

**ACC AUSTRALIA**  
**2018 IN-HOUSE COUNSEL**  
**TRENDS REPORT**

# ACKNOWLEDGEMENTS

The Association of Corporate Counsel (ACC) Australia would like to acknowledge and thank the people who made this report possible.

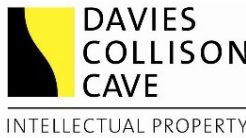
To the ACC Australia members who participated through completion of the In-house Trends Survey, we thank you for your time and willingness to share your experiences, practices and insights for the benefit of the wider profession.

We also wish to acknowledge and thank our Corporate Alliance Program Partners; whose generosity enables us to provide quality services to our members.

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## KEY FINDINGS AT A GLANCE

*Don't have time to read this entire report? Here is a snapshot of all you need to know to be at the forefront of what's trending in 2018 in the in-house legal profession.*

**Lack of time and workflow overload** remain extreme challenges for in-house counsel.

There are now **higher expectations** of **work-life friendly workplace policies**, yet **uptake** of flexible working arrangements **remains low**.

**41%** of organisations represented have experienced **cybersecurity breaches** in the last 12 months.

**Regulatory challenges** are most strenuous in areas impacted by the **Royal Commission** into Banking/Finance sector; **data/privacy law** and **competition law/ the Modern Slavery Act**.

The **greatest value** attributed to **external service providers** is in **expertise** and **knowledge sharing**.

Uptake of **NewLaw** firms continues to be **slow**, mainly due to the **time** required to understand and set up the services and their **effectiveness** of existing external support relationships.

The most popular form of **technology** adopted in legal teams is **electronic legal libraries** and **document repositories**.

## OVERVIEW

ACC Australia is committed to keeping members abreast of trends within the in-house profession. Each year we survey members to gain insight into consistent and emerging challenges, working conditions and practices within in-house legal departments.

This year's survey was completed in October 2018 by 398 respondents from a range of industries, government departments and not-for-profit organisations. Seventy-nine per cent of respondents listed themselves as full-time employees, with 18% part-time and the remainder in casual, contract or other employment arrangements. Almost 80% of respondents hold senior roles.

Consistent with the 2017 Trend Survey, work-life balance remains a concern for both individuals and organisations. Whilst organisations are establishing workplace policies to support work-life balance for parents and caregivers, there is still a reluctance to take them up due to the concern of how it may impact career development.

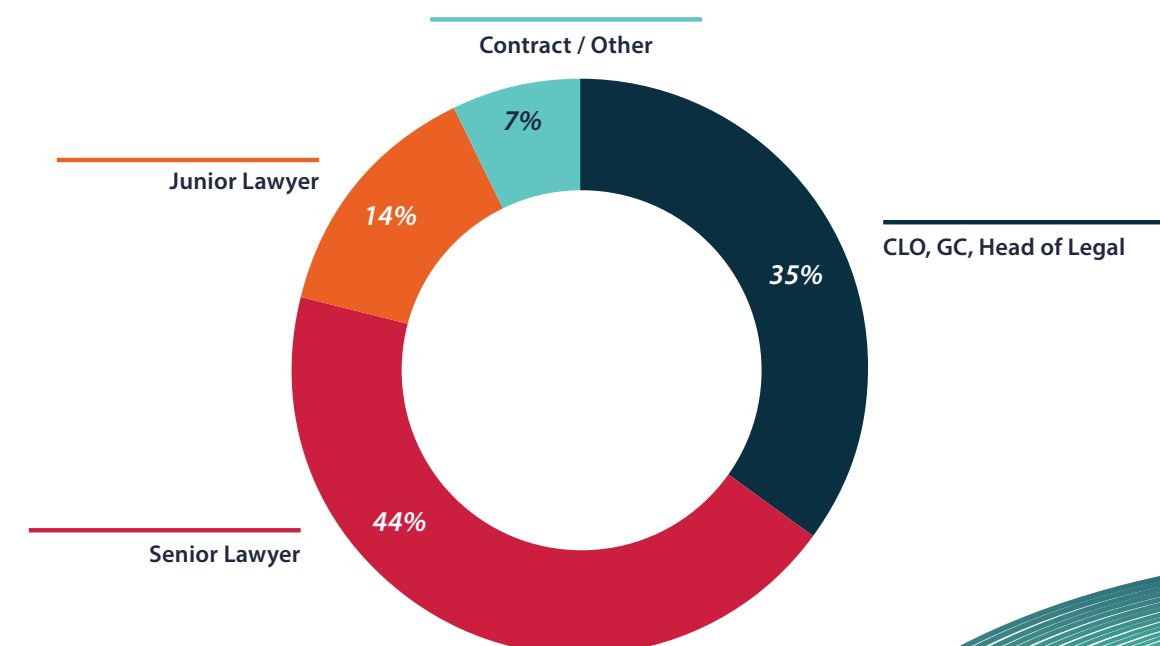
Reducing legal spend is a pressure that organisations continue to experience. Many address the need to reduce spend while increasing efficiency through consolidating legal service providers, introducing

software and matter management systems or briefing barristers directly rather than through external counsel. There are a range of factors contributing to engaging external assistance which the survey explores.

Technology and innovative service delivery continues to be a trending issue in the legal profession, however, uptake remains cautious and conservative. Lack of time to investigate options, lack of budget and satisfaction with existing models and service providers are each key factors to the lag in technology uptake. Although the level of understanding and use of NewLaw business models has increased from last year's results, this remains a relatively new area of practice and many respondents were unclear of the benefits of NewLaw models.

The following sections of this report take a deeper exploration into each sub-theme of the 2018 In-house Counsel Trends Survey. It begins with the macro – looking at broader themes in the external environment that impact upon the nature, quality and quantity of output from legal teams required in the current market. From there we explore how legal teams are managing expanding workloads and what this means to work-life balance in policy and in the lived reality of in-house counsel.

## Respondent Status



## THE EXTERNAL ENVIRONMENT

As globalisation, regulation and risk management continue to have unprecedented levels of impact on the business world, the role of the in-house legal team has never been more important. New challenges have emerged over the past 12 months, leading to increased pressure and workload demands for in-house counsel.

### Regulatory Challenges

The rise in threats to stability and sustainability of businesses has required an increase in regulation and reporting guidelines from government. Moreover, cybersecurity and risk management have become increasingly prioritised by Australian organisations. In this survey, we were interested to explore how this impacted those at the coal-face of businesses and government departments charged with protecting the commercial viability of the Australian market.

With regulation and compliance an ever-increasing focus for legal teams, we asked what key regulatory challenges are faced by in-house legal. The response was extensive, with pages of stories documented of the complexities now faced in a regulatory environment. Some responses became predominant themes, while other themes were unique, but worth noting nevertheless. To follow are the highlights.

Predominant themes (20+ respondents)
<ul style="list-style-type: none"><li>• Consumer Privacy and Data Security</li><li>• The fallout from the Royal Commissions into the Banking and Financial sector</li><li>• The Modern Slavery Act</li></ul>
Common themes (6-20 respondents)
<ul style="list-style-type: none"><li>• Change in Competition Laws</li><li>• Government changes</li><li>• Expanding ACCC jurisdiction and focus on particular industries</li><li>• Energy market regulations</li><li>• Increased compliance requirements</li></ul>
Unique challenges (5 or less respondents)
<ul style="list-style-type: none"><li>• Environmental industry regulatory change</li><li>• Advertising restrictions</li><li>• Superannuation / tax changes</li><li>• Proposed changes to gift card laws</li><li>• Introduction of Voluntary Assisted Suicide in Victoria in 2019</li><li>• Drought restrictions</li><li>• Changes to aged care</li><li>• Regulatory changes in the gambling industry</li></ul>

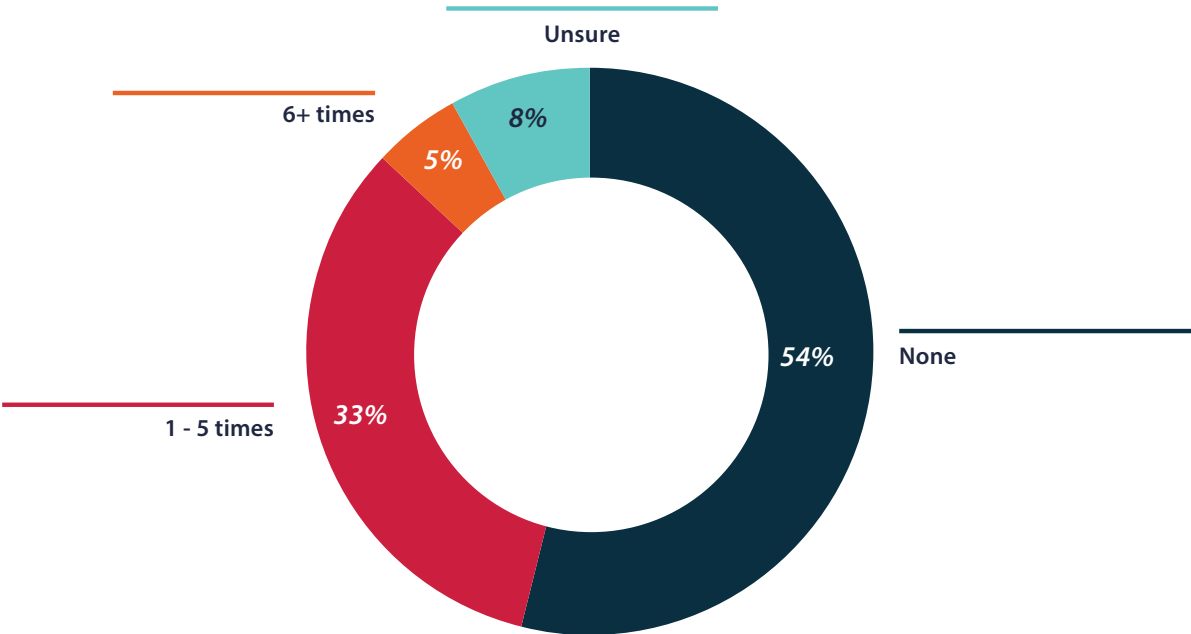
## Cybersecurity

In the past 12 months 41% of respondents' organisations have been subject to a cybersecurity breach. Regardless of whether a breach had occurred, it was clear that cybersecurity is a very real risk in today's business environment, with 32% of organisations represented being fully prepared and 61% being somewhat prepared for cybersecurity breach.

### Barrister Briefing

In this increasingly complex and ever-changing environment of global and technological disruption, cyber challenges and an ever-tightening regulatory environment, expert advice and representation is paramount to enable in-house counsel to appropriately manage risk and respond to new dilemmas. Moreover, as Australia follows in the United States' footsteps with the increasing prominence of litigation, particularly class actions, having reliable and authoritative bar support is essential.<sup>1</sup>

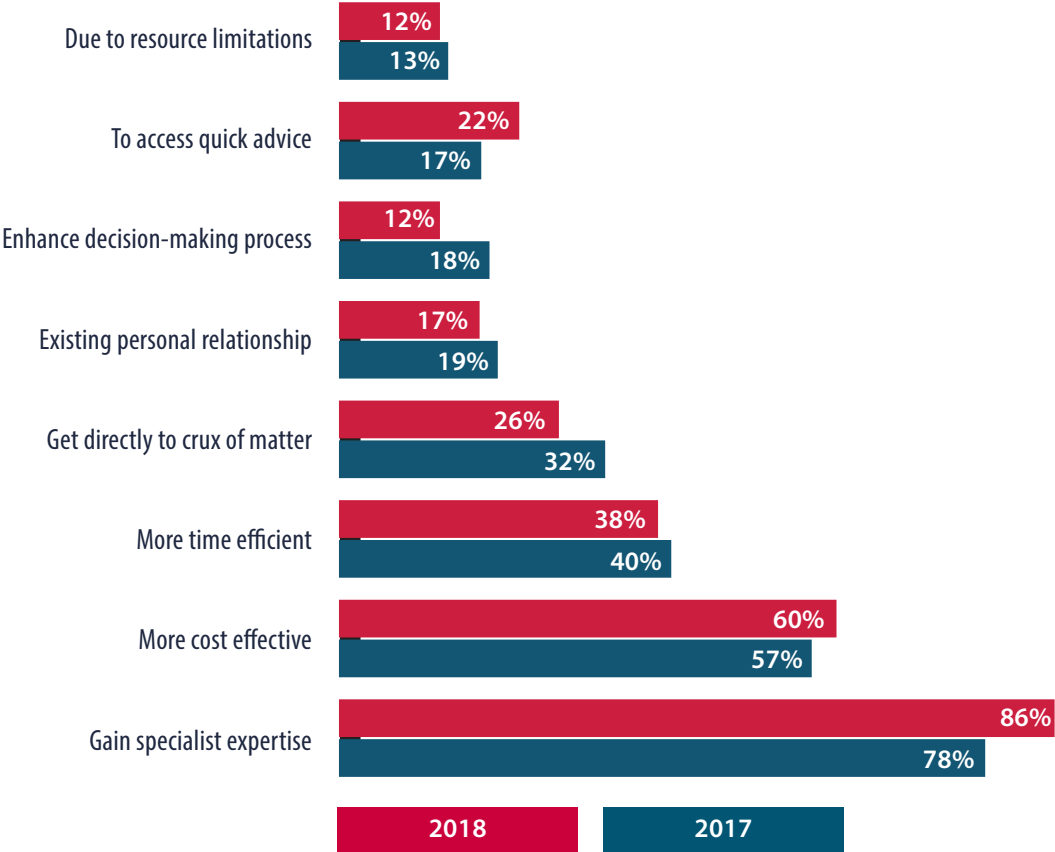
#### Direct Barrister Briefings



1. See ABC report: <https://www.abc2c.com.au/australia-comes-second-in-being-litigious>

In this study, we wanted to see if the increasing trend towards briefing barristers directly found in the 2017 research is continuing. While there was no increase, we found that briefing barristers directly, as opposed to through an intermediary, remains something that approximately 38% of respondents have done in the past 12 months. Of those, 33% briefed barristers up to five times and 5% briefed more than six times in the previous 12-month period.

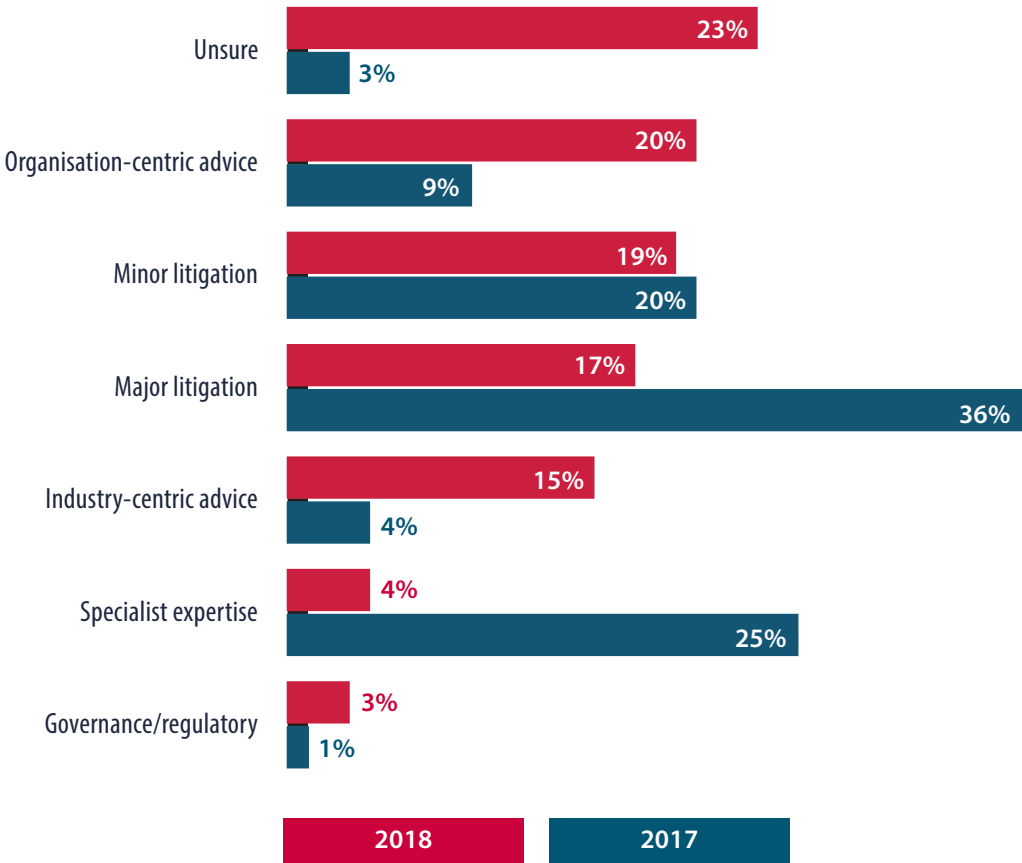
Reasons to brief directly with a barrister



Matters for which the respondents’ organisations mostly relied on for barristers’ expertise were specialist advice such as taxation, human resources and intellectual property (20%); minor litigation – tribunals, lower courts and small disputes (19%); major litigation – supreme and federal court (17%); and industry-centric advice (15%).

Reasons for directly briefing a barrister have changed little since the last survey, with the most popular response being to gain specialist expertise (86%), followed by this being more cost effective (60%) and time efficient (38%). Briefing directly with a barrister was also seen to be a way to get directly to the crux of a matter (26%).

Matters brought to barristers



These findings indicate a drop by half in major litigation. However, there was an increase of 20% in the “unsure” category which could be a plausible explanation for the reduced number. The reduction in the specialist expertise also appears to have been taken up by the increase in organisation-centric advice and industry-centric advice.

Of interest, although barristers were directly briefed by almost half the organisations represented, when asked about intentions of briefing over the next 12 months, the responses were more conservative. Forty-four per cent of respondents believed there would be no need for barrister briefing; while 26% considered briefings would be required approximately one to five times and 4% predicted six or more times and 27% of respondents remained unsure of future briefing requirements with barristers.



## MANAGING WORKFLOW

As demands on the in-house legal function continue to increase, we wanted to know how these growing expectations are being met. Increased working hours of teams was one such response, which will be explored later in this report. However, other areas such as outsourcing services and utilising technological solutions to improve efficiency were also highlighted in this research.

### Alignment with Organisational Objectives

With the spotlight in recent years on how in-house legal teams can add value and be seen to have a crucial role in reaching organisational objectives, we introduced the question about alignment with overall organisational objectives in this year's survey, and asked respondents to describe the alignment of the legal team's priorities to those of the organisation.

Most survey participants responded positively to their legal team's alignment with broader organisational objectives. The majority (69%)

advised their legal priorities were well aligned with organisational priorities and an additional 27% felt their priorities were moderately aligned, with some focus given to the organisation's priorities. Only 4% believed their team's priorities were set independent of their organisations.

The increasing role in-house legal teams play in meeting organisational objectives brings new workflow challenges, which adds greater pressure to keep up with the changes to global strategic priorities, while responding to pressures at local and operational levels.

### Outsourcing

Outsourcing has become an essential aspect of meeting deadlines and responding to the ever-increasing demands of the in-house legal function.

#### Choosing Legal Service Providers

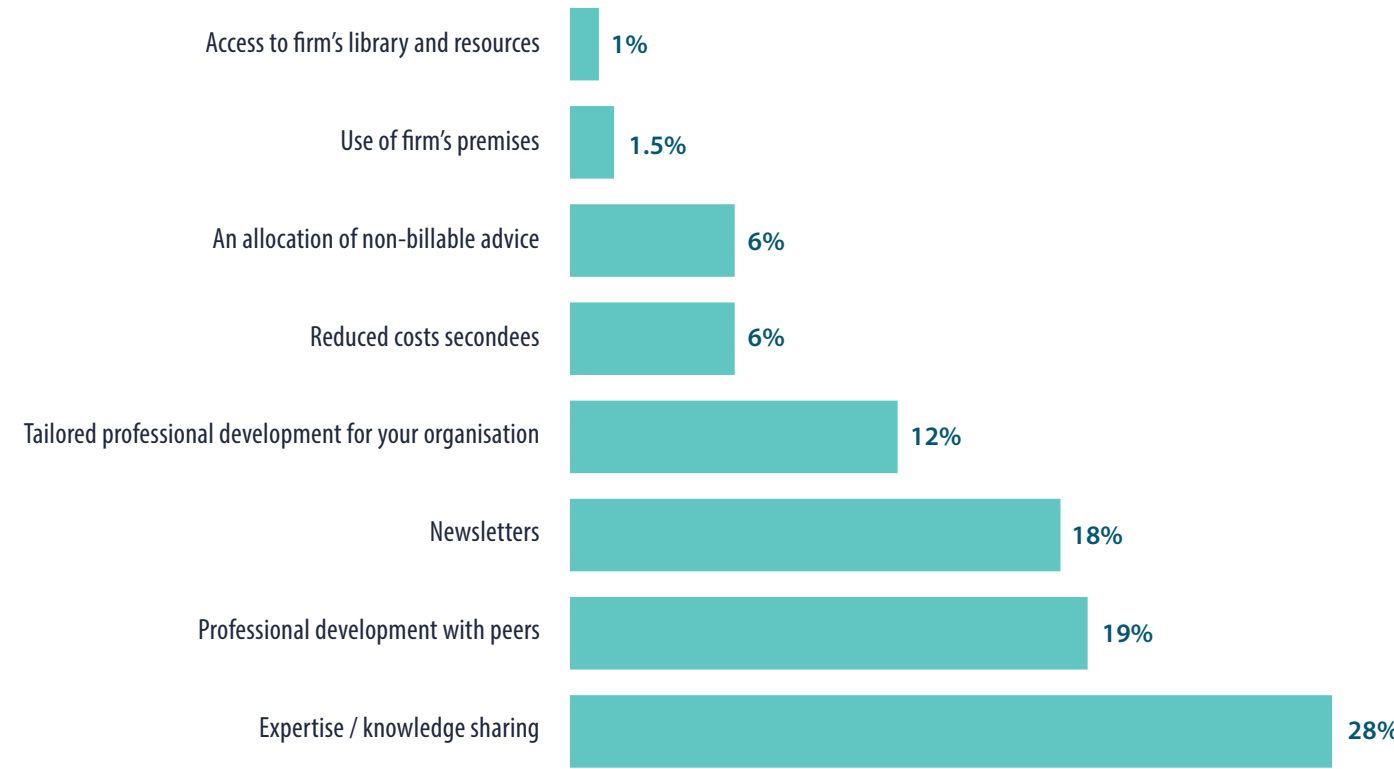
In the 2018 survey, we were interested in how in-house practitioners choose external service providers. By far, the strongest response was the service provider's understanding of the organisation's requirements. Overall responses ranked as follows:

- Understanding of organisations requirements (43%)
- Specialist expertise (26%)
- Reputation of the organisation or individual lawyer (11%)
- Past experience (5%)
- Personal relationships (4%)
- The firm's willingness to tailor their work to your needs (4%)
- The acceptance of the firm by the CEO and board (3%)
- The firm's general legal expertise (1%)
- The firm's hourly rate (0.79%)
- The firm is recognised as a top tier firm (0.79%)
- The degree to which you must manage the firm (0.26%)

#### Value-add by Legal Service Providers

This year respondents were asked about the added value provided by external legal sources. Twenty-eight per cent of respondents reported that expertise and knowledge sharing was the most common value-add service their legal service providers offered. Professional development with peers was also highly recognised (19%), as was shared newsletters (18%). Of those who responded, 8% reported that their legal service provider didn't offer any value-add services.

### Value Add Services



### Policies and Practices in External Service Provider Selection

Responses to our question regarding what policies and processes are practiced in external service provider selection reflected little change to responses in the 2017 survey, with 19% (compared to 14% in 2017) reporting having no specific process in their organisation for engaging external counsel processes. Responses of those whose organisations do have a selection process follow.

Process for external provider selection	2018	2017
Gaining sign-off from General Counsel	46%	53%
Obtaining a fee estimate	45%	53%
Decision making on a business case or proposal basis	14%	15%
Competitive procurement processes	13%	16%
Non-legal executive sign-off	13%	13%

## Panel Arrangements

There remained little difference in panel arrangements in comparison to the 2017 survey. Fifty-three per cent of respondents stated their organisation has a set panel of law firms used for outsourcing work (compared with 51% in 2017). However, there was an increase in those undergoing panel reviews, with 28% of respondents reporting the composition of the panel would be reviewed over the following 12 months as compared with less than one-quarter (23%) in 2017. Of those who were in the process of reviewing or intending to review their panels, most cases were due to organisations expanding into new jurisdiction or changing requirements. There was a wide range of panel management strategies, ranging from formalised competitive procurement processes to informal arrangements based on convenience and existing relationships.

*“We are looking at consolidation of a number of firms on our panel, tighter management of spend, greater use of value adds.”*

*“We have informal panel arrangements however we are always open to exploring new firms and options.”*

*“We’ll be looking at finding NewLaw firms which can assist us and also making the panel a bit leaner.”*

*“Depends on what comes up. We don’t need to outsource very often. If something new comes along, we may consider a new provider.”*

*“Direct relationship with two have gone and organisation will use “friends” known to non-legal exec management.”*

*“We have a loose panel of law firms based on those we have regularly used and those with particular industry expertise.”*

*“We are going to be reviewing over the next 12 months due to Australian Government policy.”*

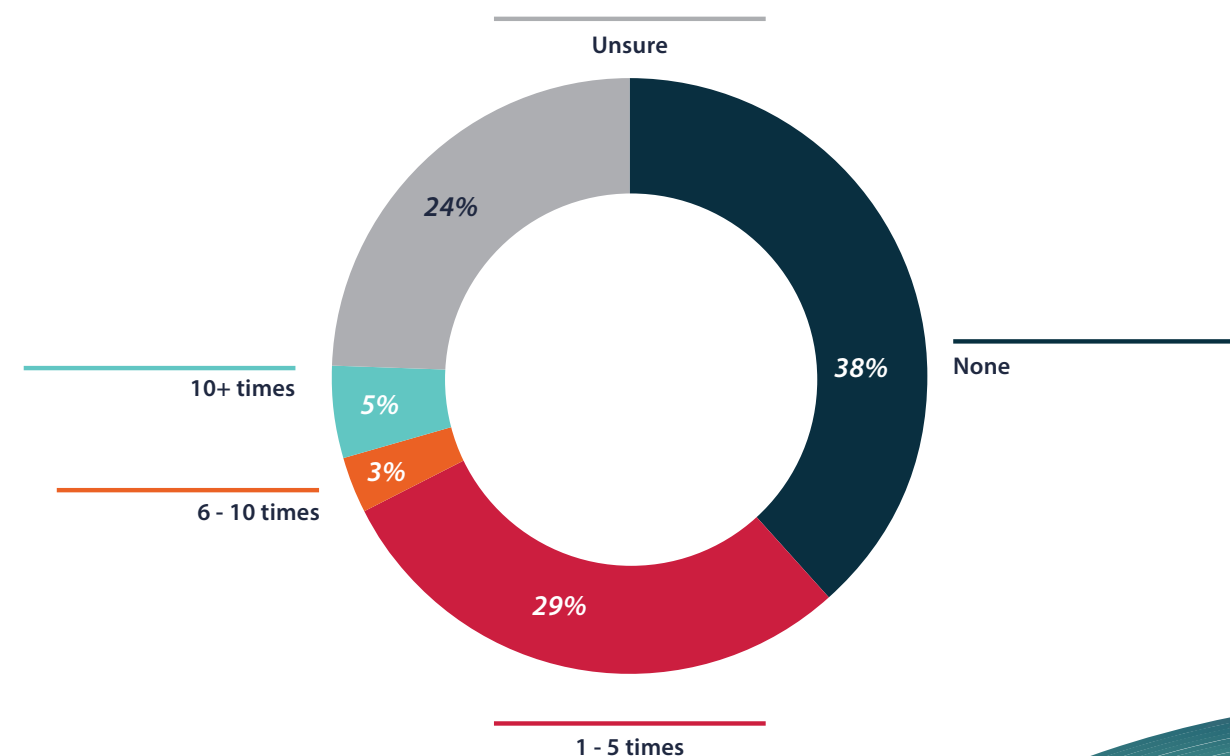
## NewLaw Business Models

The topic of NewLaw business models was introduced to the Trends Survey in 2016, at which time just 26% of respondents were familiar with such models. Over the past two years the knowledge of NewLaw business models has increased to 35% last year, and 39% this year, with the most popular form of NewLaw business models adopted being:

- Fixed fee firms (18%)
- Online document retailers (18%)
- Lawyer placement agencies (15%)

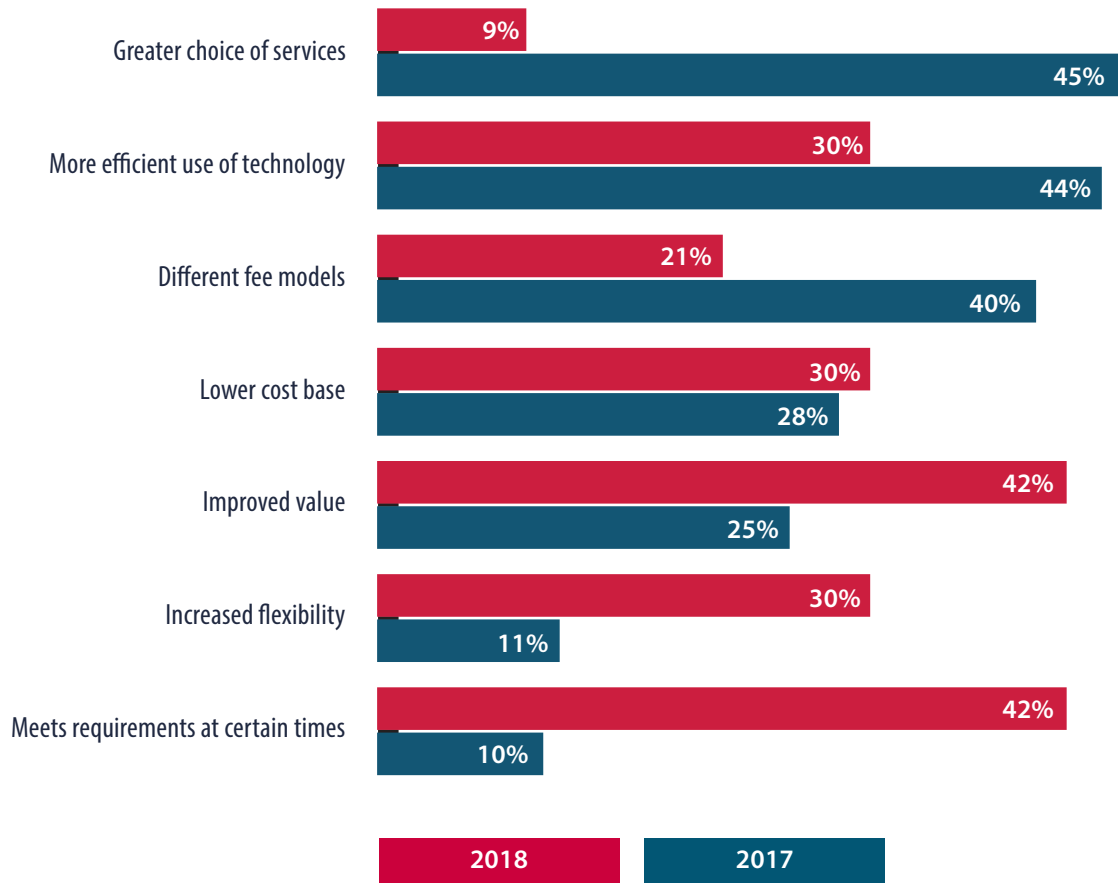
Respondents were asked to list the two most significant reasons for choosing NewLaw firms. Reasons for choosing NewLaw firms have changed significantly over the past year, with an emphasis on the ability to be responsive to changing needs as opposed to last year’s most popular response of there being a greater choice of services.

## Use of NewLaw Models



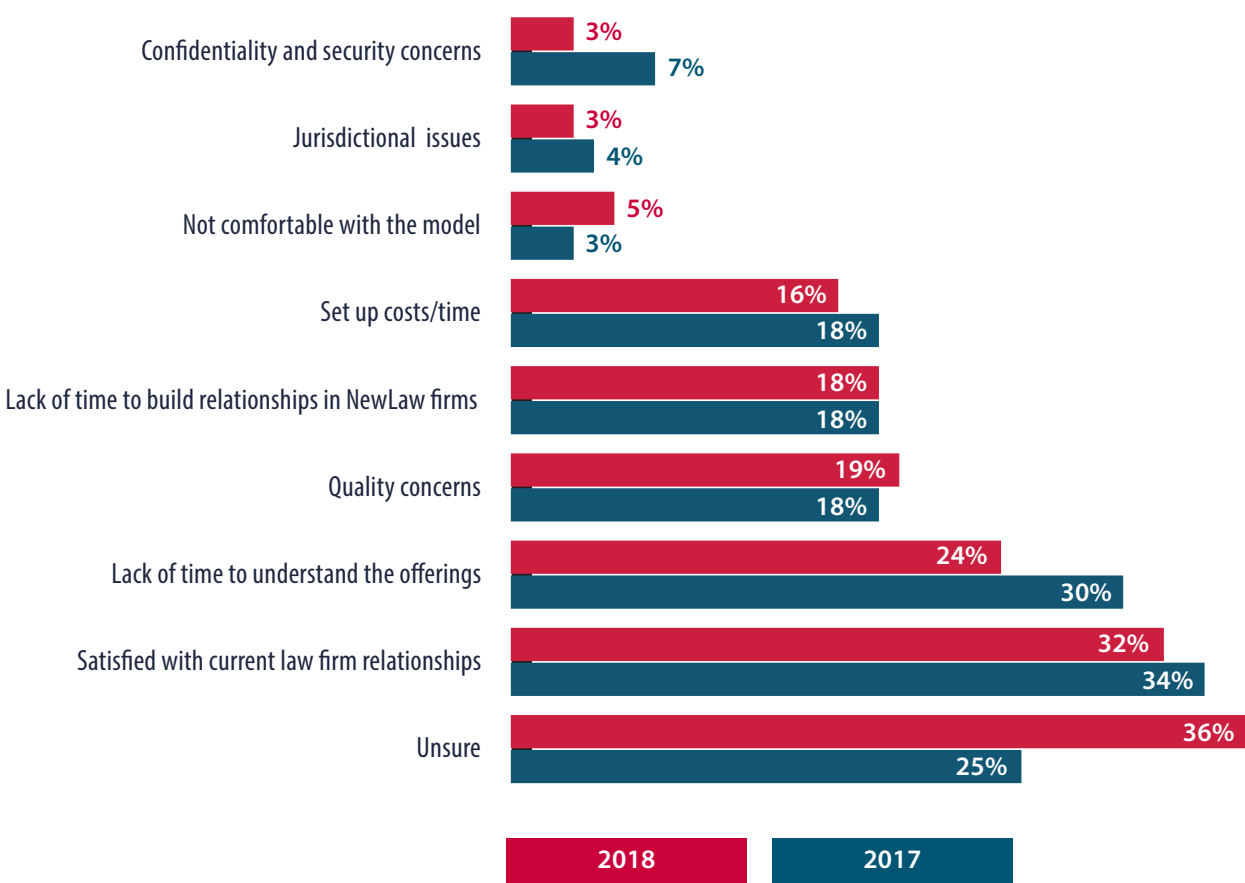


Reason for choosing NewLaw firm



While reasons for choosing NewLaw firms appear to have changed, barriers to NewLaw firm uptake remain much the same. A third of the respondents indicated they were satisfied with their current law firm relationships. A recurring theme in this survey was lack of time. Once again, lack of time impacts decisions regarding NewLaw firms both in the time it takes to understand the offerings (24%), lack of time to build relationships with NewLaw firms (18%) and the time and cost involved with setting up new relationships (16%).

Barriers to choosing NewLaw firms



Processing and Operations

The growing focus on managing risk, staying in step with regulatory and compliance requirements and becoming more strategically aligned with organisational goals has put increased pressure on the operations function of in-house legal teams. Once again, in this year's survey we were curious about how day-to-day operations are handled.

Of those surveyed, 19% have an internal employee who has full responsibility for handling the operations function. Reflecting the findings of 2017, of those who have a team member dedicated to operations, approximately one-third noted the person responsible for team operations held a legal tertiary qualification.

Potential of Creating an Operational Position

Only six per cent of respondents stated their organisation is considering introducing an operational position into their legal function in the next year. Sixty-six per cent of respondents were not considering introducing such a position and 28% were unsure.

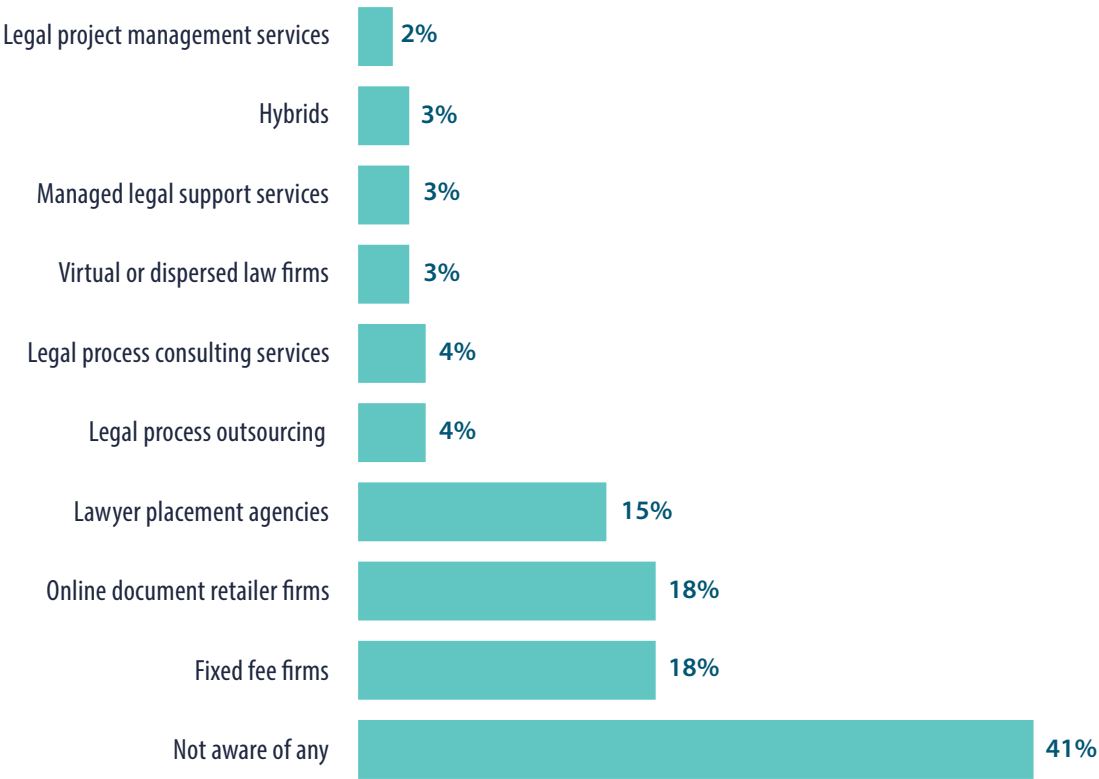
Legal Process Outsourcing

Consistent with findings last year, the majority (76%) of respondents have not utilised legal process outsourcing (LPO). Of those who utilise LPO services, 7% use these services on a daily or weekly basis, 10% on a monthly or quarterly and 9% once or twice per year. Reasons provided for why LPO services are adopted were due to cost (62%) and time (48%) efficiencies (62%), along with responding to lack of resources internally (51%).

The most popular LPO services utilised were online document storage and management systems (18%) and fixed fee firms (18%). Lawyer placement agencies were also utilised by 15% of respondents in handling operational matters.



LPO services utilised



Legal Software

Improving efficiencies through the utilisation of specialised legal software solutions is one way legal teams are able to keep up with the increasing demands on their time. Matter management remains the most highly utilised software along with document management systems leading to paperless offices.

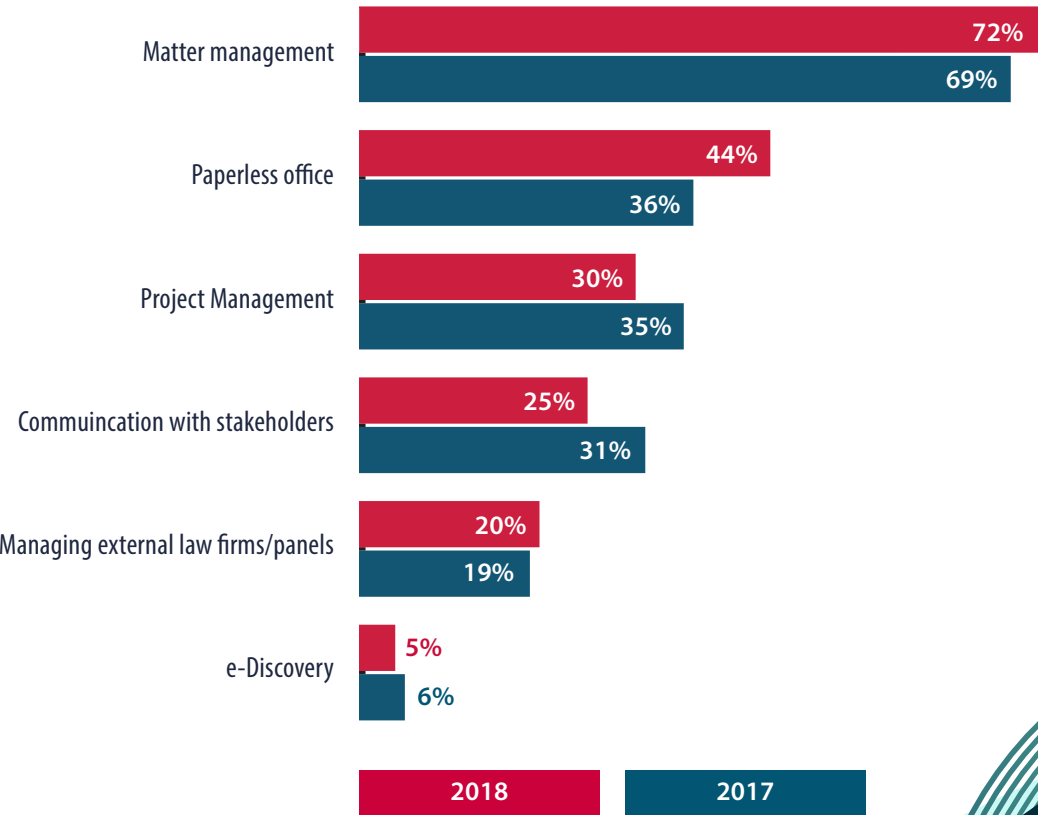
When asked if LPO software will play an increasing role in their team’s function over the next 12 months, 23% considered it would, 39% considered it would not and 38% were unsure.

Respondents were asked if they had introduced new legal software tools in the past 12 months. Thirty-three per cent of respondents reported there had been new tools introduced to their team, which is a 5% increase from last year’s results.

While the number of organisations that do not have a budget allocated to legal software has decreased from 2017 (48%) to 2018 (41%), cost continues to be the highest pressure point for introducing new software.



Legal Software Utilisation



## WORK-LIFE BALANCE

Regardless of the uptake of outsourcing and technological solutions to assist with workflow management, legal teams continue to be stretched for resources, leading to the continued trend of long working days for in-house counsel. Repeating the findings of last year, extended working hours are commonplace in legal teams.

### Typical Hours

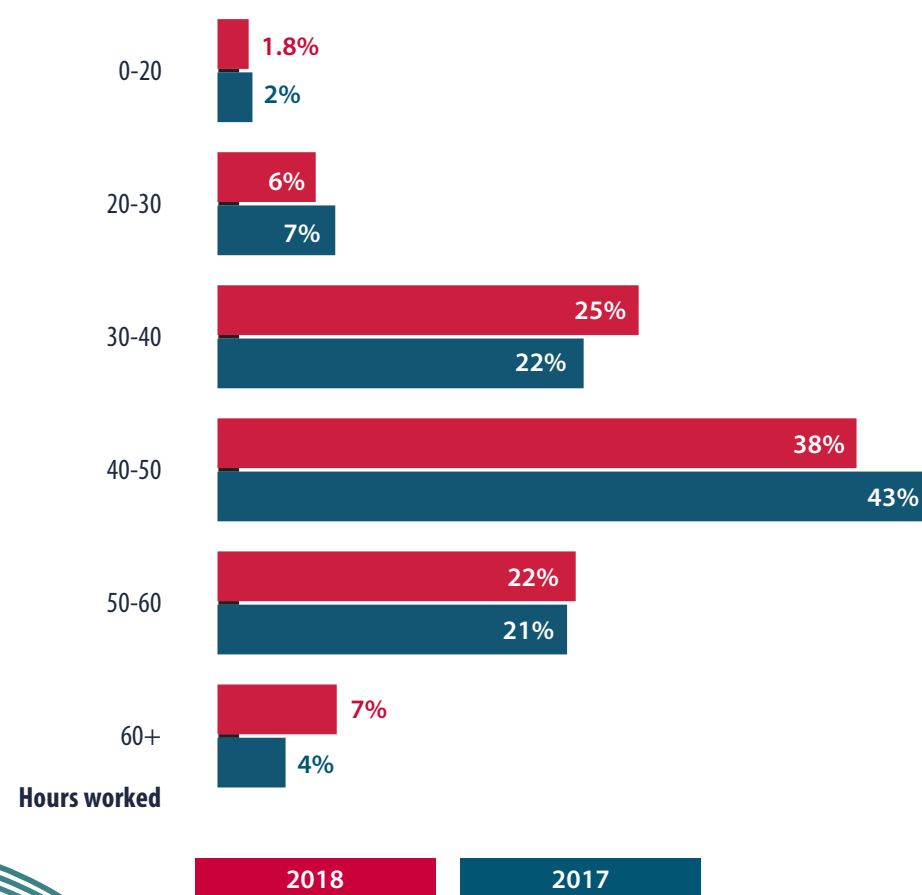
Two-thirds of the sample reported spending in excess of 40-hours per week at work; 29% reported working more than 50 hours per week. Seven per cent of respondents worked more than 60-hours per week, raising concerns regarding the health and wellbeing of many in the profession. Working long hours on complex matters is not a sustainable practice, which inevitably leads to burnout and poor health.

Comparing results to those from 2017, we see a trend towards longer working weeks, with the only exception being in a 5% reduction of those working 40-50-hour weeks.

Of interest, part-time employment remains low in this sample, with only eight per cent of respondents working less than 30-hours per week. This mirrors the trend in private legal practice whereby part-time work is scarce and lacking in incentives or rewarding workload.<sup>2</sup>

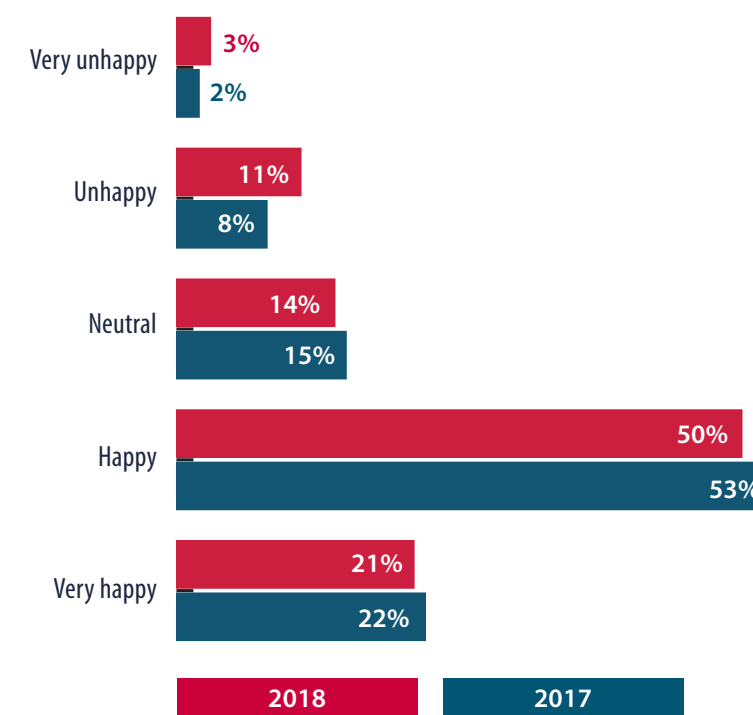
2. Campbell, I., Charlesworth, S. & Malone, J., 2012. 'Part-time of what?: Job quality and part-time employment in the legal profession in Australia' *Journal of sociology*, vol. 48, no. 2, pp. 149- 166

### Hours Worked



Correlating with the overall increased hours worked, is a slight decline in levels of satisfaction with work-life balance. In light of the general trend for organisations to offer more flexible working arrangements, it is concerning to see no reflection in the actual day-to-day experience for those in in-house legal teams.

### Work-life Satisfaction



### Workplace Policies

The responses regarding workplace policies was almost identical to the 2017 survey, with most respondents (85%) perceiving their organisation's policies to be adequately supportive of care-givers and parents.

Of the options available to them, working from home remained the most highly utilised work-life balance initiative, with 87% (up from 85% in 2017) of respondents stating they take up opportunities to work from home.

Other initiatives include:

- A reduced hours schedule (41%)
- Additional leave days (31%)
- Rostered days off (13%)
- Childcare facilities (4%)

Once again, while most respondents felt supported as caregivers and parents, over one-third of respondents felt reluctant to take advantage of their organisation's work-life balance policies out of concern that to do so might adversely impact their career.

There has been a **significant increase** in expectations of work-life friendly policies in viewing a workplace as an employer of choice, with **40% of respondents stating flexible options as 'very important' in choosing an in-house role.**



## Importance of Work-Life Balance in Employer Choice

Work-life balance was viewed as very important to those surveyed, with 68% of respondents referring to work-life balance as either an important (28%) or very important (40%) factor in choosing an in-house role. This demonstrates that while there may not be uptake of work-life balance policies, the perception of choice is more important compared to last year, with a 14% increase in those who indicated change as either important or very important.

## Pro-bono Work

Seventeen per cent of respondents reported participating in pro bono work. Of those, 15% were involved in altruistic activities through their own channels and just 2% performed pro bono work through internal work programs. Forty-five per cent of respondents who were not involved in pro bono work referred to being interested in altruistic participation, whereas 35% claimed not to be currently interested in pro bono work. Time constraints (73%) were noted as the greatest hurdle to undertaking pro bono service, followed by lack of opportunity (23%) and lack of appropriate insurance (23%). Lack of skill/knowledge required (16%) also saw respondents not further investigating pro-bono work.

## FUTURE DIRECTIONS

Despite the increased media hype over artificial intelligence and the decline in the human role in legal practice, it's business as usual for most in-house legal teams in Australia. While technology is being utilised by in-house counsel to improve efficiencies, it is in no way decreasing the workloads within legal teams. This is predominantly due to the increasing complexity of the legal environment and rapid ongoing changes to regulatory processes and reporting.

The Royal Commission into the banking and finance industry has not only impacted the finance sector but also has had flow-on consequences to all Australian businesses to varying degrees. Financing processes and contracts are now slower, more complex and under intense scrutiny. For legal teams, this increases the need for precision and risk management, while also increasing the time pressures and stress associated with managing internal and external stakeholder expectations and relationships.

Cybersecurity is now a very real threat and legal teams have the added pressures of keeping abreast of data protection and privacy laws and ensuring their organisations are equipped to handle a cybersecurity breach efficiently.

With legal teams being stretched, NewLaw options and outsourcing are enabling in-house teams to respond with agility, but there is scope to improve the adoption rates and value of this sector to in-house counsel.

Lack of time, however, means exploring new resourcing or technological innovations is often set aside as more pressing operational tasks take priority. The challenge ahead will be to keep up with the rapid changes to the legal environment, while putting systems of support strategically in place to meet ever-growing and increasingly complex demands on the in-house counsel function.

Given the long hours in-house counsel continue to work and the level of mental drain experienced keeping up with workflow and changing legislation in a highly complex regulatory environment, burn out is a real concern. It will be incumbent upon in-house leaders to monitor and manage the health and wellbeing of their teams. Encouraging in-house professionals to utilise flexible work options and holiday entitlements should ensure life-balance is adequate to sustain highly effective in-house teams.

Your feedback on this report is welcome.

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