencies and timelines.

All law reform agencies plan and manage their projects. However, project planning is now a much more developed practice than it was in the early days of law reform. In many jurisdictions, the expectations that governments and other stakeholders have of law reform agencies have increased, particularly in relation to timetables.

Project planning is a management discipline in its own right. There is a wide range of literature and many software packages are available. Providers offer project planning training, including in relation to specific software. Such training may well be helpful to the law reformer. But not all training will be relevant to the law reform context, and both training and software should be critically assessed to ensure that each is appropriate.

In reviewing approaches to planning and management of projects, this chapter anticipates discussion of the stages of a law reform project covered in the following chapters.

Issues of personnel, timelines and budget, evaluation of progress, participant input and risk assessment will affect the planning and management of projects.

4.1 The starting point: the project team

Project planning starts with the choice that the law reform agency makes about how to constitute a team that will be charged with the conduct of the project. The structure of teams

Project teams: Three law reform agencies

Tanzania: Where the Law Reform Commission takes up a reference or proposal, a project team comprising a commissioner or commissioners and legal officers is constituted. The Commission co-opts external experts where necessary. The project team is responsible for analysing and identifying the issue and challenges for reform. The project team also sets estimated time frames for the review, and prepares a planning base and the budget needed for the review; there is also an economist. Subject to the planning exercise, the team then takes responsibility for the conduct of the enquiry. The Commission typically works on three projects at a time.

Australia: The federal-level Australian Law Reform Commission works solely on the basis of references from the government, which typically include a reporting date. There will usually be two projects running at the same time. One or two commissioners will be placed in charge of a project, with four or five legal staff making up the balance of the project team, along with a project assistant. The research manager and librarian will work with both projects. The staff and commissioners have sufficient expertise to cover most projects, supplemented by additional training if necessary, but sometimes a specialist consultant will be engaged.

England and Wales: The Law Commission has four standing law reform teams, each working under a commissioner, and covering different areas of law – currently, commercial and common law; criminal law; property, family and trust law; and public law. Each usually has between three and five lawyers and the same number of research assistants under a team manager, who is a more senior lawyer. The standard approach is to assign each project full time to a lawyer and a research assistant, with support from the team manager and commissioner, and other professionals at appropriate times, such as an economist and communications professionals. Legislative drafters are usually involved in the final months of the project, writing draft legislation based on the instructions of the team lawyer/research assistant.

For some projects, where the scope of the project is particularly wide or the timescale is short, the project team will be made up of more than one lawyer/research assistant.

Generally, each team has a core of permanent government lawyers. Other lawyers with particular expertise in a relevant subject may be recruited on time-limited contracts. Research assistants are recruited for a year from new law graduates.

The Commission runs multiple projects at the same time. In 2014/2015, there were 21 ongoing projects and eight final reports. In 2015/2016, the corresponding figures were 17 and four, respectively.

varies among law reform agencies. Most will have a standard pattern from which departures may be made if a particular project warrants it.

4.2 Elements of project management

The first core element of project management for law reform agencies comprises a timeline and a budget. It is likely that, in most jurisdictions, for most projects, the end point of the timetable will have been agreed with government.

The project timeline, in whatever form it is produced, will set out how the project will achieve the final date agreed.

Timetables

In Australia, federal government references of projects to the Australian Law Reform Commission from government ministers include a reporting date. The amount of time allowed for a project varies according to the size of the project, but a reporting date a year after the reference is common.

In England and Wales, the statutory protocols with the United Kingdom and Welsh Governments specify that, at the outset, the overall timescale for the project will be agreed between the Commission and government. As with all law reform agencies, project length varies a great deal, but an approximate standard timescale for an average project that includes the drafting of a bill is three years.

The budget indicates the resources available to the project. Different law reform agencies will have different accounting practices, and there is no necessity for a specific project to be an accounting centre, with its own budget expressed in monetary terms. In England and Wales, for instance, even the law reform teams, each of which will have several projects, do not have disaggregated monetary budgets. But the resources available are agreed in terms of staff inputs as part of the prioritisation inherent in the project initiation process.

The second key element is the evaluation of progress. The timeline will set out the key stages in the project, such as the publication of an issues paper; then the publication of a discussion paper or a single consultation paper; the close of consultation on, the production and/or publication of the analysis of responses; the production of a policy paper, if that is the practice of the law reform agency; and final report publication. There will be a system to evaluate progress with regard to each key milestone. Failure to meet a milestone will require justification and remedial action.

The third key element involves co-ordinating the input of a variety of participants. These include both internal and external participants. Internally, different resources may be utilised for the project at different times. Those resources need to be available at the right time. It is important in managing each individual project that the needs of potentially competing projects or other activities are programmed in. If, in a bill-drafting agency, several projects will require the services of legislative drafters at the same time, the projects may have to be staggered or more drafters may have to be obtained from the legislative drafting office. Publications, whether project-related or corporate, such as annual reports, must be staggered to take

account of the capacity of those charged with the technical business of organising printing and press relations.

Equally, external participants – members of advisory groups, government policy officials and consultees in general – need to be aware of when and how to input into the project, and the processing of their input must be planned for and accommodated.

Fourthly, risks to the process must be managed. All projects can and will be affected by factors outside the control of the law reform agency. A change of government or minister, a negative consultation response from an important body, an unexpected outcome of a pending appeal or the loss of a key member of staff may all have adverse effects on a project. Project planning involves anticipating risks and taking steps to mitigate them.

4.3 Project planning mechanisms

This section considers four aspects of project planning: tasks, responsibility, dependencies and timelines. There are many formal approaches to project management, including those based on particular project planning software. Many law reform agencies have developed their own tailored approaches to the functions involved. Rather than recommend particular packages or approaches, the broad mechanisms necessary for project management are set out below.

4.3.1 Tasks

The core of a project plan will include a number of tasks, each with increasing specificity as the relevant staff member details each of the phases of the typical law reform project. The exact content of tasks will depend on the structure of projects in that law reform agency and the stage of the task within the project under consideration. Guidance on these will be apparent from the stage-specific chapters of this guide. There should always, however, be some considered plan that sets out tasks and sub-tasks down to the level of specificity so that every member of the project teams knows what they are expected to do, and by when.

Broadly, the more specific the task list is, the more reliable the plan will be. It takes time to generate task lists. But it is important to do so. In the first place, it inevitably saves more time later if the task is programmed carefully in advance. Secondly, accurate, realistic and flexible task lists are invaluable

Four aspects of project planning must always be considered: tasks, responsibilities, dependencies and timelines. Each of these should be mapped in detail, accounting for contingencies, variables and risks.

in allowing the project manager to estimate the time and resources necessary for each stage of the project, and ultimately the project as a whole.

One way of generating the task list is for each staff member to document what they do in the course of the day or week in some detail. The resulting record provides a description of the process each person goes through and the tasks that they perform.

Alberta: Meetings in a multi-track project

The Alberta Law Reform Institute undertook a project to re-write the province's out-of-date Rules of Civil Procedure.¹ The reformed rules came into effect in 2010. The multi-year project, initially estimated to cost C\$2.6 million, involved almost 24 full-time or part-time counsel. There were 11 working groups, a steering committee and a drafting committee, amounting to 118 volunteers. In total, the project accounted for in excess of 30,000 person hours. The 11 different working groups examined subjects from the commencement of actions to discovery and evidence to management of litigation. The project produced issues papers and 21 consultation documents over a five-year period.

With 11 working groups and two other major committees, involving members from the two major urban centres in the province and others across the province, many meetings were held. Organising these meetings effectively was a particularly important element of the project, and the project team developed a detailed task list/checklist for meetings. The following is a very small extract from the overall project document:

Meeting arrangement procedures:

- canvass for dates
- confirm date
- prepare meeting summary sheet
- book facility (video teleconference)
- email meeting dates to committee members
- order food
- send a reminder notice (a few days prior)
- contact facility with the number attending and the caterer
- agenda:
 - prepare draft agenda
 - gather materials for agenda
 - format materials and finalise agenda
 - duplicate for paper copy recipients
 - distribute agenda and materials
- post-meeting procedures:
 - distribute minutes with the next meeting material
 - email minutes to other counsel
 - check catering expenses are correct.

4.3.2 Responsibilities

If the identification of tasks is important, then assigning responsibility is critical. Who will perform the task, certify it is complete, and move the project along to the next stage?

Responsibility takes several forms. The person performing the task may certify that it is complete, or may report to another whose job it is to co-ordinate the completion of an array of tasks. A publications manager may receive reports from a lawyer to confirm that content is correct; from an administrative assistant to confirm that formatting is complete; from an intern to confirm that footnotes have been checked. All of these confirmations certify that the report may now be published on the website. The chair/director will require reports from others on the stages of completion and the budget status of various projects in order to have a meaningful discussion with funders or legislators.

Large organisations will often have significant resources devoted to quality assurance. Many law reform agencies are small or medium sized and may not be able to devote resources exclusively to quality assurance and risk management. However, a clear delineation of an understanding of responsibilities will help to avoid errors when staff are faced with heavy workloads.

One of the most effective ways of ensuring that responsibilities are handled effectively is the progress meeting. Such meetings can be regularly scheduled, but kept short and focused on those who need to know and those who need to report.

Responsibility and accountability can go hand-in-hand in a positive way.

4.3.3 Dependencies

This concept introduces an element of complexity into the more straightforward identification of tasks and assignments of responsibility. Even if the project is thought of as progressing through sequential stages, they will often overlap, in that preparation for the next stage can and should begin before the previous stage is complete. For example, if a working group is to be used, the members can be identified, their time and availability confirmed and their contact information set up – all in advance of and in anticipation of the first meeting. Procedures and expectations can be set out in the invitation and confirming correspondence. The actual timing of the working group

Accountability against project milestones: England and Wales

In England and Wales, there is a full commissioners' meeting every two weeks, at which draft publications and policy papers are agreed. Every other meeting, the commissioners constitute, along with the chief executive, the programme board, and are joined by the non-executive director (currently the head of a British university and a former permanent secretary in a government ministry). At programme board meetings, the team managers of each of the four law reform teams report on progress against milestones on each of the teams' law reform projects. Every three months, there is an expanded programme board meeting that considers a more detailed report from each team that concentrates on forward-looking adjustments to the project plan.

Each board report assesses progress against milestones, making use of a 'red-amber-green' system to indicate the level of risk to a particular milestone. The example below shows the progress of projects of the Commercial and Common Law team:

Commercial and Common Law					
Project	Milestones	By date	Commissioners' Meeting	RAG (May)	RAG (Apr)
Transfer/event Fees in Retirement Homes and Other Leases	- Interim Report Published - Final Report to be published			GREEN 	GREEN 
Implementation: Groundless Threats	Implementation			GREEN 	GREEN 
Bills of sale: drafting new Goods Mortgages Act	Report and draft Bill	September 2017	Various – TBC	AMBER 	AMBER 
Insurable Interest	Consultation on updated Bill	Late 2017	TBC	AMBER 	AMBER 
Social investments and pensions	Final Report	June 2017	11 May 2017	AMBER 	AMBER 
Issues:	Event Fees: Published on 30 March (5 working days ahead of schedule). Intellectual Property (Unjustified Threats): The Bill received Royal Assent on 27 April 2017. Goods Mortgages Act: We have been working to an extremely tight timetable to meet Parliamentary deadlines. The election has affected the timetable further and an alternative timetable may be required. Insurable Interest: On 18 Oct Commissioners confirmed postponement of insurable interest pending completion of social pensions' project. Social pensions: The team is preparing a blackline draft to circulate to Commissioners, incorporating Commissioners' written comments and feedback at the peer review meeting on 11 May. A draft summary will follow. We have shared individual chapters with key stakeholders and are responding to their comments.				
Decisions:	Board to discuss potential new timetable for the Goods Mortgages Act.				

commencement is dependent on the completion of the materials for consideration, the preparation of a work plan and an agenda.

Not to do this preparatory work would unnecessarily lengthen the timelines and create downtime. On the other hand, artificially accelerating the timeline may compromise material preparation and reduce the quality of the working group output and advice. There may also be internal dependencies. Staff lawyers may be working on more than one project at a time. Some of the responsibilities can be compartmentalised, but intense analysis or report writing may require exclusive dedicated time until completion. Especially in smaller agencies, these pressures must be taken into account.

4.3.4 Timelines

Estimating the length of time required for each stage in a law reform project, and ultimately the length of the entire project, is a key requirement of law reform planning.

Experience will give the law reform agency a broad sense of the average total length of most projects. An overall figure may provide a useful check at the end of the process. However, it does not take account of the particular challenges of the project under consideration. Projects vary according to factors such as their size, complexity and the difficulty or otherwise of the consultation process. Account must also be taken of internal factors such as staff or commissioner turnover and budget uncertainty.

A reliable time estimate will be based on a realistic assessment of the time to be taken for each component part of the project. A law reform agency may well have a standard timetable that can be consulted, but in each case adjustments must be made to the standard timetable to take account of the particular challenges of the project being planned.

Estimates should allow for both the amount of effort and the duration of time within which the effort is to be expended. A project lawyer may have accurately estimated that 15 days' work is needed to complete a particular task. In assessing the duration of the task, however, other things must be taken into account. The lawyer will inevitably have other routine matters to attend to, such as staff meetings, correspondence on past projects and line management meetings. It may be known that the lawyer will be expected to spend two or three days assisting in relation to an event planned for another project. The outcome may be that the 15 days' work is likely to be completed within a period of 25 days.

It is important that time, both in terms of effort and duration, is managed effectively so that other activities that depend on the completion of certain tasks are not delayed. Estimates are not immune from abuse – they can be grossly exaggerated in terms of effort and time for completion so that no task is ever completed late. On the other hand, being too ambitious imposes unnecessary pressure to complete the task or compromises the quality or the reliability of the work.

It is important, therefore, for this sort of time estimate to be reviewed by those in a position to provide informed questioning or challenge, for instance a commissioner or a more senior staff member.

A timeline must take account of contingencies, variables and risks.

The project planner will know that a variable exists, but not what the outcome will be. If a decision goes one way, little further work will be needed. If the decision goes the other way, a new work programme will be needed. The timeline must allow for both possible outcomes.

A contingency, on the other hand, is an indeterminacy that is not known in advance. Experience shows that in any complex project there is a high probability that something will occur that will mean extra time is necessary. It may be that a major consultation group needs additional time to finalise its response, that a member of staff leaves unexpectedly, that a development in the law must be accommodated or simply that research reveals a new and complicated aspect that had not been anticipated. It is therefore wise to build in some leeway for such events, either formally, by including an additional 10 per cent in each time period, for instance, or informally, by rounding up time estimates.

Thirdly, risk must be planned for. The example of a risk register from the Law Commission for England and Wales above illustrates the sort of risks that may be anticipated. In addition to each project having a risk register, the Commission develops and maintains a corporate risk register.

Each law reform agency may have its own formal or informal way of planning for risks. However it is done, the distinction

Review points

In some projects, review points may be agreed with the government ministry responsible for that area of the law. In 2008, the Law Commission for England and Wales started a project on adult social care. The project plan provided for two review points. The Law Commission and the United Kingdom Department of Health could agree to continue or discontinue the project at each review point. The initial phase of the project provided for a scoping exercise to delineate the issues to be covered by the substantive project. At the review point, both parties agreed that the project should continue. The second review point was after the publication of the substantive report, and its purpose was to decide on whether the Law Commission should go on to produce a draft bill for government consideration. At that point, both parties agreed that the Law Commission should not do so. The reason for this decision was the determination of the government to legislate for the project, and so prepare its own bill, which was later enacted as the Care Act 2011.

The project plan accommodated the decision-making variables at each stage.

between the likelihood of a risk occurring and the impact that the risk would have if it did come about provides a useful way of analysing risk. The purpose of thinking about risk in this way is to plan what can be done to minimise those risks. However, anticipating risk by taking countervailing measures itself uses up resources. The distinction between likelihood and impact assists with the consideration of how much resource should be devoted

Limiting the advance plan

Another way of dealing with future uncertainty, whether in terms of variables or contingencies, is to limit the determinate plan.

In 2015, the Alberta Law Reform Institute commenced a project on the rule against perpetuities, a highly technical issue in the law of trusts.² The following is an extract from the original time estimate/plan.

Project Design

1. OVERVIEW

- [4] It is proposed that this project follow the standard trajectory of Report for Discussion [RFD], consultation and Final Report [FR]. To focus discussion and input in this difficult area, ALRI should formulate preliminary recommendations in a formal RFD, rather than attempt to consult using open-ended questions in a more general consultation document.
- [5] At this stage, I have been asked to prepare the Preliminary Assessment only to the RFD stage. Therefore, no design or time estimates are yet being suggested for the consultation and FR stages. I am advised that further planning for those stages is best undertaken once the direction of ALRI's preliminary recommendations is clear.

2. MILESTONE DOCUMENTS

- [6] All targeted completion dates in this section assume a project commencement date of March 1, 2015.
- **Background Issues Memo** (includes reading and consideration of research already done, conducting further research as needed, analysis, writing of memo, presentation of memo to one Board meeting for formulation of preliminary recommendations)
Targeted Board Meeting Date: June 26, 2015
- **Report for Discussion** (includes conversion of Background Issues Memo to RFD style, inclusion of preliminary recommendations, approval process of draft RFD by Board at one meeting, revisions, preparation for publication)
Targeted Board Meeting Date: September 18, 2015
Targeted Publication Date: October 15, 2015

The report for discussion was published in April 2016. The project continued, and a final report was published in March 2017.

to avoiding the risk. High-resource mitigation may not be called for if the risk is low, even if its impact would be very high if it did occur. On the other hand, it may be sensible to devote more resources to a risk with moderate impact, if it is much more likely to occur.

Notes

- 1 <http://www.assembly.ab.ca/lao/library/egovdocs/2008/alilr/171319.pdf> (final report); <http://www.cfcj-fcj.org/inventory-of-reforms/alberta-rules-of-court-project> (links to other publications).
- 2 <https://www.alri.ualberta.ca/index.php/completed-projects/rule-against-perpetuities>

