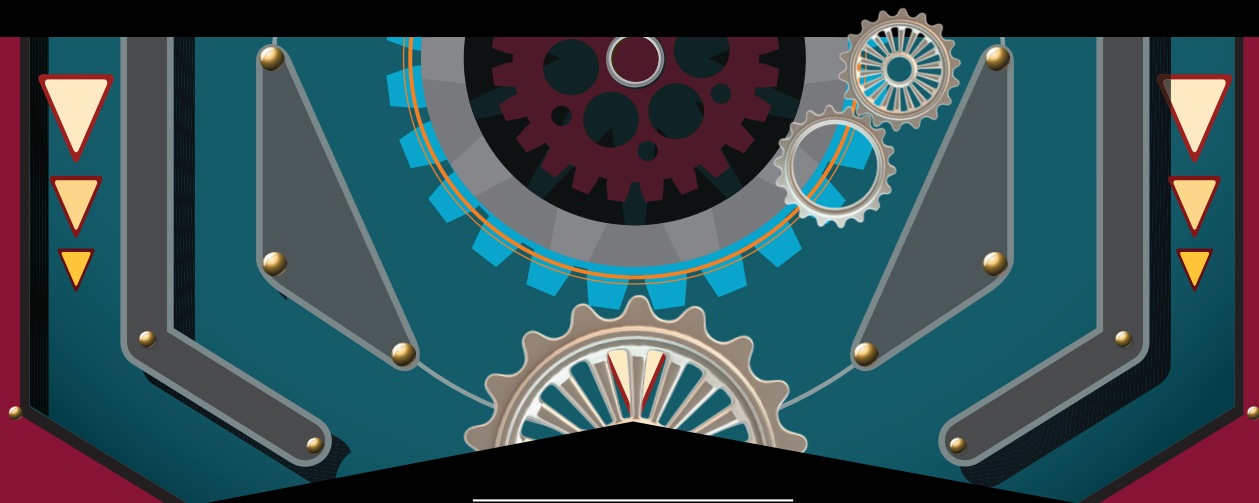




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PRESIDENT'S REPORT



Karen Grumley
National President

As we approach the end of the financial year, I'm sure many of you are also in the throes of finalising your department budgets, measuring your teams' performance against this years' criteria and plotting the key initiatives to drive delivery of your strategy for the next year.

This edition of the Australian Corporate Lawyer magazine is focused on Law Department Management – a broad topic which demonstrates both the complexity of legal team management, as well as the increasing complexity of managing the operational efficiencies of our divisions.

Every day the work I complete in my role reinforces with me the fact that as in-house lawyers we don't work in isolation. We need to position our teams to impact business strategy as effectively as possible. We manage our people (their roles and responsibilities, structure, incentives and culture) the workflow in our teams (through processes, approaches, and systems) and the information, data and knowledge. We also oversee our legal service providers and administer many other critical resources required to enhance the operations of the legal department. Sounds easy, right?

Peter Drucker - referred to as 'the founder of modern management'; put it plainly when he said: *"there is nothing quite so useless as doing with great efficiency something that should not be done at all"*. Not so easy - how do we know we are doing the right work, with the right people, for the right divisions and driving the right deliverables?

One way is to take advantage of the ACC Legal Operations Maturity Model, Toolkit and Webinar series. The purpose of this toolkit, developed by ACC and its supporting legal service providers, is to give law department leaders the ability to benchmark the maturity of their teams, gain alignment on department priorities and gain access to real-life experience on how to implement improvements to the legal department. What better way to learn than from our peers?

This edition of the Australian Corporate Lawyer should also provide you with a variety of sources of information on management practices specifically aimed at in-house law departments.

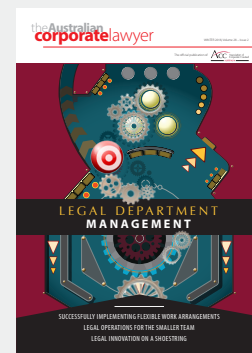
Taking more advice from Drucker; *"management is doing things right, leadership is doing the right thing."* I'd like to take this opportunity to do my duty as a leader of ACC Australia and thank all of you, the members of ACC Australia, for your feedback and ongoing input into our association.

Over the last few months we have conducted our annual collection of In-house Counsel Days in each of South Australia, Victoria, Western Australia and New South Wales. Thanks to all those who attended creating the vibrant, inclusive atmosphere these days are renowned for. These are great events and aren't possible without the commitment of the state organising committees. I extend my thanks to everyone involved in making this year's events a success.

I'd also like to thank our members and supporters for the overwhelming response to our call for session contributions for the 2018 ACC Australia National Conference. Based on this response, I'm looking forward to welcoming many of you to Brisbane for this important annual event in November.

Of course if you can't wait until November to get access to some of the best learning opportunities we have on offer, then you should consider joining the 2018 Australia and Asia Pacific delegation attending the ACC Annual Meeting to be held from October 21- 24, 2018 in Austin Texas. Delegate participants will be eligible for a discounted conference registration. Contact ausmembership@acc.com for more information and to receive the unique discount code. As a 'frequent flyer' for the ACC Annual Meeting held each year in North America, I highly recommend this important annual event.

If you need a business case for your attendance at these conferences, I hope that the tips and techniques, resources and advice on Law Department Management featured in this edition of the magazine provides you with plenty of compelling information. **a**



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PERSPECTIVES

TERESA CLEARY

In today's world, legal department management and the role of the in-house lawyer reflects the broader economy and community. The words trust, innovation and sustainability in this context have never been more appropriate.

Top of mind is the deepening crisis of 'trust' in Australia's institutions and organisations. The erosion of confidence in industries such as the banking and finance sectors shows that attitudes are changing and that it is time for businesses to address issues and concerns that the public believes are not being addressed. Organisations, from the Board to the CEO and across senior management, should be taking the lead on change rather than waiting for change to be mandated.

Recent research indicates that internal culture and practice are regarded by directors as the biggest trust-related challenges facing their companies—ahead of both customer satisfaction and the financial stability of the organisation. Trust is integral for business success and the General Counsel can help organisations build trust as they are in a unique position to influence and shape an organisation's culture. We can tie trust into what we support and lead in our organisations and ensure that our legal departments do the same, no matter what their size.


A General Counsel must be capable of leading and, where necessary, creating a competent and cohesive legal team. The role also requires the ability to collaborate, motivate and establish trust across a legal department. This is not an easy task when you are also fulfilling your day job and facing internal pressures such as increased volumes of work and the need to reduce skyrocketing costs. Regardless, if the General Counsel and legal team do not trust each other, you are not going to obtain that rise in performance that will inevitably influence the broader business.

Look around your organisation and you are bound to see a team where people shine, ideas flourish and exceptional work is achieved. That is where trust is and leading those teams are effective leaders that go beyond the basics. This is also critical for a General Counsel to help create and manage a thriving and sustainable legal department. The risk of not having a high trust culture in your legal department will not only see

high turnover and uncertainty that slows effort, but your team members will also be afraid to act without permission, even when their actions are the right thing to do. This can lead to teams failing to share ideas and shying away from innovation.

Trust also extends between the in-house legal department and the commercial business. It is critical that legal department management extends to building and cultivating solid relationships across the commercial business. Solid relationships are built up over time by gaining trust. Successful in-house lawyers make an effort to create connections across organisations, regularly checking in with key commercial colleagues to learn how they can better support operations. With a strong commitment to business strategy and priorities, the in-house legal department can be seen to be adding value by being responsive and offering creative and innovative solutions. When the legal department has a strong internal reputation and are perceived as providers of creative legal solutions with a business perspective, the lawyers are drawn more deeply into business teams as high value-added contributors and trusted advisors. There's that word again—trust.

Some organisations have already taken the next step in placing trust at the forefront of their evolution. These include the likes of Uber and Airbnb who have created "Head of Trust" roles. These roles focus on, amongst other things, bolstering trust within and outside their organisations and is fundamental to the success and longevity of those organisations. Although probably a cutting-edge concept for Australian organisations, there is no reason that a General Counsel couldn't emphasise the need for their legal department to consider fostering 'trust' as part of their advisory role.

General Counsels are responsible for managing legal departments that are accountable for promoting the highest standards of integrity, probity and corporate governance. I think trust is a natural and fundamental extension of that. Trust is necessary for business success and is critical to the success of managing any legal department of any size. In my mind, focusing adequately on cultivating, building and growing trust as part of legal department management can only help lead change for the better for both individuals and organisations. 



Teresa Cleary

As General Counsel and Company Secretary at the Australian Institute of Company Directors, Teresa applies her extensive legal experience gained over a seventeen-year legal career. Her current role followed a decade long career at Telstra which included the position as Supervising Counsel, NBN Negotiations Deal Team. Teresa also serves as Non-Executive Director of the Community Broadcasting Foundation Limited.

Teresa is the current Treasurer and a Committee member of the NSW Division of ACC Australia.

Each month ACC Australia invites our in-house industry leaders to share their experiences and perspectives on the theme of the current issue of the Australian Corporate Lawyer.



A DAY IN THE LIFE

ANN STUBBINGS

Group General Counsel and Company Secretary
Orora Limited



Ann Stubbings

As Group General Counsel and Company Secretary at Orora Limited, Ann sits on the Executive Team and leads a small and agile legal and company secretariat team. With 6700 employees across 134 sites in seven countries, Orora designs, manufactures and distributes a range of fibre, metal, glass and point of purchase packing products. Prior to joining Orora, Ann worked as Senior Group Legal Counsel at Amcor Limited.

5 am or 6 am

On gym days, I am up at 5am (way too early) or 6am on other days, and each morning I walk our two Labradors, whatever the weather. Early starts also allow me to check in on overnight emails, news alerts or calls to our North American businesses and, most importantly, to drink my first coffee of the day.

7.30 am

After squeezing in normal household activities, I travel to work at our head office in suburban Melbourne. As my family is now beyond school years, I try to avoid the chaos of school traffic. Travel time allows me to make work or family calls. I call one of our two US lawyers to discuss some litigation we have on foot in the US that will involve searching old email records—we resolve the best way to undertake this task.

8 am

Any time after 8am, depending on traffic, the first priority when I get to the office is another coffee, then I deal with quick emails before completing a final review of the pre-read for a 2-hour Group Executive meeting.

10.30 am

As the Company Secretary, I follow up on actions arising out of our recent board tour to the US, finalise the minutes of the meetings and start preparation for our next round of board and board committee meetings. This includes drafting the agendas and

sending them to the Chairman and Committee Chairs for approval.

11.30 am **My next meeting is with my Co-Sec para-legal to review the year end reporting timetable, including preparation for the annual general meeting and the annual report.** We also start planning the content for the annual report and the first draft of the notice of the annual general meeting. As we are a lean team, we have to plan well ahead to allow for interruptions.

12 pm

Just as I am about to start focussing on the final review of material for a customer and investor innovation expo the business is holding the following week, I receive a phone call from a US colleague about a contractual provision in an acquisition deal that requires an urgent response. We work through the answer on the phone. I complete the review of the innovation expo content and then take a call from one of my sons to discuss the terms of a contract he has been given for a new role.

1 pm

This is my regular catch up with the Sustainability team, which, pleasingly, has recently moved to report to me. We review the sustainability material for the innovation expo and discuss the work we are doing on our sustainability strategy. I go to a local café to grab lunch and eat it

in my office while scanning the news. Missing lunch is fraught with danger as my team has been known to succumb to the 3pm chocolate fix—a poor substitute for lunch.

2 pm

I interact regularly with the lawyers on my team throughout the day, which is not difficult given our small numbers. This involves discussing matters, resource planning and deliberating on legal or governance topics for our next board or exec team legal report. **In a catch up with one of the Australian lawyers, we discuss the status of an employment investigation, some IP matters and how we are going to continue streamlining our legal processes.** The team has been on an innovation journey over the last year, implementing matter and document management systems to improve the way we work. The team has identified further initiatives to enhance our

service to the business, so our discussion centres on how we will progress this.

3 pm

I attend a meeting with the CEO and CFO to discuss the key terms of a significant contract prior to execution. We also take the opportunity to discuss plans for a board tour to one of our key Australian sites later this year.

4 pm

I now have some time in my office—I ask the team to update the status of their key matters in our matter management system so I can produce the key matters report for my regular meeting with the CEO the following week. Several emails arrive from our head of safety on recent 'near misses' and actions taken as a result. As a manufacturer, safety is a high priority, so I respond immediately with my comments. After reviewing external advice on a potential dispute and a

discussion with our group head of procurement about a contract, text messages start arriving about what's for dinner, who will feed the dogs and a weather forecast update from my skipper for our sailing race on Saturday. I am a mentor to several women at Orora and one of them pops into my office for a chat.

6 pm

I try to leave the office any time from 6pm onwards. I check in with my parents and my husband on the way home. My husband is a barrister and, while we usually discuss 'normal' topics, we have been known to argue over dinner about in-house counsel's right to claim legal privilege! After a family dinner and another dog walk, I try to catch up on work and the schedule for the next day. We then have a call with our daughter in London as she walks to work—a lovely way to end the day. 

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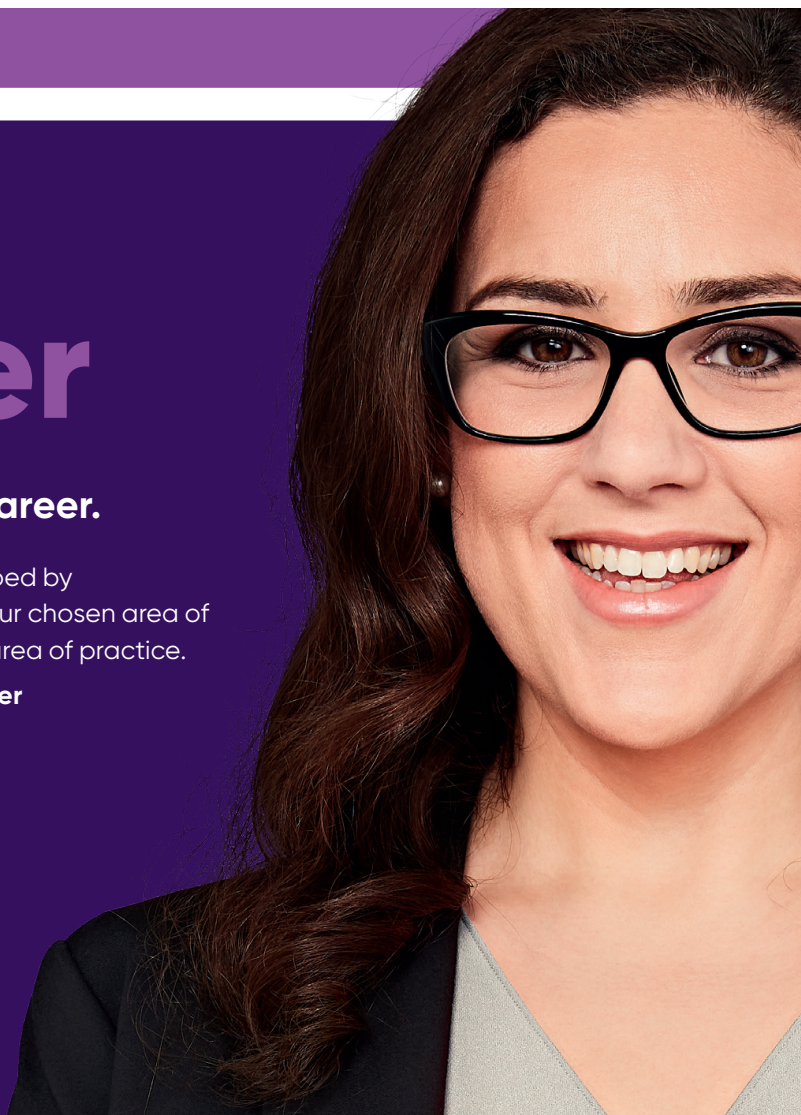
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LEGAL OPERATIONS – THE BIG PICTURE

In order to provide some differing perspectives into the broad theme of Law Department Management, ACC Australia approached four General Counsels' and asked each of them to share their insights across a range of themes including strategic planning, aligning legal and business, measuring success and driving collaboration. The four respondents, each with diverse legal backgrounds and across very different industries were happy to reflect on their own legal department functions and share their experience and lessons learnt.

What are the most important attributes of a well-run legal department?

Richard Dammary (RD): Great lawyers and a committed support team, working together, focussing on their clients' needs, solving problems and not creating them. Thinking end-to-end and always putting the interests of the Group first. Looking out for each other. Having great peripheral vision for what lies just around the corner ... Courage and resilience ... and a sense of humour.

Tanya Myint (TM): It starts with the great people in the team, and I definitely have that within the Penske Legal Department! Our team is close-knit and we centre our success on communication and organisation. At Penske, we often work independently on matters but we make a concerted effort to share knowledge and ideas at all possible opportunities. Because we do this, we often find that efficiencies can be gained from leveraging off previous work product. Organisation is also critically important as this allows us to streamline our work flow and capitalise on efficiencies to meet the fast-paced demands of the business.

Mick Sheehy (MS): The most important attribute of a legal department is its people. The most important attribute of a well-run legal department is that its people are empowered to bring their best to work, to understand what is most valued by the department, its clients and the company, and that they have the knowledge, tools, support and incentives to deliver measurable outcomes consistent with what is valued.

David Lamb (DL): The most important attribute of a well-run legal department is the quality of the legal team that operates in the department and that includes the lawyers, para-legals, legal executives, administrators and personal assistants. Without quality colleagues, a legal department cannot be run well, even with the best intentions. The second most important attribute is effective communication. This applies within the department as well as outside the department with business colleagues, counter-parties and business partners. The best advice and insight in the world are of little value unless they can be communicated effectively.

What does strategic planning look like in your legal department? Do you start with the corporate strategic plan or a "blank sheet"?

RD: We start with being crystal clear about our role in the organisation. We have set this goal as providing top-tier legal services to our clients, aligned to businesses/functions, but independent of them. We want to do this as a strong team and in the most efficient way possible. These aspirations define the core elements of our plan. We operate to a three-year planning horizon. Big change doesn't happen 'between breakfast and morning tea'! Working patiently and methodically on the key dimensions increases the chances of success. And since we don't have the luxury of just working 'on

the business' (by which I mean improving the legal function), we all have to accept that success will take time. Showing progress creates organisation-wide support.

TM: We usually hold strategic planning sessions towards the end of the year. We reflect on the past year, our achievements, areas for improvement and how we want to position ourselves in the following year. In developing our department strategic plan, we certainly consider the corporate strategic plan and how we can support that. From late 2016 to 2017, Penske expanded its presence in the retail market and simultaneously experienced personnel growth. In response to this, we developed and delivered training at each of the new locations focusing on topics relevant to the day-to-day operation of the dealership.

MS: It is a balancing act. The corporate strategy is very important as a framework for ensuring the legal department is best placed to service the company's future needs. However, it is not sufficient. The legal department strategy must also be focused on what work will it seek to do the same, differently or not at all. The legal department must also ask itself not only how will we do tomorrow what we do today more efficiently, but also what value will we produce tomorrow that we don't deliver today. This requires thinking more broadly than simply what is in the corporate strategic plan.

DL: Strategic planning entails contemplating the type, volume and location of legal work that is likely to arise in the next one to five years. We start with our current team and build from there, adding professionals and staff in the fields of expertise and jurisdictions that are needed to support our corporate objectives.

Big change doesn't happen 'between breakfast and morning tea'! Working patiently and methodically on the key dimensions increases the chances of success.

In an era of increasing use of data for decision making and performance management across the corporation, how is the legal department adapting? What are some interesting examples of using data to drive strategy and change behaviours?

RD: All our management decision making is data driven. We understand how every single dollar of our total legal resource is spent, internal and external. We classify it by business/function and by legal practice area. That allows us to be creative in how we build our own capability, as well as how we partner and select external legal support. It also allows our transformation to be self-funding, i.e. greater efficiency funds the next investment. You can't do this without great data. Our next challenge is to enhance the data we have about how the internal legal team adds value to our clients.

TM: We collect data on every matter that is referred to the legal department and we categorise the information meaningfully. This allows us to analyse (1) year-on-year changes in the number of matters referred to the department; (2) from which business divisions they originate; (3) year-on-year changes in external legal spend; and (4) the types of matters referred to the department. Whilst the data allows us to observe trends and plan accordingly, we don't currently use it for performance management as we tend to take a more holistic approach to driving strategy and behaviours.

MS: Legal departments are getting better at recognising that data-driven decision making trumps decisions made by gut-feel. We're also understanding that we don't always need new tools to capture data as some of our existing ones already do it, we just weren't using them optimally. We're also becoming better at understanding that we need to know our baseline if we are to effectively measure change. More work needs to be done on understanding what decisions we might make with different data and therefore what type of data we should prioritise to obtain. One of the more interesting applications is the categorisation of different work types in terms of strategic importance and value and the way in which better resourcing decisions can flow from it.

DL: Data is clearly one of the buzz words for the 21st century. However, data is not the answer but rather a tool that can be used to carry out objectives and implement strategies. We use data to evaluate where each practitioner is spending time with respect to practice areas, business groups and jurisdictions. We then use that data to review our capacity as well as to see whether we can create additional opportunities to provide input. We then realign our focus to address areas that require bolstering or perhaps were overlooked in the past. We also use data to evaluate jobs and tasks and then work to create a more efficient and effective response to our colleagues' needs.

... data is not the answer but rather a tool that can be used to carry out objectives and implement strategies.

How do you see the legal ecosystem evolving to better meet the needs of corporate legal departments? And what further changes do you anticipate?

RD: That's a tough question. Our next evolution is to build a top-notch Legal Operations function. We are well underway on this journey now. It encompasses a range of areas: knowledge management, legal technology, administrative support, reporting and contracts management. There is no shortage of opportunities.

TM: I haven't seen a great shift in the legal ecosystem to better meet the needs of our department. Whilst external service providers are more willing to provide capped fee pricing, virtual/in-person secondments

and hotline style advice, 6-minute billing increments is still a prominent feature. There is greater flexibility from external service providers in non-contentious matters but time-based billing in litigation has a tendency to lead to unpredictability of costs and this continues to challenge us. I am an advocate for greater information sharing amongst the in-house community and that combined with increased use of AI will undoubtedly drive further change.

MS: The legal ecosystem is making great progress helping legal departments with strategic direction, and tools and process improvements to assist legal operations. It is also doing a fabulous job helping legal departments identify lower value and more repetitive work types that can benefit from technology and alternative labour models. I think the next wave of change will evolve from specific point solution tools to better integrated platforms to enable corporate legal departments to better obtain and use technology solutions.

DL: The legal ecosystem is using data more efficiently, which means the ability to use advice and expertise across offices and jurisdictions. This enables outside counsel to better cater to clients and allows us to receive more effective advice in a more cost-efficient manner. I expect this evolution to continue as clients become more demanding and service providers improve at harnessing data and moulding that into useful information for clients.

What initiatives have you undertaken lately to cut legal costs, improve predictability or achieve better outcomes?

RD: This is an ongoing journey. By the way, cutting legal costs and achieving better outcomes need to be the same thing! No-one will thank you for cutting costs but losing cases or doing so at the expense of client service. That is the magic: finding a way to cut costs and *enhance* service and quality simultaneously. I'm proud that we have reduced our legal costs by around forty percent over the past three to four years. However, I am prouder that we have built a fine team, who are collegiate and hard-working. They have great judgement, great values and achieve terrific results

TM: We have directly briefed out to barristers in the past to decrease legal costs. This brought about advantages as counsel was intimately involved in the case and played a strategic role. The ability to sustain this arrangement can be difficult if there are time constraints and the team is being pulled into other directions. We take a proactive approach in working with our insurers on claims which has resulted in early resolution and/or abandonment of the claim. This has involved carefully setting and managing expectations with our insurers and their panel lawyers.

MS: I have undertaken numerous initiatives ranging from automation, AI review, triage, matter and knowledge management and obtaining the right data and metrics. These are all important, however, I still think much of the low hanging fruit sits in the automation of documents, processes and decisions. With all initiatives, the hardest part is behavior and cultural change, which is where we seem to end up deploying the bulk of our effort.

DL: We have recently restructured our team moving expertise, responsibilities and personnel closer to legal matters. This meant restructuring some of the Hong Kong professionals to become part of the China legal team. This ensures that practice expertise and skills are better matched to the underlining business needs.

I am an advocate for greater information sharing amongst the in-house community and that combined with increased use of AI will undoubtedly drive further change.

ACC recently published a Maturity Model for the Operations of a Legal Department to facilitate benchmarking and advancing in maturity in 14 key areas. What are your priorities for legal operations modernisation and why?

RD: It's a great model and I commend it. By the way, don't be tempted to think you need to reach the 'advanced' stage of the model in every domain. That's a trap! It's about being fit-for-purpose. The Woolworths team is progressing on multiple fronts. We are looking to enhance e-Discovery, we are reviewing the Group's contract management system, we are about to make some further changes to our management of external resources, we are looking to enhance information governance, we are working on a new knowledge management strategy and we are building a legal tech strategy. Like the rest of our planning process, we are doing this in a three-year horizon. Why? Because it's where the next phase of our service and costs improvements will come from!

TM: Our immediate priorities are to advance maturity in the areas of compliance and contract management. Face-to-face compliance training intrinsically delivers many benefits; however, it is not sustainable due to resourcing and costs. We are developing online training modules which will provide transparency on a range of different metrics. We are also centralising our key policies and other documentation in the total quality management system. In terms of contract management, we are developing a greater variety of template contracts accompanied with in-built instructions for ease of use. Leveraging off enterprise level platforms will allow the team to increase focus on strategic and higher risk matters.

MS: All of the areas are important and it would be dangerous to prioritise some over others. That said, you must start with strategic planning, so this is critical from the outset. Additionally, no shift in any of the other areas will be successful if you don't understand and invest in how to effectively execute change management.

DL: Our priorities concerning modernisation include trying to create a paper light environment where we use soft filing and facilitate data storage and retrieval in a manner that creates efficient space and enables quick recovery of documents and correspondence on a shared platform. In addition, we are restructuring our office space to create more modern, open and collaborative work spaces. This is being undertaken in conjunction with an overall corporate office renovation that will create more social hubs, breakout rooms, telephone rooms and community space.

What have you undertaken to align legal with business priorities? Or to prevent or reduce disputes that lead to litigation?

RD: We now operate a legal model that aligns senior lawyers to each key business/function, what we call 'business partnering'. By definition, this makes our client's priorities our priorities: we are client demand driven. A close partnering relationship allows the team to negotiate priorities where there are competing demands and limited resources. We adopt a philosophy that there are two reasons only to litigate: either an important point of principle or there is a lot of money (or reputation) at stake. Most other differences of opinion deserve to be resolved commercially if parties are reasonable.

TM: We communicate closely with internal stakeholders to understand their strategy and tailor our work product in view of that objective. I participate in the executive management meeting which helps immensely to understand broader corporate objectives and I relay that information to the team. Our department also hosts monthly meetings with members of the executive team which helps to align objectives on projects, initiatives and management of ongoing matters.

MS: Most legal departments understand the importance of lawyers being closely integrated with their commercial clients and encouraging them to have a deep understanding of business strategy and commercial drivers. A recent example of alignment work that I was involved in was the establishment of a team to identify emerging technologies the business was moving into and the associated new legal issues concerning those technologies. Once identified we began planning how to ensure we would have the right capabilities and expertise to service those future needs.

DL: As mentioned above, we have recently realigned professionals and their practice areas, skill-sets and expertise to various jurisdictions that bring them closer to the business groups in need of legal services. This has led to the expansion of our legal teams in Beijing, Shanghai and Singapore and the recruitment of legal officers in Hong Kong to handle Group-wide issues including intellectual property, marketing, communication and branding. We hope that additional staff at business centres will facilitate a more collaborative approach with the business teams. This, in turn, should lead to a better understanding of business issues that will, hopefully, prevent or reduce disputes that lead to litigation.

... no shift in any of the other areas will be successful if you don't understand and invest in how to effectively execute change management.

There is a lot of buzz these days about Artificial Intelligence, blockchain and smart contracts. Where do you see the most exciting potential offered by emerging technology options and what steps are you undertaking to prepare to leverage new offerings?

RD: We are very keen to leverage AI and decision-making tools to standardise currently manual decision processes and the legal documents that follow them. Lease options renewal is a good example.

TM: The potential to automate some of the less complex but more time consuming tasks associated with the running of the legal department is attractive. Our team is developing work flow processes around the engagement and renewal of dealers. We anticipate that this process could potentially be automated in the future. We have developed a clause bank containing our commonly used clauses which will serve as a useful foundation if we deploy smart contracting strategies in the future.

MS: We shouldn't underestimate the influence that AI and blockchain will have on legal departments but so too will it influence the enterprise more generally. There is a great opportunity for legal departments to take a leadership role and provide our companies value in navigating and implementing these new technologies. There are many exciting applications and one I like to think lawyers might be able to help provide solutions for sooner rather than later is smart contracting and obligation management throughout the lifecycle of a contract.

DL: Technology options are intriguing but many remain in their infancy and are not yet value added initiatives. The standardisation of templates and facilitating quick retrieval and production of more standard documents is something we do and hope to get better at in the future. This applies to more mundane documents such as confidentiality agreements, framework agreements and heads of terms, as well as more complex documents such as shareholders' agreements and complex leasing documents. We continue to revise the system to better our offering and abilities to assist our colleagues. Smart contracts are perhaps the wave of the future but we are some ways away from being able to use that innovation effectively in our day-to-day businesses. In addition, the use of technology to make due diligence reviews more efficient, timely and inexpensive is beginning and, hopefully, will continue in the future. Blockchain will certainly change the approach to due diligence and settlement in a huge number of transactions. It appears that, initially, blockchain will develop internally within global commercial institutions before becoming more widely adopted. However, it is clear that the use of a verifiable, decentralised, public, digital ledger will be a game changer in a whole host of areas ranging from banking, real estate, securities, financing, due diligence reviews, and so on.



... it is clear that the use of a verifiable, decentralised, public, digital ledger will be a game changer in a whole host of areas ranging from banking, real estate, securities, financing, due diligence reviews. . .

How do you measure success in your legal department? What metrics do you wish you had and don't? How do you benchmark to identify opportunities for improvement?

RD: We measure Voice of the Team (team feedback on key dimensions such as leadership, flexibility, resources to do the job, and so on). We are just now implementing the same for Voice of the Client. Happy Team (with the rights skills and professionalism) = Happy Client.

TM: The success of the department has traditionally been subjectively measured. It has been based on feedback from the business and reflection on activity e.g. projects completed, transactions completed, disputes settled. External legal cost is not always a strong indicator as it can fluctuate and is largely driven by claims volume due to reasons not attributable to the department. We would like to release a survey to the business to obtain some metrics on a number of criteria including timeliness, quality, ease of doing business etc. which will serve to provide some benchmarking data for future years.

MS: Success can be measured through many lenses, such as outcomes, speed, materiality, employee engagement and client satisfaction to name a few. Measures should be chosen for two purposes, first, what are the most important measures to enable us to make better decisions about how to operate the legal department and, second, what measures are most important for the company to understand what return on investment it is receiving from its legal team.

DL: We measure the time we spend on each particular business operation, jurisdiction and department. We supplement that with surveys that are performed periodically and post significant transactions. We benchmark ourselves with our previous metrics and our fellow group companies, particularly with respect to billing and transactional efficiency.



In this dynamic environment, change management is an ongoing challenge. What are your most successful change management tactics?

RD: Let's face it, change is hard. If I have learned anything over the past 4 years at Woolies, it's that transformation is messy. It's not linear. And we all make mistakes as we go... I look back and think "Jeez, I wish I hadn't done that". But when you surround yourself with an energetic, diverse and open-minded team, it allows you to move so much faster. Building alignment is key: people want to understand the "why". They want to feel that the hard yards will be worth it in the end. Marking milestones and celebrating successes is critical. Passive resistance is a huge pitfall—it drains the energy of those working to create a better future.

TM: One critical tactic that is employed at Penske is communication and transparency from the leadership team through to all employees as to not only the "what" but the "why" and to err on the side of repetition so that the change becomes a company habit. In line with that, we view the bigger picture in supporting any transaction or dispute. We see our value in identifying areas which may need continued focus even after contracts are executed or disputes resolved. We have provided training, produced summaries, manuals and checklists for the operations team to manage contracts and projects. We also do not shy away from follow-ups and publishing "Legal Reminders" in monthly circulars.

MS: One of the key tricks for change management is to understand 'what's in it for me'. This applies whether you're trying to change the behavior of the lawyer providing the services or the client consuming them. Also, you need to be relentless about making any change lead to a far superior outcome than the status quo, especially if it involves technology. People are far less forgiving of technology flaws than they are of human ones.

DL: Collaboration between business colleagues, legal practitioners and other service providers is the best way to encourage productive change. Not until all are working toward the same goal, will effective change take place. It is not useful for one unit to propel change if it is not adopted by another unit. It is not until all are working in common for mutually beneficial change, will it truly be adopted.

One of the key tricks for change management is to understand 'what's in it for me'.

What are some effective ways to drive knowledge sharing and collaboration in a legal department?

RD: This is far more a cultural challenge than a systems and processes issue. It starts with each lawyer feeling they belong to a single, collegiate community of interest. If people like and trust each other, that's half the battle won! Next, it's about creating a common vision for what we do and why we do it. Woolworths Group's purpose is "Better Together" and we look to give life to that in the Legal Services Group. We deliberately have a pretty flat structure—as few levels as possible—after all, we are all practising lawyers looking to provide the best independent advice we can to our clients. We also use a "two-eyes" approach for major projects being handled internally. This reinforces our shared view that no-one has all the answers.

TM: As we are a small legal team of four, we work independently. Despite this, there is a strong level of knowledge-sharing in the team. We have regular meetings and our central matters register and filing system provides (1) transparency into each other's workload and; (2) access to each other's work product. As a team, we will usually select which external seminars to attend. The person who attends a seminar will provide a brief of the seminar content and key learnings at the next team meeting. If we develop a useful document, we will circulate it to the team for future reference and place it into a precedents folder.

MS: Irrespective of what knowledge management tools or processes you have, the design principles should always be the same. Knowledge sharing needs to be easy: easy to share and easy to find. Searching should be fast and relevant. Great sharers of information should be celebrated and rewarded. Additionally, you should always measure the effectiveness of any current system or tool so you know how well it is functioning and know where improvements are required. Poor knowledge sharing is one of the more wasteful and inefficient areas in our profession.

DL: Collaboration with business units that is championed by younger and perhaps more free-thinking lawyers seems to be the best method for creating beneficial change. The use of technology for sharing information particularly with respect to outside legal opinions, documents and other professional advice and opinions is also an effective way to drive knowledge sharing. ¹

The Association of Corporate Counsel (ACC) has produced the Maturity Model for Legal Department Operation. Legal department leaders are encouraged to use it as a reference tool to benchmark maturity from early to advanced stages across fourteen law department management functions. ACC Australia members are invited to download this resource via the ACC global site.



Richard Dammerly

As the Chief Legal Officer and Company Secretary of Woolworths Limited, Richard brings a wealth of legal and business experience to the role. Richard previously served as a Partner of Minter Ellison Lawyers in the Mergers and Acquisitions Group and this followed senior legal roles with Coles Group Limited, Telstra and Telecom New Zealand. Richard holds degrees in Arts (English) and Law from Monash University, an MBA from the University of Melbourne, and a PhD in history from the University of Cambridge.

Richard holds a position on the Executive Committee of the ACC Australia GC100.



Tanya Myint

Having joined Penske Transportation Group International Pty Ltd upon its inception in the Asia-Pacific region in 2013, Tanya is the group's Head of Legal and Compliance with responsibility for legal, compliance and risk management. Tanya has enjoyed her journey with Penske in developing an acute understanding of the company's business drivers and building a suitably matched team that is commercially minded, pragmatic and well-rounded.

Tanya is a current committee member of the Queensland division of ACC Australia.



David Lamb

A US qualified lawyer, David Lamb has worked in private practice in Chicago and Osaka. Having joined Hongkong Land Limited in 1996, he was later appointed Executive Director and Group Counsel in 2004. There he retains responsibility for following extensive commercial experience from working in Asia and the United States, all legal aspects of the Group, and oversees the functions of Company Secretarial and Legal Services.

David is a current member of the ACC Hong Kong Executive Committee.



Mick Sheehy

A recognised international leader in the field of legal innovation and transformation, Mick Sheehy has been awarded numerous international legal innovation awards. Boasting an extensive commercial and M&A background, he will shortly conclude a fourteen-year career at Telstra where he is currently General Counsel, Finance & Strategy. He is the founder and Chair of Corporate Legal Operations Consortium Australia and is a member of the advisory board to Swinburne Law School.

FOCUSING ON WHAT MATTERS MOST

Three years after a global restructure of its legal function, an independent survey of internal stakeholders revealed 91% considered the legal team as 'valued business partners.' While 96% indicated the team enabled them to do their jobs more effectively. BHP's General Counsel, Caroline Cox, shares her insights on how this was achieved.

In 2014, BHP undertook a global restructure of its legal function. A new vision was created for the team – to be true business partners, with a 'seat at the table' in solving problems and identifying opportunities. Becoming a 'business partner' is a commonly stated goal for in-house teams. However, achieving this aspiration, and gaining (and keeping) a 'seat at the table', is much easier said than done.

At BHP, we have been focusing on three key areas to embed ourselves as true business partners: speaking the language of the business, shifting our mind-set from risk adverse to risk aware, and ongoing development of our team.

Speaking the language of the business

In my former life as a law firm partner, I would regularly say to the lawyers in my team that the first step to delivering excellent strategic advice was to have a deep understanding of the client's business. In an in-house environment, this level of understanding is non-negotiable. To drive this, our lawyers are co-located with the businesses they support, sit on business leadership teams, and get involved in core business processes such as risk assessments. This ensures the team has relevant context, and can provide input in real time.

We have also focussed on ensuring we plan our work and seek to demonstrate our value to the company. This has given us credibility and a common language with the business.

We have taken a number of practical steps to ensure these things are front of mind for the team:

- **Embedding non-lawyer analysts** – we have embedded analysis and improvement experts into our team to drive efficiency gains, as well as assess the dollar value of the work we do.
- **Reserving time for proactive projects** – we aim to spend 25% of our time on continuous improvement projects that streamline our processes, increase the business' self-reliance or ensure we are planning for issues in advance so we can respond quickly and consistently if they arise. By way of example, we introduced a suite of new standard contracts across the Company which achieved an estimated efficiency gain of 7,000 hours annually.
- **Prioritisation** – as we have become more embedded in the business and the external environment has increased in complexity, the demands on our time have increased. As a lean team, we recognised that we needed to be more deliberate in how we allocate our resources and budget. We are currently rolling out a prioritisation tool across our global team that involves all of us identifying the value of various 'buckets' of work by reference to annual business plans and company priorities. This then drives a clear view of where we need to spend our time, what work needs to come out, and where we need to do things differently and more efficiently (e.g. through technology or removing overlap).


Shifting mind-set

I have also been working with the Legal team on taking a more holistic approach to risk. I want us to take into account broader considerations, beyond the 'black-letter' law, including community and regulatory expectations. Therefore, the question for us is not just, "can we do this?" But, "should we do it?" and the law is just one component in answering that question. Taking this approach is critical to BHP for achieving long-term value and sustainability, and has been welcomed by the business.

Developing our people

As part of our restructure in 2014, we took on over thirty new lawyers, many of whom were in the five to ten year post admission experience range. Ensuring we are catering for the ongoing developmental needs of our team is, therefore, a key priority.

Our lawyers continue to develop their skills through broad exposure to the business in a variety of roles, both legal and commercial. In a large organisation like BHP, opportunity can arise in a variety of ways. This includes temporary roles elsewhere in the Legal team (such as on a specific project or providing cover while another member of the team is on leave), a secondment to another part of BHP's business or a secondment outside of BHP. By way of example, we have had lawyers on secondment to Corporate Affairs, Audit and Risk. One of our lawyers also recently completed a six-month secondment with the Department of Prime Minister and Cabinet as part of the Chief Executive Women Program. We advertise these development roles to everyone in the legal team and distribute a quarterly newsletter profiling the roles and benefits of the experience.

We continue to think laterally about the types of opportunities that will build the team's understanding of operational drivers and the interests of various stakeholders critical to our business. This has strengthened the commerciality and breadth of their perspectives and increased team engagement. 

Driving continuous improvement, the right mind-set and ongoing development has positioned us as partners with the business on the issues that matter most to the company. This is an engaging and rewarding role, and one we will certainly be striving to keep.



Caroline Cox

After joining BHP in August 2014, Caroline was appointed Group General Counsel in March 2016. There she leads a team of more than one hundred lawyers across Europe, North and South America, Australia and Asia. Prior to joining BHP, Caroline enjoyed an eleven-year career with Herbert Smith Freehills where she was a Disputes Partner specialising in large cross-border regulatory investigations. Caroline also represented companies in a range of significant public commissions of inquiry, including the Oil for Food Inquiry and the James Hardie Inquiry.

DEVELOPING A HIGHLY ENGAGED LEGAL TEAM

How does engineering, development and legal intersect? REA Group General Counsel & Company Secretary, Sarah Turner and Senior Legal Counsel James Hutchins share how the REA legal function remains agile and innovative within one of Australia's fastest growing digital businesses.

REA Group Ltd operates one of the world's largest property and lifestyle media companies. It is a fast-growing digital business spanning four continents.

From realestate.com.au, realcommercial.com.au and flatmates.com.au in Australia to our platforms in India, Malaysia, Singapore, Indonesia, Hong Kong, Thailand, Macau and the Philippines, people use REA's sites and apps to find a place to rent, buy or share, search for a home loan, find property inspiration and understand the market.

REA is a key player shaping the digital sector in Australia and its legal team needs to be closely aligned to not only the strategy of the Group, but also to the way it works and the values it lives.

In developing new ways of working, the legal team has taken inspiration from the engineering and development teams and has sought to create efficiencies based on innovation and agile ways of working.

Why innovate?

Innovation is about solving problems quickly and efficiently. It's tempting to quickly take onboard the most promising technology to keep up with other in-house teams; however, it's important to consider first what problems need to be solved.

Artificial Intelligence is fascinating and blockchain is a great CPD topic; however, in REA's experience, truly valuable in-house innovation is about finding solutions that fully meet legal needs while enhancing the value of the legal team to the business.

REA's lawyers have set out to transform their team through innovation. On the way, we have learned a lot about what innovation can do to transform the team and its contribution to the broader business.

Why change?

The first step to intelligent innovation is to work out what problems need solving. Working in an industry-leading tech business that has delivered a long list of game changing products using agile principles and a deep commitment to innovation, we were inspired to improve our presence in the business, spend more of our time on things that really matter and help the business grow.

What changes are important?

Understanding what we wanted to achieve as a legal team was a helpful first step, but we wanted to test whether we were right, so we asked a broad focus group, at all levels of seniority across our business, what they thought we did well, didn't do so well and what was confusing them.

We knew that innovation directed at solving challenges for the legal team was only half the answer and change would only be truly useful if it also helped the business meet its priorities.

Consistent themes quickly emerged around needing greater efficiency for frequently asked questions, easier access to legal resources, empowering

the business to achieve their work objectives faster and putting in place infrastructure that made it easier for everyone to access the right tools at the right time.

How do you go deeper?

Once we defined target areas for what we named 'Project Hoover', we needed to prioritise. We identified 'easy wins', chunkier projects and the 'longer burns'.

Our quick wins centred on the things we controlled, such as collecting and analysing workflow data, updating templates and training programs, standardising responses, designing clean guidelines and checklists, making existing resources easier to find on our intranet and delegating appropriate tasks to colleagues outside the legal team.

The chunkier projects generally had a technological aspect to them or relied on input from people outside the team or outside the business. These included refining processes, automating template documents and implementing a digital contract management system.

Finally, there were cultural goals that we knew we couldn't achieve immediately. We wanted to improve the team's brand, engage more openly and visibly with the business and learn from the best talent in the legal and business worlds.

Where did we begin?

After defining the goals, we started prioritising our work by creating 'streams', defining the tasks under each stream and nominating owners for accountability. Consistent with the way our developer squads and engineers work, we knew creating streams and tackling them at the same time would create synergies, foster collaboration and drive engagement.

The stream focuses were:

- **Improve the team** – build the legal brand, learn from the best, seek feedback and respond to opportunities for improvement.
- **Empower and educate** – empower the business with guides, training and efficient processes for engaging with Legal.
- **Build the Claiminator** – create a dynamic resource for marketers to craft leadership claims using current, always up-to-date, market data.
- **Reference Warehouse** – deliver simple legal resources and processes to increase efficiency and leverage knowledge.
- **Digital legal infrastructure** – digitise contract management, guides, contract approvals and training attendance records.

How do you keep track?

With a clear idea of how and what we wanted to do, we had to manage workflow. We had a complex project and heavy workloads.

Taking inspiration from REA's incredible team of software developers, the lawyers chose to use 'agile' software development practices in their workflow management, using an online tool called "Trello".

Trello is an app installed on each lawyer's smartphone and laptop that visualises a shared virtual workflow pinboard. On this board, each lawyer



posts a virtual 'card' for each task, colour coded by work stream. This way all tasks can be viewed by the whole team, moved upwards and downwards depending on progress and allocated between team members.

Incidentally, the team now uses Trello for all of its matter management. On Trello, matters move from the "Pipeline" board (it's on our radar) to "Today" (today's to-do list) to "Legal Complete" (it's with the stakeholder, external counsel or the other side) to "Complete" (it's done) or backwards and forwards as well as between lawyers as the matter progresses.

Trello also gives the general counsel extraordinary visibility over what is going on in the team, where work is allocated and where blockers might exist. Equally, the team has complete visibility over the general counsel's workload, enhancing transparency and team engagement.

What did we achieve?

Through prioritisation and project management, REA's lawyers have undertaken some powerful work to change the team's contribution to the business. Some of the highlights include:

1. The Claiminator. We built the "Claiminator" to tackle the in-house problem of efficient marketing approvals. It's a simple reference source on our intranet that tells marketers what they can say and how they can say it each month, depending on how our apps and sites perform against competitors.

The Claiminator automatically 'sucks in' data from analytics providers such as Nielsen and Omniture and spits out real-time figures. It calculates multiples (e.g. '2.98 times') and averages (e.g. 'averaging over 1 million Australians a day') and logs record performances (e.g. '6.60m in February'). Each claim has its own legally approved source reference or disclaimer that can be copied and pasted into marketing materials.

To create the Claiminator, our lawyers worked with the data services and marketing teams to firstly ingest the data through APIs, pass data through

date-sensitive formulae and seamlessly surface the data into clean marketing copy ready for multi-channel communications. We even created a launch campaign on the intranet, internal screens and other internal channels. Our advice: "Claiminate, don't litigate!"

The result is an evergreen and accessible resource that was used over four hundred times in its first six months, transforming the marketing approvals process, saving an estimated three hundred and fifty hours, reducing risk and increasing compliance.

2. Embedding privacy-by-design. In a world of Cambridge Analytica and a broad regulator focus on data and information, we need everyone, not just the legal team, to focus on caring for personal information entrusted to REA.

The process of embedding 'privacy-by-design' has been a prime example of our 'lo-fi, high-impact' innovation through Project Hoover.

We worked with internal stakeholders to create a one-page checklist guiding the business through the lifecycle of every piece of personal information and detailing how it should be handled by REA at each stage.

Through our changes, the business now has tools to carefully assess privacy issues before they design a new product, implement a new process or system, collect new information or allow a third-party access to personal information.

With very little technology required, and with no external cost, REA's legal team established the infrastructure for a compliant culture. However, embedding a culture is not just about setting up a process. We continually try to lead and support a compliant culture in a variety of ways.

To prepare for the mandatory data breach notification laws, we proactively formed a standby incident response team, drafted and tested a response 'playbook' with escalation and reporting processes carefully planned out, placed 'incident rooms' on standby, drafted template notifications and

created a secure Slack channel for incident team members.

Before the new laws came in, all line-of-business leadership teams were briefed by their in-house lawyer on the scope of the new laws and how REA had prepared for them.

To ensure that communications about the new laws reached the entire business, the legal team created 'explainer' cartoon videos using real world scenarios about how a breach could happen and how to report a breach.

3. Better due diligence. We simplified and personalised the due diligence (DD) process to better understand risk, deal with it maturely and engage efficiently with internal stakeholders and suppliers.

How does it work? The new DD process intuitively 'flexes and shrinks' according to the supplier and what they are supplying—if the supplier is not providing services that influence personal information, why ask them to answer privacy compliance questions?

Communication is now more direct thanks to weekly cross-functional DD 'stand ups': rapid-fire 10-minute catch ups to discuss progress and the key issues affecting suppliers.

Collaborators are now more focused on their professional 'sweet spot': the lawyers talk to the legal issues and the IT security team speaks to security issues. Email chains and 'cc' lists are shorter and there is much less confusion, repetition and process management.

The overall result is a better process for suppliers and greater efficiency for our team and internal stakeholders.

4. Digital contract management. To centralise contract administration and gain insights into utilisation, we decided to 'go digital' on our contract management.

Why did we need this? The business wanted fast reporting on supplier metrics and proactive management of contract renewals. For internal purposes, our team needed a better way to understand what we were working on, how work was allocated and what value we were bringing to the business.

The only way to achieve this was to go digital. However, realising that an off-the-shelf product could not perform as well as a customised one, we collaborated closely with our internal tech support and business improvement colleagues to get the most from our investment. With the help of our in-house tech talent, we were able to build integrations, workflow tools and reporting functionality into the system.

The result is a customised document management system that delivers much greater clarity for the business and insights into how we add value.

5. Fun. One of the perennial challenges of in-house lawyers is to foster a positive and highly engaged dynamic between the "Legal" and the business. While our relationship with the business has always been positive, we decided to 'build the brand' in a range of innovative ways.

One of the most successful examples of this has been our concerted effort to become an integral part of "REAio" – a quarterly festival of innovation at REA where staff work on their passion projects. These 'hack days' allow all employees to invent, test and present their ideas. Our team gets involved by offering to 'legal' every project and every now and then joins a team to bring an invention to life.


Not only is it fun and incredibly inspiring to see what our colleagues can create in three short days, we also get out into the business and speak to people outside our usual leadership team stakeholders. Our keen involvement in a much loved REA tradition shows that we really 'get' and are part of the culture of the business.

Did it work?

In-house innovation is no different from innovation in the outside world. For it to work, it has to improve something. To measure our success in Project Hoover, we measure metrics but we also keep an ear to the ground for the intangibles.

At the end of its first year, Project Hoover produced two stunning metrics proving its value. First, the legal team engagement score was an incredible ninety-seven percent. Second, we estimate that external fees 'saved' equates to \$1 million per year or almost two thousand hours of saved time for our lawyers across the team.

On the intangibles, we truly believe we have changed and we are making a difference. We feel that we are more engaged within and across the business. But the last word must go to the business itself and, who better to speak to the changes than REA Group's Chief Inventor, Nigel Dalton:

Our legal team has busted all the myths that lawyers are an expensive, add-on-at-the-end, ass-covering, tick the boxes business prevention department. Our lawyers are valued members of every squad in the business. 



James Hutchins

Currently Senior Legal Counsel at REA Group, James acts as lead counsel to, and sits on the Leadership Teams of, REA's Media and Content and Consumer Marketing lines-of-business. He is also REA's Australian Privacy Officer and represents the legal team on the REA Risk Council. James is a member of the Regulatory Affairs Council (Australia).



Sarah Turner

As General Counsel and Company Secretary at REA Group Limited, an ASX100 multinational digital advertising company specialising in property, Sarah leads REA's global legal, secretariat and compliance teams. Sarah's current role at REA Group followed previous General Counsel positions at EBOS Group Limited, Symbion Pty Ltd and SMS Management & Technology Limited.

SUCCESSFULLY IMPLEMENTING FLEXIBLE WORK ARRANGEMENTS

The benefits of flexible working arrangements are considerable... increased employee retention, increased engagement, increased productivity and less time wasted. Plus the creation of a team culture that values the individual needs of team members. Salmat's General Counsel, Kathleen Forbes shares how flexible working arrangements at Salmat have proved that flexibility really can work for all.

Starting as General Counsel at Salmat in 2011, one of my initial strategic priorities was balancing the legal team's work priorities and family and carer commitments, with the demands of stakeholders. From personal experience I knew of the considerable benefits of flexible working arrangements. However there were those within management who viewed flexible working arrangements with a level of scepticism and I certainly encountered a significant cultural barrier to working flexibly. Knowing that this was the case, our team faced this challenge head on and, in so doing, has proven that flexibility really can work for all. Today, there is widespread acceptance of flexibility as a key enabler of diversity and inclusion, and a driver of better business outcomes. There is also a better understanding that flexibility leads to higher productivity and is an asset that helps attract and retain top talent.

Technology

There is no doubt that technology is transforming workplaces across the world and Salmat is no different. The most crucial step in our journey was leveraging technology to enhance collaboration and connectivity with our key business clients. Over three years ago, Salmat moved to cloud-based Google G-Suite. Everyone in the Salmat group uses the Google Suite of productivity tools including Google Drive, Google Hangouts, Sheets, Slides and Docs. For the legal team, the move brought about a significant shift in enabling flexible work practices.

Google Hangouts enables us, with the click of a link, to attend meetings no matter where we are. We participate as if we are there in person and also see the faces of the others who are joining remotely from other sites. This makes a huge difference to the feeling of "connection" with key stakeholders—something you can't replicate as well down a phone line.

With all our files stored on Google Drive in the cloud, access is relatively easy from any device, whether its via phone, tablet or laptop. Google Docs allows various stakeholders to work on the same document at the same time. We can share a document mid hangout and edit together with our stakeholders,

making the whole process very efficient, increasing collaboration and helping us build better relationships with our internal clients.

We have also taken advantage of Google Sites to build ourselves an internal legal intranet that is intuitive and user-friendly, consolidating all compliance resources and contractual templates, allowing the business to submit frequently asked questions, and including helpful guides and tips to assist stakeholders in the creation of contracts. This has increased the transfer of knowledge between diverse teams, business lines and regions.

Our ability to access and attend to the usually time consuming administrative tasks that come with corporate life has also greatly improved with Salmat's move to Workday's cloud-based software as its ERP and HR system. Expenses claims are easily uploaded from anywhere, invoices viewed and approved from the phone, leave requests are approved simply and easily, access to team compensation data is comprehensive and our other team HR admin functions can be performed anywhere, at any time, from any device.

Our use of cloud-based technology was further enhanced by the implementation of electronic contract execution software DocuSign. At Salmat, the legal team was often the final approver of contracts and, therefore, by default was left with the task of readying a contract for execution. We saw the need for cloud-based e-signature technology, both from a signor perspective with directors often travelling to various sites and from an administrative and document management perspective. We procured and rolled out DocuSign to simplify the contract execution process across the Salmat Group. The result was a secure, visible contract execution process, which can be both set up and used remotely, leading to a better contracting experience for our clients and an easier experience for the legal team.

We also identified the ability to use DocuSign to further drive process improvements in our HR team—we believed that DocuSign and Workday could provide significant value if utilised together in Salmat's employment contracting process. With over 2,900 employees, many of whom work in



the contact centre business and must be recruited with minimal notice from our clients, the HR team invest significant resources in preparing and issuing individual employment agreements. The Legal team participated in the flagship project to integrate Workday with DocuSign, leading to a technical partnership between the companies and assisted the HR team in employment contract execution. These efforts have resulted in a consistent, professional and electronic approach to making external offers—a significant improvement in efficiency for our contract business that recruits hundreds of agents each year.


There is no doubt that Salmat's cloud-based technology has helped improve the legal team's work/life balance and delivered better outcomes for our team and our business stakeholders. We have flexibility in the "when, where and how" we work, enabling us to get the job done in a manner that satisfies our work/life demands as well as the demands of our stakeholders. In fact, the flexibility we promote has enabled us to delight our stakeholders with increased responsiveness and availability. We can do our best work in a place and time that suits all stakeholders. There are, of course, other similar and substitutable technology solutions that bring similar benefits—in today's corporate life, such solutions are a must to enhance the mobility and connectivity of the workforce generally.

People Commitment

A second crucial element in ensuring that flexible working practices worked successfully for the legal team and its stakeholders involved a focus on people management practices and attitudes—in essence, employee engagement. It's about listening to the needs of your team and finding ways to create an environment that works for them and for the company.

In the Salmat legal team we have an environment where team members are confident in the knowledge that family and carer obligations are a priority, because that is what is important to all team members—three of the four team members work part-time flexible hours, coupled with remote working arrangements, managing work and family/carer commitments. It can be as simple as sending a team member to a mentoring programme designed specifically for parents returning to work after a parental leave career break or fostering part-time hours to ensure the needs of an elderly parent can be met—a small investment can deliver significant returns.

While flexible work was once the more or less exclusive domain of employees with carer responsibilities, today a wider range of employees want to access flexible work arrangements for a greater number of reasons. In any other legal team, the work/life balance could have different motivations—whether sporting commitments, artistic pursuits or community service. The goals are the same—structuring a solution to provide work/life balance, listening to the needs of team members and creating an environment where each is encouraged to thrive.

Our highly valued and engaged team members have the attitude that flexibility goes both ways and they are more than happy to be flexible to support the needs of the business, thus creating a win-win situation for the legal team and the business. 



Kathleen Forbes

Having commenced her legal career with Clayton Utz, Kathleen has enjoyed a lengthy in-house career across a broad range of sectors, including distribution, IT, marketing and defence. Having held the position of General Counsel for the publicly listed Salmat group since 2011, Kathleen has been closely involved in the growth of the organisation and its diverse array of services which now includes national letterbox distribution services, outsourced contact centre services, speech and virtual agent solutions, digital catalogues and email marketing.



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LEGAL OPERATIONS FOR THE SMALLER TEAM

Drawing inspiration from Reebok to Nike via Ford, Jobs and other great trailblazers, Maria Polczynski addresses the challenges associated with legal operations management for the smaller team.

A quarter of a century ago, best practice for running an in-house legal department was encapsulated in the *Reebok Rules*.¹ Nowadays, many of these rules are so universally accepted that they have become clichés: learn the business, get a seat at the table, be a problem solver, don't say 'no', focus on what is important, be proactive and available, input early, give answers, get to the point.²

When discussing how their teams enhance their legal service function, in-house counsel, particularly in smaller teams, often still talk in terms of the Reebok Rules. Yet in the last 10 years, the Reebok Rules have been criticised as insufficient for the modern period:

[the writer] omitted any Rules related to the use and management of outside counsel; said nothing about cost control, nor even whiffed at benchmarks. His rules slight technology (except a side mention of a coffee maker and telephone) and he neglected any mention of either training and knowledge management or the scope of responsibility of the law department.

.... Promulgated during a kinder and gentler era for law departments, ..., the Rules remind us of unhurried lawyers who stick to practicing law, know clients personally, and befriend them with trust and avuncular wisdom.³

I believe we can continue to value the Reebok Rules for the "practice of law", while recognising that they did not target, and so do not (for the most part) address, the "business of law".⁴ It is the business of law that is captured in the new discipline of legal operations management.⁵

Big players' legal operations functions

Three years ago, I found myself at an international roundtable on value in legal services delivery, sitting beside four members of the legal operations leadership team of a global insurer.

This team had massive resources, enabling them to introduce extensive infrastructure for data capture, reporting and management systems and analytics to gain deep insights and demand strong disciplines from their external providers. That level of resourcing made sense when their employer's annual legal spend exceeded the market capitalisation of several ASX100 companies, but how did their strategy translate to my far more modest situation?

The same question arose for many at the 2017 Association of Corporate Counsel Australia National Conference, when we heard from Richard Dammy, the General Counsel of Woolworths, whose legal team were amongst the ACC's 2017 Value Champions. This Australian-based legal transformation case study was on a smaller scale than the global insurer, but still had a budget in the tens of millions of dollars. His team's transformation was multifaceted, but the key elements included:

- installing a new legal management system granular reporting capability
- requiring external legal advisers to adopt standardised invoice practices—as part of an external partnering framework
- recruiting a dedicated legal operations manager.

What these big legal teams have achieved is inspirational and well worth hearing about. Nonetheless, examples on this scale can leave smaller teams (let alone sole in-house counsel) feeling daunted.

Challenges for smaller teams in achieving meaningful legal operations enhancements

The small team's constraints in terms of resources and lack of market leverage are very real—with operational improvements a classic challenge of the "important, not urgent" quadrant of work⁶, reverberating with the refrain "I'm/we're just too busy".

With great empathy for those who repeat this refrain, it is a fair response on any given day or week and sometimes even for a testing month. However over any calendar quarter it signals poor prioritisation or perhaps a lack of the courage needed to pursue a proactive agenda in the face of others' demands.

Sometimes we comfort ourselves by the thought we are performing well in terms of the Reebok Rules. We reflect on the inherently qualitative nature of our legal team's value-add and the good understanding of that by key leaders we work closely with. The smaller the business and legal team is, the more likely these comforts hold truth, but ... what small business has no growth ambitions?

All around us, teams are expected to improve continuously in performance, productivity, quality and speed—particularly the good teams. Without new methods in the legal team, we are simply running ever faster on the hamster wheel.

If you also do what you always did, you'll always get what you always got.
Henry Ford

Footnotes

1. Jack Douglass, Vice President and General Counsel of Reebok International Ltd, *Reebok Rules* ACCA Docket, Spring 1992: <http://www.acc.com/committees/ntic/upload/the-reebok-rules.pdf>. Under Douglass' successor, the Reebok Rules were augmented by the Reebok Litigation Rules, which address legal operations issues, such as external panel firm engagement.
2. The summary sometimes diverts from that of Douglass to reflect modern terminology and the substance of the respective rules, but in the headline language of Douglass they were: Learn the business (Rule 7); Lawyers should attend all key business and staff meetings (Rule 1); Be a problem solver (Rule 12); Eliminate the 'no' word from your vocabulary (Rule 2); Stay focussed on what is really important (Rule 13); Be proactive (Rule 19); Be available (Rule 16); Learn about problems early (Rule 5); Give answers, get to the point (Rule 22).
3. *General Counsel Metrics* - Law Department Management blog – Rees Morrison - https://www.lawdepartmentmanagementblog.com/fifteen_years_1/. The detail of this criticism can be argued to be unjustified as the rules do include material about cost control, for example, Rule 13 – Stay focussed on what is really important (which includes a story about an external lawyer's insensitivity to costs) and Rule 17 Legal work and the Bell curve - not every job requires an "A" effort.
4. The useful distinction between the 'practice of law' and 'business of law' was drawn by Colin Jasper of Jasper Consulting (now Positive Pricing) at the Law Counsel of Australia's World Masters of Law Firm Management Conference in February 2015. Jasper applied the distinction in a private practice context. From the in-house perspective, the practice of law can be seen as the subject matter of the Reebok Rules and the "business of law" is nowadays increasingly called legal operations management.
5. Although several of the Reebok Rules appear to contain the genesis for elements of the legal operations discipline.
6. The Eisenhower Decision Principle—in a decision matrix, popularised in Stephen Covey's *The 7 Habits of Highly Effective People*.

To help smaller teams commit to improving their legal operations without the turbo-charged resources of large teams takes a lot of persistence. Below are some of the challenges, with ideas for a small team response and inspiration from well-known trailblazers.

Challenge #1: Where to start?

It is not a lack of ideas on how to improve delivery of legal services that challenges the smaller team but rather the superabundance of information. It is a job in itself to organise this information to obtain the perspective needed to decide priorities.

Happily, the legal operations industry has mapped its own landscape. For Australian in-house lawyers, the two most comprehensive classifications of legal operations have been developed by:

- **Association of Corporate Counsel's (ACC) Legal Operations maturity model** – that tabulates early-stage, intermediate and advanced indicia for each of the 15 components of legal operations.⁷
- **Corporate Legal Operations Consortium (CLOC)**⁸ – with its distinctive clock-shaped outline of 12 key components of legal operations.⁹

Use one of these outlines to give yourself the vantage point needed to assess your legal department's situation—so you can plan.

Consider also joining at least one of these industry organisations, which represent excellent return on investment.

Challenge #2: Too much to do

Be ambitious in your plans, but realistically so.

One of the great execution traps is to plan too many actions at once. Instead, commit resolutely to a manageable number of achievable objectives within a fixed timeframe. This may be only 1 to 2 in a year. Then, do something specific, persistently, to make them happen. If a roadblock halts one for 4 months, put it on hold and substitute another that can be done in the 4 months, but don't start too many things at once.

This is actually MUCH HARDER in practice than it sounds but is essential for the small team.

I'm as proud of as many of the things we haven't done as the things we have done. Innovation is saying no to a thousand things.
Steve Jobs

Challenge #3: Balancing the plan with capitalising on opportunities

Without stepping back at all from Challenge #2, small legal teams cannot afford to be anything but opportunistic. Meeting challenges #2 and #3 together has two parts.

First, self-made opportunities, through continuous improvement, should be a way of life. If you have already prepared advice on a topic, with a little reworking it could live again as a reusable tool for non-lawyers, a training guide, a news update, a FAQ, and so on. Reusing work already completed maximises impact relative to incremental effort. This can be managed as part of the BAU—without drag on the strategic plan.

Second, an unexpected opportunity from an external provider may help to achieve a goal in the long-term plan ahead of time—and provide an easy win. Therefore, by all means exploit it, if this does not distract you too long from your planned priorities.¹⁰ However, do not respond to providers with their innovations at the expense of your own strategic plan. Stay pro-active. Even freeware comes with an opportunity cost—and what a large team has capacity to absorb in augmentation to their plan may replace the plan in a small team.

Challenge #4: Keeping up with the changing legal marketplace

Keeping track of the modern dynamic legal landscape is next-to-impossible, but happily we don't need to know everything at once—just what is relevant to our plans now. Therefore, identify the specialist sub-set of service you need and the number of providers for that service. Then, approach them to see if they have special offerings for smaller legal teams. Some of them certainly will.

Similar to Challenge #1—use secondary sources to identify trends and categories of new services available to you and the service providers in each. For example, in the legal technology world:

- Thomson Reuters Legal Tech Start-up Landscape
- LawPath's Australian Legal Tech Startup Market Map
- The Legal Geek Start-up Map

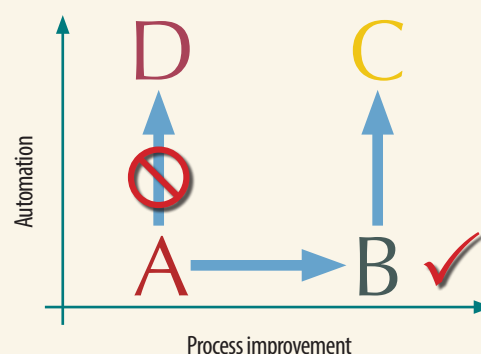
These sources sometimes track more than the pure legal technology space and increasingly BigLaw mimics and develops new model options also—so it is also worth asking specific questions of your traditional providers.

Challenge #5: Innovation and metrics on a \$0 budget

Much 'innovation' involves automating processes. This can be great and provide an immediate improvement but can also be a lost opportunity if not preceded by process improvement.

With reference to the diagram below, a well-funded team may be tempted to improve from starting point A by applying technology. However, point C represents the desired end-state of maximum efficiency. Once at point D, you cannot progress to point C except by going back to A and then through B.

The absence of a technology budget forces the smaller team along the x-axis. The team may not get to point C in the short-term, but will reach its launching point, point B. From there, automating the simpler process will cost less when the opportunity to automate comes.



* This diagram is taken from a keynote presentation on innovation, by Deloitte's at Chilli IQ Law Firm Managing Partners' Conference, Gold Coast, February 2015.

Pending the desired technology support, small teams should consider the existing organisational technology. Much process improvement can be achieved with creative use of systems designed for project management, risk management, customer complaints handling, collections or risk management functions. For matter management, project portfolio management, HR or customer relationship management systems may be of use.

**...engineering is the art of doing for 10
schillings what any fool can do for a pound.**

Duke of Wellington

With scalability less of an issue in small teams, even Excel or Access provide a strong starting point for data capture. From experience, for a team of up to 15, an Excel spreadsheet with the right headings can be stable with up to 3 years' worth of matter management information in it. Clever use of headings and disciplined adherence to procedures can capture the same information that is captured by more specialised systems.¹¹ Admittedly, reporting is much more labour intensive, but the information is there – and can later be translated to a system as it becomes available.

Challenge #6: How to find the time to execute?

If you find legal operations a chore, there will always be great reasons not to get to it. Therefore, find a small bit that intrigues or interests you or a team member and start (or have them start) with that. Even if it is not the most strategically useful action, it will be progressed because of that interest—and something that is of marginal benefit but is completed does more good than something of potentially great benefit that is not completed.

The scope of legal operations is so broad (see Challenge #1) that there must be some component of it that at least intrigues the modern in-house lawyer. Find it—and get started. Try hard to avoid the lawyer's curse of perfectionism. Apply the 80/20 rule. Then, produce a useful draft of the ultimate output into use—say as a pilot in a limited environment—and be willing to learn from the lived experience to improve it on the go. Nowadays, this has the wonderful title of “minimum viable transformation”¹² in IT but sounds like good old-fashioned experimenting on a cost/benefit basis.

**Working hard for something we don't care
about is called stress; Working hard for
something we love is called passion.**

Simon Sinek


Challenge #7: Persistence and patience

The challenge of persisting in the face of all other challenges is perhaps the greatest challenge of all. The returns rarely happen in giant leaps forward. It is little by little that we change, mindful that we have to win hearts and minds to do so. It takes time for the cultural changes required to occur so that legal operational changes are not seen as a withdrawal of the personalised professional service of the trusted adviser and the benefits of the Reebok Rules. Therefore, be patient in terms of realising the benefits.

Challenge #8 – How to get started

**The way to get started is to quit talking and
begin doing.**

Walt Disney

To move beyond the Reebok Rules and get off the ‘too busy’ hamster wheel: Just do it! 

Footnotes

7. The 15 components are: • Change Management • Compliance • Contract Management • eDiscovery • External Resources Management • Financial Management • Information Governance (Records Management) • Internal Resources Management • Intellectual Property Management • Knowledge Management • Metrics and Analytics • Project and Process Management • Strategic Planning and Legal Operations Leadership and • Technology Management – see <https://www.acc.com/vl/public/ProgramMaterial/loader.cfm?csModule=security/getfile&pageid=1463318&recorded=1>
8. CLOC is a US-based industry association open to membership by corporate counsel, which set up its first Australian branch in Melbourne in late 2016. See further <https://cloc.org/>
9. The 12 elements are: • Strategic Planning • Financial Management • Vendor Management • Data Analytics • Technology Support • Legal Support Models • Knowledge Management • Professional Development and Team Building • Communications • Global Data Governance/ Records Management • Litigation Support and • Cross-Functional Alignment. See diagram Slide 4 of CLOC: *Reshaping the Corporate Legal Services Industry presentation slide pack* by Connie Brenton, CEO & Chairman BOD Jeffrey Franke, Leadership Team & BOD October 2017 at <http://www.legalexecutiveinstitute.com/wp-content/uploads/2017/10/1045-am-CLOC-Reshaping-the-Corporate-Legal-Services-Industry.pdf>
10. This may be particularly apt for readily-accessed web-based targeted services run on third-party systems, such as the now well-established Plexus Promotions Wizard app <http://www.plxs.com.au/promotion-wizard>, or for a new model pricing that doesn't need a system, but beware of the investment in time, even for the ‘free’ options.
11. The key information, other than the matter description and responsible internal lawyer, includes business unit serviced, two levels of type of legal work (headline area, such as litigation and type, such as IP), external lawyers and their pricing—both estimate/quotes and invoices, with a ‘variance’ field. A general comments section can be useful – especially for warnings and cross-referencing to other files—and if you are a little more ambitious, a heading to check yes/no as relevant to one or more major organisational initiatives or values is great for specific ‘alignment’ reporting, if your organisation is prone to that.
12. *Minimum Viable transformation* by Jacob Brunn-Jenen and John Hagel in “Business ecosystems come of age” Deloitte University Press <https://www2.deloitte.com/content/dam/Deloitte/co/Documents/strategy/Business%20Transformation.pdf>



Maria Polczynski

Now General Counsel at oOh! Media, Maria previously held senior in-house roles including Head of Group Legal at Bendigo & Adelaide Bank. Maria has a deep understanding of the delivery of legal services and regulatory support and has served as both the national and Sydney Chair of the Financial Services Committee of the Law Council of Australia.

Maria is a current committee member of the New South Wales division of ACC Australia.

LEGAL INNOVATION ON A SHOESTRING: HOW TO INNOVATE ON A BUDGET

Legal teams must cut costs. But how can you innovate with no time and no money? In-house lawyer, independent director and blogger, Verity White shares her tips.

\$ 0. Is this your legal team's software budget?

If it is, you're not alone. The 2017 ACC Trends survey reported that nearly half of legal teams have no money in their budgets for software. The 2017 ACC Australia Benchmarks & Leading Practices Report revealed that sixty percent feel pressure to reduce legal costs and twenty-five percent state there is pressure to minimise cost increases.

Despite this, over seventy-five percent of in-house internal spend is still allocated to lawyer salaries and related costs. In comparison, legal departments are spending a mere four percent on technology and just three percent on improving workflow.

Australian and New Zealand in-house lawyers reported spending approximately half their time on work that is of low importance or low value but that is urgent.

Breaking these survey results down, this means that in-house legal teams are spending one third of their legal budget on work that is of low value or low importance. That is an incredible amount of money!

... in-house legal teams spend one third of their legal budget on work that is low value or of low importance...

ACC Australia 2017 Benchmarks & Leading Practices Report.

Does lack of money and time mean legal teams can't innovate? Not at all! In fact, it can make you smarter, leaner and faster about how you look at innovation.

People not tools

People not tools is a key feature of the Agile Manifesto¹ for software development and it applies to legal innovation also. You need to focus on solving problems for people rather than getting fixated on a particular tool or application.

Tools that don't solve problems won't get used.

It doesn't matter what you have in your tool belt, if tools don't work for the people they are intended to help, they are of no use. When it comes to innovation, you need people with the right attitude. It's not magic tools, but people that will inspire, encourage, demonstrate and innovate to entice others on the innovation journey.

Don't get me wrong, tools are very important and the right tool for the job makes a world of difference. However, when it comes to launching innovations or trying new things, stay away from the shiny, expensive tools and focus on the people to ensure you're solving the right problem.

Get clear on what you need

What problem do you want to solve? What do you *really* need a potential tool to do (versus what would look cool or be nice to have)? Before you ask anyone to build or investigate anything, get it clear in your own team what outcomes you want and the priorities of those specific features. It would be nice to have a tool that spits out a Word Doc after assembly ... but it's not a necessity.

The smaller your must have list, the faster the build and the cheaper the price tag.

Build and test a prototype

Car designers build real-size clay versions of cars and show them to potential drivers to test reactions long before they set up the equipment required to actually construct a car.²

Cars are expensive to make and so too is innovation. Even if you aren't spending money to buy software, you are spending your time to investigate and problem solve. And, while you're investigating, the day-to-day work keeps rolling into your inbox.

A small amount of low code, analogue upfront work to prototype and iron out issues will mean that it will be faster and cheaper to build the real deal. Produce a storyboard of your innovative app or use phone frames with pictures to visualise what you would like a potential app or tool to do.

Don't wait for the perfect tool to start innovating, start drawing out your ideas and workflow so you can test and perfect your prototype tool now.

This may mean using a whiteboard or just pens and paper ... you could create a presentation or just jot things out in a Word document. However your prototype, it will help structure your thoughts on what problem you need your innovation to solve, how you want the user experience to feel and ultimately it will mean less back and forth with IT or other developers as they guide you through (and charge you for!) work you really could do on your own.

Do an audit

Have you ever gone shopping and purchased a new item only to bring it home and realise you already have one (or two!)?

Waste not, want not.

Innovation gets expensive if you're inefficient. While your ideas *might* be groundbreaking and special, it is unlikely that someone, somewhere in the organisation hasn't thought of trying something similar.

Look outside the legal team and make nice with your IT department. There might be spare licences for amazing programs or your IT team might have already built something you can use off the shelf or tweak to solve your problem. You won't know until you ask!

Want to innovate but not sure where to start?

Ask your IT team about software and other applications you may already have access to. Ask them, do we currently have any applications that can ...

- ✓ Automate workflows?
- ✓ Assemble documents?
- ✓ Create webforms?
- ✓ Make quizzes or surveys?
- ✓ Create, edit and manipulate PDFs?

Additionally, ask about spare or more advanced licenses for Microsoft 365 and other enterprise software. If you clearly outline the problem you are trying to solve, you might be surprised with what free programs you uncover that could help the legal team solve problems.

And remember, if you get a 'No, we don't have anything that does that ...' ask around and also ask what's on the future technology road map. You'll find that different departments and different teams often have access to different programs.

How to talk to your IT department

IT departments are interesting and delicate. Depending on how motivated your IT department is, they can be a fantastic ally in your innovation aims. Speak with IT—take them out for coffee or lunch in exchange for answers to your many questions.

FUNCTIONAL REQUIREMENTS These are questions for yourself, your team and the end users.	NON-FUNCTIONAL REQUIREMENTS These are questions for yourself or for the IT team.
What do we want the technology or tool to actually do?	What does your organisation need for security and system compatibility?
What problem are we trying to solve?	Where can we store data? Specifically ask about Amazon Web Servers—lots of apps use AWS to store data, which IT departments don't like.
Who is this tool for?	Do we have a Data Classification Policy? This will help you decide on what kind of information you can put through what tools.

Use what you have

There are lots of functions in tools we use every day that we don't yet use in full. While your team might have a \$0 software budget, it's almost guaranteed that you have access to Word processing software and other company-wide applications.

I have been a big fan of DocuSign—an electronic signature application—for a long time. Despite having an 'all you can eat' type licence and investing in DocuSign's Australian entity, the Telstra legal team and wider company previously made only minor use of this powerful tool until champions throughout the company began to encourage and demonstrate its myriad of uses.

To increase uptake of this productivity powerhouse, the Automation stream of the Telstra Legal Innovation Forum championed DocuSign throughout the Legal team. Over the past eighteen months, we have held one-on-one coaching sessions as well as intensive training for a larger group of AutoMates (our team name for automation savvy lawyers!). We are now making full use of the amazing features of DocuSign to automate Settlement Agreements, Novation Agreements, Consent and Release Forms, and documents and processes.

Just as paying for a gym membership doesn't make you fit, investing in tech doesn't make you innovative. Innovation is an attitude, not an app.

Innovation is an attitude, not an app.

We can't afford not to innovate

With more and more studies showing collaboration and innovation helps increase productivity growth (in one Australian study, by 4.1 percentage points³), the real question for legal teams is, can you afford not to invest time, energy and (gasp) money into innovation?

NO CASH TO SPLASH	SOME CASH TO SPARE	CASH TO BURN
Attend every free CPD session you can on innovation (Check out the ACC member events https://acla.acc.com/events) and set up a shared space for innovation ideas. Just having time to brainstorm innovations and discuss improvements can create amazing (cheap) ideas.	Your budget needs to stretch so make use of multi-purpose applications that help with automating workflow, minimising risk and empowering clients such as electronic signature platforms (e.g. DocuSign).	Just because you're cashed up, doesn't mean you should go straight to the checkout on the latest greatest tool. Consider spending your budget on in-house training on innovation to increase the innovation mindset in your legal team.
Learn every feature of Microsoft Word—there's lots of included features you can use to create innovative contracts, advice and guidelines.	Speak with colleagues in other organisations and at CPD events to see what kinds of applications they are using or testing. Learn from their mistakes if possible and use the connections they have developed to negotiate on pricing.	Invest in greater features of tools you know and love—such as Office 365 or DocuSign—to increase collaboration and innovation with these off the shelf but somewhat expensive tools.
Use the checklists above to talk to your IT team about current applications and programs you could use or re-purpose to solve your problems.	With your list of problems to solve and your checklist of IT requirements, contact at least three different providers and ask them to show you how their tool might solve your problems whilst meeting IT's requirements.	Solve a big, hairy problem. Once you identify a problem that needs solving and you have done the basic work to sketch out innovations, think big to have an impact. It might cost but the value return could be huge.

Stretchy investment pieces

Once you are clear on what you need, invest your shoestring budget where it will get you the most bang for your buck and stretch with you as your skills increase. This means looking for multi-skilled applications such as DocuSign that you can add functionality to as you need it.

Don't try to buy a piece of software to solve just one problem (unless the problem is big enough!). Think about what kind of return on investment your company expects from technology.

Negotiate and ask for added value

This might not be news but generally you should never accept the first price you're offered. There are lots of reasons and levers you can use to negotiate down pricing, especially if your company is large or you think there is a large scope to replicate successful innovations.

You could offer to participate as a case study or do a testimonial for a discount. Alternatively, if there is no room to move on pricing, ask the

provider to include training, templates, maintenance, monthly check-ins, ad hoc trouble shooting or whatever other services your team would find useful depending on your priorities.

A small-time investment from the provider can work wonders for increasing take up of innovation in your organisation.


Do not accept just one rose

Just like singles on dating shows, often legal teams fall in love with one provider or one application and fail to shop around or seek out more quotes. While many apps are unique in different features, there is a lot of overlap between offerings. Speak to several players and create some competitive tension.

Not only are you learning more about other potential functions and benefits that could solve your team's problem, with more information you can ask more intelligent questions. When you are informed and market savvy, you are better armed to spot a good deal.

Free or low-cost innovations you can do on a shoestring budget				
INNOVATION IDEA	TOOL	HOW	SKILL LEVEL	COST
Easy to read, likeable contracts	Microsoft Word (Review tools, templates)	Structure your contracts for productivity. Improve your formatting game with templates—free and online.	Basic – Mid	Included in basic licence
Reduce that low value work with easy to follow guides	Microsoft Word (SmartArt)	Create clickable infographic and flowcharts with SmartArt and hyperlinks to other resources.	Mid	Included in basic licence
Secured template agreements	Microsoft Word (Developer Mode form fields)	Locked down contracts with only certain form fields available for editing.	Mid – Advanced	Included in basic licence
Feedback from clients and other lawyers	Google Forms	Develop quick and easy surveys to test innovation ideas and gather feedback on work. Be aware of data security and information classification though.	Basic	Free
Guided work flows and approval processes	DocuSign (Templates)	Control document workflows so contracts are quickly signed and go through appropriate approvals.	Basic – Mid	Included in basic licence

Innovation on a shoestring

Remember you are never 'done' with innovation. Make sure you 'infuse every initiative' with an innovation lens to ensure your legal team is continually adding value to your business. When you see results from low-code innovation, you can develop the business case to increase your budget for new innovative tools. 



Verity White

Currently at Telstra in the Consumer and Small Business team, Verity is an enthusiastic member of Telstra's Legal Innovation Forum in the Automation team. Verity is an Executive Director with the Communication Research Institute and Secretary at Melbourne social enterprise STREAT Ltd.

Find Verity on Instagram @checklistlegal or her blog www.checklistlegal.com where she explores using digital thinking to revamp and simplify contract processes and documents.

Footnotes

- 1. agilemanifesto.org/, accessed 25 April 2018.
- 2. www.howacarworks.com/technology/how-cars-are-designed.
- 3. www.rba.gov.au/publications/confs/2015/pdf/palangkaraya-spurling-webster.pdf?utm_source=eNewsletter&utm_campaign=9886ae8f0a-EMAIL_CAMPAIGN_2018_02_08&utm_medium=email&utm_term=0_e1fc69b194-9886ae8f0a-85629525
- 4. Sacha Kirk and Richard Stock, 'Innovative KPIs are critical to secure greater value from law firms', Australian Corporate Counsel Volume 27, Issue 3 – Spring 2017, <https://acla.acc.com/documents/item/1910>

THE EMERGENCE AND GROWTH OF IN-HOUSE LEGAL TEAMS

Chief Counsel at the Commonwealth Department of Human Services, Annette Musolino, traces her own in-house journey and reflects on the increasing influence of the in-house legal function.

Early in my legal career, I was offered an in-house role in a large bank. As a law student at the ANU, I was aware that the best administrative and constitutional law students joined the Commonwealth Attorney-General's Department. Beyond that, in-house practice was not something I had previously considered as I had followed the traditional path into private practice.

A friend that I consulted about the offer asked, "Will you still be a lawyer?" It was the mid-1990s and the in-house legal market was still emerging. My friend's response reflected the lack of understanding of in-house legal roles at that time.

Since then, the in-house legal market in Australia has flourished and matured, including in government. The number of Commonwealth entities with in-house legal teams has grown, with in-house legal teams undertaking just over 50% of work in the Commonwealth legal services market. These teams have become more structured, with deeply specialised practice areas. The use of sophisticated legal practice management tools has increased and networks for in-house legal professionals have emerged.

A report published in 2016 by the Secretary of the Attorney-General's Department (following his review of Commonwealth legal services) described a series of good practice indicia for in-house government legal teams. These included clarity on roles and responsibilities, governance arrangements linking legal and the executive, a focus on supporting the organisation to meet statutory obligations and manage legal risk, appropriate legal practice tools (such as case management and legal reference tools), a tailored approach to measuring value and performance, structures to support independent legal advice and guard legal professional privilege, and quality assurance processes and a strategic approach to developing legal capacity. As in-house legal teams continue to evolve, these indicia provide an excellent measure against which in-house government legal teams can benchmark, as they seek quality and efficiency improvements.

The growth and increased professionalism of this market is driving a more unified approach to strategic issues affecting Commonwealth legal services. This includes better collaboration and sharing of resources and improved career pathing and inter-agency mobility for lawyers.

Nevertheless, misconceptions about in-house practices persist. When I talk to lawyers who are considering a move from private practice, they voice the same concerns. They worry that they will de-skill and become a post-box between the client and the external lawyer, that a move in-house will limit future career and remuneration opportunities, that "you can never go back to private practice" and that in-house is the move you make as a pre-cursor to retirement.

My experience—in the private, corporate and government sectors—belies these myths. In-house legal teams are increasingly leading the way in innovative legal practice. This is driven by the need to keep up with the often ambitious transformation agendas of their business clients. It is also driven by the need to constantly increase efficiencies and provide value to the organisation. In the current budgetary environment, and against a highly contestable landscape, in-house legal teams without a strong service focus will not survive.

For lawyers motivated by challenging and interesting work, the modern in-house environment is hard to beat. In-house lawyers are often at the forefront of transformation and reform programmes. They are involved in

large procurements and business and system re-design, which invariably involves complex statutory interpretation, advising on privacy and secrecy laws and driving law reform. This develops not only their legal skills, but also their commercial and business capabilities.

In-house lawyers frequently help manage political and reputational sensitivities. This experience combined with the breadth and variety of work available and the opportunity to work in multi-disciplinary teams equips in-house lawyers with very broad skills. In addition to increasing their competitiveness in the job market, this experience can pave the way for alternative careers, with many in-house lawyers moving sideways and upwards into roles in business, governance or regulatory roles.

Law firms and in-house teams are increasingly forming joint teams and using staff exchanges and secondments to provide the right capability and capacity to meet clients' needs. All of this has translated into much greater mobility between law firms and in-house legal teams.

Experience in both sectors enhances a lawyer's competitiveness for partnership in a firm or for general counsel roles. Experience as an external provider better positions a general counsel to successfully deliver on the role of informed purchaser of legal services. Conversely, an appreciation of the in-house environment is a significant advantage for a partner pitching for in-house work. Lawyers whose careers have been limited to only private, government or corporate practice will struggle to compete with those with a more varied career.

There are good in-house teams and bad ones. The good ones are responsive to a changing environment, have a strong quality and service ethic, are focused on the well-being and development of their people and have a strong reputation within the organisation. Those qualities will ensure that in-house legal teams continue to evolve and flourish, and to drive positive change in the broader legal services market. 



Annette Musolino

Annette Musolino is the Chief Counsel at the Commonwealth Department of Human Services. The Department delivers payments and services under the Medicare, Centrelink and Child Support programmes. Annette leads a large team operating across Australia. Her background includes private practice, in-house corporate and regulatory roles. Annette has a special interest in change management and the evolving role of lawyers within government.

Annette was named Government Lawyer of the Year at the 2017 In-house Lawyer Awards.

THE RISE OF BIG DATA

Founder and CEO of Xakia, Jodie Baker discusses the concept of Data-Driven leadership in a data-rich world.

The rise of Big Data has ushered in an era of data-driven leadership. Data—both big and small—is the new language of corporate boardrooms and CEOs are demanding fluency from all members of their leadership teams, including General Counsel and their Legal Departments.

In a 2016 global survey by McKinsey & Company, thirty-eight percent of responding CEOs indicated that they were leading data and analytics initiatives in their companies. A more recent (August 2017) survey by KPMG found that CEOs worldwide rated “becoming data-driven” as a top-three priority.

Even moderately advanced legal departments likely have access to large quantities of data and scores of spreadsheets. Taking it to the next level, however, involves developing the skills and identifying effective resources that can help, as *The Economist* described, “extract the nuggets of gold hidden under the mountains of data.”

Legal operations or Legal Department management have existed for decades in some circles; however, it should be no surprise that its more recent and far more significant growth trajectory coincides closely with the rise of data-driven organisations. The ACC features its own popular section dedicated to legal operations and the Corporate Legal Operations Consortium has grown from an informal group of forty like-minded professionals in 2009 to nearly one thousand, three hundred members representing thirty-seven countries on five continents.

The size and scope of legal operations functions remain widely varied. However, no matter where your department might fall on that continuum, adopting a legal operations mindset can help you address two critical questions: What do CEOs want from the legal department and what do CEOs want from data?

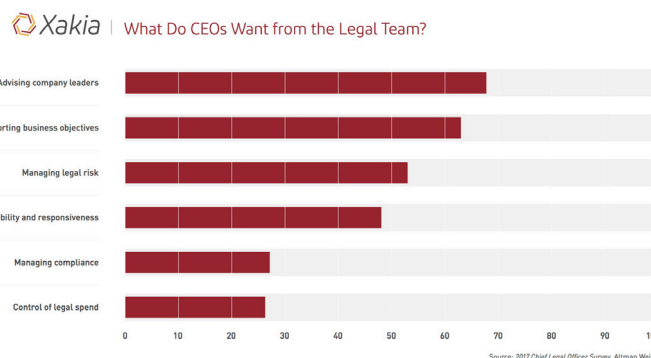
What CEOs Want from the Legal Department

While every situation is influenced by unique factors, when it comes to Legal Department performance, research by legal consulting firm Altman Weil provides valuable insights about what really matters to CEOs and corporate board members. In its 2017 Chief Legal Officer survey, Altman Weil asked respondents to rank Legal Department activities from most valuable to least valuable as seen by the CEO and board. Top priorities emerged as follows:

1. Advising company leaders (70.2 percent).
2. Supporting business objectives (67.8 percent).
3. Managing legal risk (56.4 percent).
4. Offering availability and responsiveness (51.2 percent).
5. Controlling legal spend (28.9 percent).

Responses to the Altman Weil survey tracked closely with responses to a 2016 survey conducted by New York Stock Exchange Governance Services. In this study, when U.S. corporate directors and executive officers were asked what GC functions are expected to add the most value to the board in 2020, 79 percent of respondents cited, “acting as an adviser to the board” and 73 percent said, “acting as an adviser to the CEO.”

As CEOs and boards continue to advance decision making that is informed by rigorous data analysis, Legal Departments have a tremendous opportunity to harness their own data and deliver metrics that illustrate performance, value and future risks and opportunities.



What CEOs Want from Data

Perhaps the biggest challenge for legal departments that want to seize the data is determining which metrics are most valuable and identifying best practices for consistent collection and reporting. Proactively engaging with your CEO on this topic will serve as a strong signal that you ‘get it’. However, you should be prepared for those exploratory discussions by having a basic understanding of what the CEO’s needs might be. Here is the opportunity to present options leveraging data you already have and already know, and then to refine your reporting based on further guidance from the CEO.

What’s the least complex model that would improve our performance?

According to McKinsey & Company, one key factor is focusing on developing reporting that helps predict and optimise business outcomes. While large datasets can make this overwhelming at the outset, McKinsey suggests starting with and frequently repeating the mantra, “What’s the least complex model that would improve our performance?” Approaching data challenges with this perspective can help minimise analysis paralysis and keep you and your team focused on choosing the most useful data and identifying the best technology tools for the job. Start by identifying a business opportunity and then determine how data can inform decisions that can ultimately lead to improved performance.

When it’s time to push up to the boardroom table, your data must be on-point and easily digestible. According to *Inc.* magazine, senior executives rely on data that is normalised, predictive and comprehensive.

While data normalisation has a specific technical meaning in database design (eliminating redundancies and anomalies), *Inc.* uses ‘normalised’ more to describe data that is most relevant and streamlined. Think dashboard rather than data dump.

Predictive data was once almost exclusively the domain of sales and marketing; however, many forward-looking Legal Departments are now using it for risk management, early case assessments, budgeting and a host of other applications that drive effectiveness and efficiency in conjunction with other legal operations improvements. Data modelling for predictive

analytics can be complex and intimidating; however, an experienced technology partner can help you work through how to get started and create a simple foundation that will be scalable for future initiatives.

CEOs who want a comprehensive view aim to combine top-level legal department analysis with data from other departments. Imagine, for example, how powerful legal risk analysis could be when combined with product development and customer satisfaction metrics. It is important to understand that from the CEO's perspective, legal department data will be used in a broader context with company-wide data. Legal department leaders will want to examine their specific data at a more granular level, but they must also identify those key metrics that CEOs and directors can fit together with other information from around the company to help inform big picture strategy for both risk and opportunity.

Raising the law department's profile

The challenge is not necessarily that legal doesn't have valuable information, it's that they are not measuring and reporting it.

An in-house community benchmarking study by the GC350 found that forty-four percent of respondents said they don't have a high profile within their companies and that their top tactic for sharing their accomplishments is "attending other team's meetings." In the same survey, seventy-seven percent of global companies said they don't measure the value delivered to the business by the legal department. The challenge is not necessarily that Legal doesn't have valuable information, it's that they are not measuring and reporting it.

That said, a number of industry leaders are having impressive success using data to inform decisions and operate more efficiently and effectively. This is especially true for companies with large litigation dockets; however, there are numerous examples of companies combining legal project management and data analysis across the breadth of their operations, not just in litigation.

Since 2012, the ACC has recognised the best of the best with its annual Value Champions award. This is not a popularity contest by any stretch. It involves a rigorous application process and a multistep review by a panel of highly qualified judges. The ACC receives dozens of entries each year and awards ten to twelve companies who have been the most innovative at "cutting costs, increasing predictability and achieving better outcomes."

Last year, for example, Australia's Telstra earned the Value Champion designation. Under the leadership of General Counsel Mick Sheehy, the telecommunications company has been working on legal department operational improvements since 2013, according to the ACC's summary of the award winners. What started as LPM innovation around transactional improvements at a local level was 'supercharged' through design thinking and collaboration with Telstra outside counsel from Herbert Smith Freehills. The company focused on improving, among other things, the time its in-house lawyers were spending on internal meetings, time spent gathering and reporting information for internal communications and streamlining the creation of non-disclosure agreements.

With significant progress being made, Sheehy told the ACC that his department will now be looking at "bigger and bolder" initiatives, such as developing a triage system, establishing key data and metrics and workflow automation.

Among the inaugural winners of the Value Champion award in 2012 was global pharmaceuticals giant GlaxoSmithKline (GSK). While GSK's reported success was impressive in scope, one key metric stood out. Through an initiative that began in 2008 under the leadership of General Counsel Dan Troy and head of U.S. litigation Bob Harchut, GSK legal partnered with IT, finance and procurement to make significant changes in how the company

was paying for legal services. The challenge was to move all outside counsel assignments throughout the world to value-based fees whenever feasible.

According to the ACC, Harchut hired two financial analysts—not lawyers—to help the department establish and track metrics and monitor success. The results by 2012? Well, those speak for themselves. GSK's external spend with value-based fees increased from 3 percent to 68 percent and the company reported estimated savings of \$21 million.

If you feel like your department's challenges may be too big, consider insurance giant AIG, a 2014 Value Champion. According to the ACC, the company works with more than 1,200 individual law firms on behalf of ninety million clients in ninety countries. In 2012, AIG created a Legal Operations Center (LOC) that included a Process & Information Excellence Team. The team developed in-depth legal analytics capabilities and systems backed by 'self-service' dashboards that allowed users to create custom reports and compare law firms across similar matters using real-time data, according to the ACC.

Similar to GSK, the size and scope of AIG's initiative is impressive and game-changing. The company estimates that the LOC's work resulted in savings of more than \$200 million in 2014 alone.

There is an obvious common thread that runs through virtually every Value Champion story. Winners identified innovative ways—some simple, some highly complex—to harness the power of their data and develop metrics through which improvements, no matter how incremental, can be measured and reported.

Make your case

Data-driven decision making is not a passing fad. CEOs will continue to put downward pressure on all departments to step up their game and demonstrate how they are innovating and delivering value in measurable ways.

Lawyers and legal departments thrive on evidence and it's time for you to be your strongest advocate—to collect your data and make your case in a way that is easy for time-crunched executives to understand.

Identifying an industry partner can be a great place to start or to help accelerate progress you may already be making. Find a partner with the consultative expertise to help you develop a strategy and the technology platform to help you execute it.

Your CEO will thank you. **a**



Jodie Baker

An innovator, entrepreneur and business builder, Jodie combines her legal and financial services background to focus on building tools to manage the business of law. She is the Managing Director of Xakia Technologies, an automated data capture and matter management software, purpose built for in-house corporate legal teams. Jodie is also Deputy Chair of the Australian Legal Technology Association, dedicated to providing a community to Australian legal technology companies for information sharing, collaboration and building the presence of Australian legal technology on the global stage.

PRACTICAL ADVICE FOR INTERNALLY INVESTIGATING HIGH VISIBILITY EMPLOYEES AND CONTRACTORS

An internal investigation into a personnel related issue is always difficult, with multiple variables potentially complicating the matter further. This article will examine how to investigate high-level employees by providing three examples and how each might be investigated to protect the company and its values.

The threshold determination for conducting a successful investigation is to identify the need for an investigation and to properly determine its scope. Equally important, these determinations must be made promptly, although the full scope should be periodically assessed throughout the investigation to ensure key facts and issues that arise from the investigation are not overlooked in pursuit of the original scope. In other words, the scope of an investigation should be focused but also fluid when necessary.

While there is no perfect definition of a trigger for an investigation, employers should be vigilant and cautious when confronted with the potential need for an investigation. It may be necessary to conduct an investigation even if no one has formally or informally requested one, or if the requesting party is a third party (or anonymous). In fact, it may be necessary to conduct an investigation even when the party who initiates a potential investigation subsequently opposes the investigation. Employee relations and human resources professionals are all too familiar with managers and other stakeholders in the organisation declining to bring something to their attention because the complaining employee was “just venting” or “speaking only as a friend”.

While it can be helpful to have a formal complaint/reporting process, that process cannot be a crutch. It may be necessary to conduct an investigation even when employees (or others) bound by that process have not followed it or refuse to follow it. Finally, and perhaps most importantly, it may be necessary to conduct an investigation even when the relevant facts appear clear cut at first.

It is crucial for anyone identifying the need for an investigation, determining the scope of the investigation and/or conducting the investigation to put aside all preconceived notions about the facts and/or players involved. Determinations that are—or may reasonably appear to have been—based upon the reputation, work performance and/or apparent (but uninvestigated) veracity or reasonableness of the allegations may be difficult to defend.

... it should be a balancing act in which reducing institutional disruption is weighed against ensuring the situation is resolved with a sufficient and legally defensible inquiry.

In terms of determining the proper scope of an investigation, the report, complaint or other source creating the need for an investigation will be paramount. While there is always institutional value to narrowing the scope of an investigation, it should be a balancing act in which reducing institutional disruption is weighed against ensuring the situation is resolved with a sufficient and legally defensible inquiry.

Hypothetical #1

An employee on a performance improvement plan has been scheduled for a termination meeting. After being notified of the meeting, but not its purpose, the employee contacts his supervisor and the entity's Ethics Point hotline to report sexual harassment by a colleague directed toward younger, female subordinates. None of the women have previously complained and the employee has long harbored a grudge against his colleague.

This hypothetical raises issues regarding both the credibility of the complaint and the ever-present concern of the “preemptive strike” by an employee facing termination. Most employees aren’t surprised when they are fired. They can often predict when termination of employment is imminent and take action to protect themselves—either by managing their performance to meet expectations at crucial moments or unethically attempting to protect themselves with a complaint.

In this hypothetical, it is supposed that the employer has no outside information suggesting the alleged sexual harassment occurred. The company has reason to believe that the complainant is motivated both by his impending termination and his personal feelings about the subject of the complaint. In a situation like this, it would be tempting to discount the allegations. However, even if completely fabricated, this presents a significant institutional risk in the future, especially if more credible complaints arise. If additional complaints arise and are corroborated by an investigation, the company will be faced with difficult questions about why it did not conduct a better initial investigation. Thus, it is clear why a proper investigation of even an obvious preemptive strike is valuable.

While the preemptive strike is a concern, it is often not as problematic as it appears. If the company can show that the termination decision was made before the complaint, then the seemingly retaliatory timing becomes much less worrisome. As a corollary, there is no reason to delay or change the termination decision. Employers are always advised to treat a complainant exactly as they would be treated had they not made a complaint. In this situation, while an investigation of the allegations is appropriate, the scope should be relatively clear and there is no need to allow the pending investigation to muddy the waters of the termination.



Handling whistleblowers complaints

Another significant concern for in-house counsel is whistleblowing, both in terms of investigating and resolving the legitimate concerns raised (if any) and dealing with the potential claim of retaliation against the whistleblower. Additionally, data exists suggesting that whistleblowing is on the rise. For example, the United States Securities and Exchange Commission received 4,200 tips related to the Dodd-Frank Act in the 2016 fiscal year, a forty-two percent increase since 2012.

Internal compliance procedures are key to ensuring a reduced risk of whistleblowing by preventing regulatory violations or the perception that violations have occurred. While the specifics of an internal compliance programme will differ from industry to industry, based upon the applicable regulations, creating a culture of compliance can, and should, start in-house. While it might seem counterintuitive to some employers at first glance, the goal should be to pursue something like an initiative for internal whistleblowing. While the bad apples of opportunistic plaintiffs and their attorneys often receive the attention, whistleblowers who act in good faith—even if misguided—will be helped by having internal avenues to direct their concerns. If an employee feels he or she has compliance concerns that, depending on the company, can have serious consequences for the general public, but that employee has no option or has not been educated about the internal compliance options, then it is easy to understand how and why the employee resorts to external whistleblowing.

In addition to reviewing the substantive compliance concerns raised, companies should make it a priority to protect whistleblowers from retaliation. Anti-retaliation rules should be clear, available to all employees and actively communicated in regularly scheduled training. If and when an employee raises a compliance concern, the prohibition against retaliation should be specifically communicated to the employee in a documented form, along with a request that the employee inform the appropriate individuals if he or she believes retaliation has occurred.

Finally, whistleblowers may request (or demand) to be kept aware of the progress of the investigation and its outcome. While it is advisable to provide a non-anonymous complainant with information about the progress of the investigation, generally whistleblower complaints will often differ from, for example, a complaint of harassment or discrimination in which the complainant is necessarily involved. Additionally, there is typically no requirement to provide a complainant with a report of the investigation. If processes or practices are changed because of a compliance investigation, it will often be necessary for the complainant to be aware of this, particularly if the complainant is a stakeholder who will have responsibility for carrying out remedial action or new policies.

Conducting the investigation

Conducting a thorough and prompt investigation is crucial in response to any complaint, but unusual issues may arise with “high intensity” employees.

For example, the question of whether to retain outside counsel or other investigators to handle the investigation may arise. In situations in which “C-suite” or other high-level executives may be implicated in the investigation, it is advisable to shield in-house counsel from involvement due to prior relationships with the parties.

The use of *Upjohn* warnings is a key tool for maintaining attorney-client privilege—to the extent the employer wishes to maintain privilege. Decided in 1981, *Upjohn Co. v United States* established what has become known as the corporate *Miranda* warning. Like *Miranda*, it allows the company to obtain relevant information that it needs to conduct an investigation after providing the subject of an interview with an explanation of the purpose of the interview and obtaining consent to continue. To affect a proper *Upjohn* warning, the in-house lawyer should inform the employee that she only represents the company and that she specifically does not represent the employee. The employee should understand that the purpose of the meeting or interview is to obtain information relevant to an investigation. The employee should be specifically informed that—because the attorney only represents the company and not the employee—there is no attorney-client privilege between them. As a result, the company may choose—as its sole option—to disclose information received from the employee to a third party.

While deceptively simple, the risks of a poor *Upjohn* warning can be serious. In a 2009 opinion, a federal district judge strongly criticised the ethics of attorneys who handled an interview of Broadcom CFO William Reuhle. Broadcom was being investigated for its stock option practices. While the attorneys represented Broadcom, they also represented Reuhle and the company in similar civil lawsuits in which Reuhle was an individual defendant. During an interview, the notes of which were later released to federal prosecutors, Reuhle was allegedly told that the interview was conducted “on behalf of Broadcom”, which the attorneys apparently intended to mean that the interview related to the criminal defense of Broadcom. Despite that vague statement, Reuhle had good reason to believe the attorneys were interviewing him in connection with their representation of him due to the simultaneous representation of him on related civil matters.

The Broadcom example also highlights situations in which even a perfect *Upjohn* warning will be insufficient. When an attorney is representing both the company and an individual employee, a joint representation agreement containing a conflict waiver is crucial. However, there will be situations in which conflicts are irreconcilable and separate counsel must be obtained for an individual. In those situations, a joint defense agreement may allow conflicted counsel for separate parties on the same investigation to share information and communications without waiving privilege.

Hypothetical #2

An anonymous report is received by the Ethics Point hotline alleging that three employees, including the CFO, have been concealing revenue shortfalls for a public company. The assigned investigator interviews the three employees, with two subordinates conceding that the company has taken “aggressive” positions on the revenue at issue, but do not believe that it is illegal. The CFO defends the position and states that this is a regular practice that the CEO knows about. The CFO also claims he knows which employee has made the anonymous report. The CFO concedes that the Audit Committee on the Board is unaware of the practice and that it does not meet the materiality threshold to be reported in public filings.

This hypothetical raises issues of internal versus external investigators. This is a situation in which outside counsel should conduct the investigation given the involvement of high-level executives and an apparent dispute about whether the issue under investigation presents a serious issue or not. In-house counsel is likely to have relationships with all the key players and be placed in a situation of determining how and when to best inform the Audit Committee regarding this practice.

Hypothetical #3

A high-performing employee resigned. During the exit interview, the employee alleged that her supervisor had favoured male employees in the group by going to lunch with them more frequently, attended sporting events with them on the weekends and was generally much more comfortable with them. She conceded that her reviews had always been superb, that she had received substantial bonuses and that in the last talent management audit, she had been designated as the likely successor to her supervisor. Upon learning that an investigation had begun, she asked to participate in meetings, suggested witnesses to interview and generally wanted to be kept apprised of the investigation.

The panel discussed the difficulties of investigating the “fuzzy” areas of employment that do not (at least in this situation) translate into tangible employment consequences. Where an employee has clearly been very successful in all the tangible aspects of employment—compensation, reviews and opportunities for advancement—it may be tempting to overlook or discount the importance of seemingly minor issues such as lunches and pseudo-social outings. Additionally, the company may legitimately wonder why the employee has waited to raise these concerns until the end of her employment. While a cynical view might be that the employee must not have been too concerned with the issues, an alternate explanation (which may not come out without sufficient investigation) is that the employee now feels comfortable enough to raise her concerns. Additionally, if a high-performing and successful employee feels strongly enough to complain, then others may be experiencing these concerns more acutely and the situation may get worse. Several significant cases in recent years, such as the former Reddit CEO Ellen Pao’s lawsuit against her former employer, a Silicon Valley venture capital firm, have had their origins in seemingly subjective claims of exclusion from work cliques or “boys clubs,” rather than an objective refusal to hire or promote female employees.

In terms of conducting the investigation, the hypothetical raises issues of complainant attempted involvement in the investigation. While it is important to take complaints such as this seriously, serious consideration does not require allowing the complainant to influence the investigation’s direction or outcome. In a situation such as this, even if the complaint is substantiated, appropriate remedial action may be as simple as explaining the impact of the supervisor’s actions to him and ensure he is aware of how they are being perceived. The investigator or attorney should be able to determine the relevant individuals to speak with and should be aware of the complainant’s potential motivations in “suggesting” individuals to be interviewed.

Completing and producing an investigative report

Depending on the severity or type of investigation, it may be necessary to produce a written report stating the outcome and/or recommended actions of the investigation. A recent example of an internal investigation occurred in the United States National Football League (NFL) following what became known as the "DeflateGate" scandal. This involved the allegation that the New England Patriots used deliberately under-inflated footballs to gain an advantage in the playoffs. Oddly enough, "DeflateGate" highlighted several important issues for in-house counsel to consider when conducting and completing an investigation.¹

The New England Patriots' Quarterback Tom Brady requested a copy of the NFL's investigation file and the NFL claimed attorney-client privilege. Later, an attorney from the firm that conducted the investigation cross-examined Tom Brady at a hearing. As this demonstrates, insulating the counsel conducting an investigation and/or completing an investigation from other portions of a situation may be important, given the obvious concern with cross-examining the subject of an allegedly independent report your firm prepared. In the event it becomes worthwhile to waive any privilege applying to the investigation or the company is compelled to do so (which may occur due to a defense raised such as "advice of counsel" or involuntarily if ordered by a tribunal pursuant to a motion), having an outside investigator who is insulated from other privileged communications can reduce the risk of a waiver of privilege beyond what the company intends or would want. On the flip side, if the same attorneys—in-house or outside—are conducting the investigation, completing a report, and advising the company on what actions to take, can make it very difficult to differentiate between and/or define the potential scope of a privilege waiver, in addition to the risk of making the attorney-investigator a fact witness to the results of the investigation.

In a fast-paced media and regulatory environment, unusual issues of privilege, whistleblowing and recognising the risk of and preventing retaliation become even more important, as serious business, civil or even criminal penalties may be in play.

Conclusion

Any investigation into potential wrongdoing by a company, its employees or its contractors is a serious matter that human resources, legal and outside counsel must take seriously. In a fast-paced media and regulatory environment, unusual issues of privilege, whistleblowing and recognising the risk of and preventing retaliation become even more important, as serious business, civil or even criminal penalties may be in play. However, with a conscientious effort to implement compliance programmes, provide appropriate education and training on compliance to employees, recognise potential retaliation and take seriously questions of how best to conduct and complete an investigation (and who is best positioned to do so), employers can effectively ameliorate the risks of even the stickiest human resources or compliance situations. ¹

Footnote

1. <https://en.wikipedia.org/wiki/Deflategate>.

An original version of this article appeared in the April 2018 issue of the Docket.



Monica Allen

As Vice Chancellor and General Counsel of Washington University in St. Louis, Missouri, Monica leads a diverse legal team that manages a range of legal matters for one of America's leading private universities. Prior to joining Washington University, Monica served as a Partner at Haar & Woods, LLP and also served as Senior Attorney for the Federal Reserve Bank of St. Louis.



Steve Bishara

With a passion for Human Resources and organisational behaviour, Steve currently serves as Senior Vice President and Chief Human Resources Officer of Harbour Group, a business consulting firm, headquartered in St. Louis, United States. Steve's passion for Human Resources has remained consistent across a range of HR roles in diverse industries including food & beverage, manufacturing, packaging and science and technology.



Matthew Schelp

Now a partner at Husch Blackwell LLP, Matthew was formerly Assistant US Attorney for the Eastern District of Missouri. In his current role, Matthew leads the firm's Government Compliance, Investigations and Litigation practice group. He also regularly leads internal investigations on behalf of his clients throughout the United States and internationally.

THE YIN AND YANG OF MANAGING AN IN-HOUSE LEGAL TEAM

For most things in life there is an upside and a downside—the yin and yang. Or to put it in management speak, one person’s challenge is another person’s opportunity. Whatever you call it, the principle applies to managing an in-house legal team.

I recently departed my in-house general counsel role in government after over eighteen years of service to the public as well as to an assortment of ministers, directors generals and departments. So, what now?

For one thing, it has given me a chance to reflect on my time managing an in-house legal team for the last eight years.

Essentially, I worked in the same area of law (administration of Crown land in Western Australia) for the entire time, but it was for a procession of five departments and a few more directors generals in those eighteen years.

We started out as a small, self-managing team of five lawyers, doing the best we could in the manic times of the resources boom in Western Australia. Over time, the team grew into a bigger team of ten lawyers (including the general counsel role) and a legal secretary to support the team.

So, what was the yin and yang of my experience?

The Yin – What was Rewarding

Being passionate

I was passionate about making a difference in the administration of Crown land and so too were the lawyers. It gave us a purpose to come to work. We wanted to do the best job we could for current and future Western Australians.

Working with professional colleagues

Not only could the lawyers look to me for guidance or opinion on work matters, but similarly I would seek out their feedback or views. A great benefit of working in a team is the opportunity to talk with your peers about work issues, look at them from different angles and come up with the best solution in the circumstances.

As general counsel, I was under pressure to deliver commercial or operational outcomes for the business. I would bring that perspective to the matters the lawyers were working on, and so sometimes temper their enthusiasm for the strict letter of the law.

However, sometimes in my eagerness to achieve an outcome, I might seek to stretch the limits of the law a bit too far the other way. The team would then be my litmus test.

We had an environment in which all the lawyers were able to speak freely and challenge me if they felt I was going too far. Every now and again they would pull me ‘back from the brink’.

Cohesive legal team

One of my mantras was, “your reason for urgency is not my reason for urgency”. However, this had limitations when it was the minister who wanted something done urgently.

We worked on (and achieved) a number of high profile projects with tight deadlines. One involved all of the lawyers working on a large number of funding agreements at the same time. Another required a number of us to work on different components of a large process improvement project simultaneously.

In both cases, it was essential to have a consistency in approach. This involved setting up precedent documents or other transactional rules as a first priority and ensuring there was a steady stream of information to the team as developments occurred. This led to the lawyers working on the project being able to deliver consistent, high-quality work by the deadline.

It was also important to recognise the work of the other lawyers who were not working on those specific projects, as they kept the other work moving along so that it didn’t suffer unduly either.

Lively legal debate

How many lawyers can say that they had the opportunity to work for a large part of their career in a new, highly evolving area of law and policy?

Over the time, our work required ever increasing consideration of native title issues. Native title parties have shifted their focus on policy and legal issues noticeably over the last ten years.

A number of the lawyers had significant expertise and interest in this field; therefore, we had many lively and intellectually stimulating discussions on matters of law, principle and broader public policy.

This breadth of experience helped in the professional development of the other lawyers who didn’t have a background in this area of the law. It also added depth to the team, so that one or two lawyers were not the repository of all knowledge and went towards future proofing the team.

Disseminating knowledge

Having more lawyers allowed the team to develop work packages on complex matters in a format that was user-friendly for the operational officers. Many of these officers were young and enthusiastic and wanted to soak up knowledge. As well as more conventional written materials, the legal team provided formal training and practical work tools and made themselves available to talk to the officers.

It was very gratifying to see the materials and training put into action by the operational officers on a daily basis.

New ways of presenting information

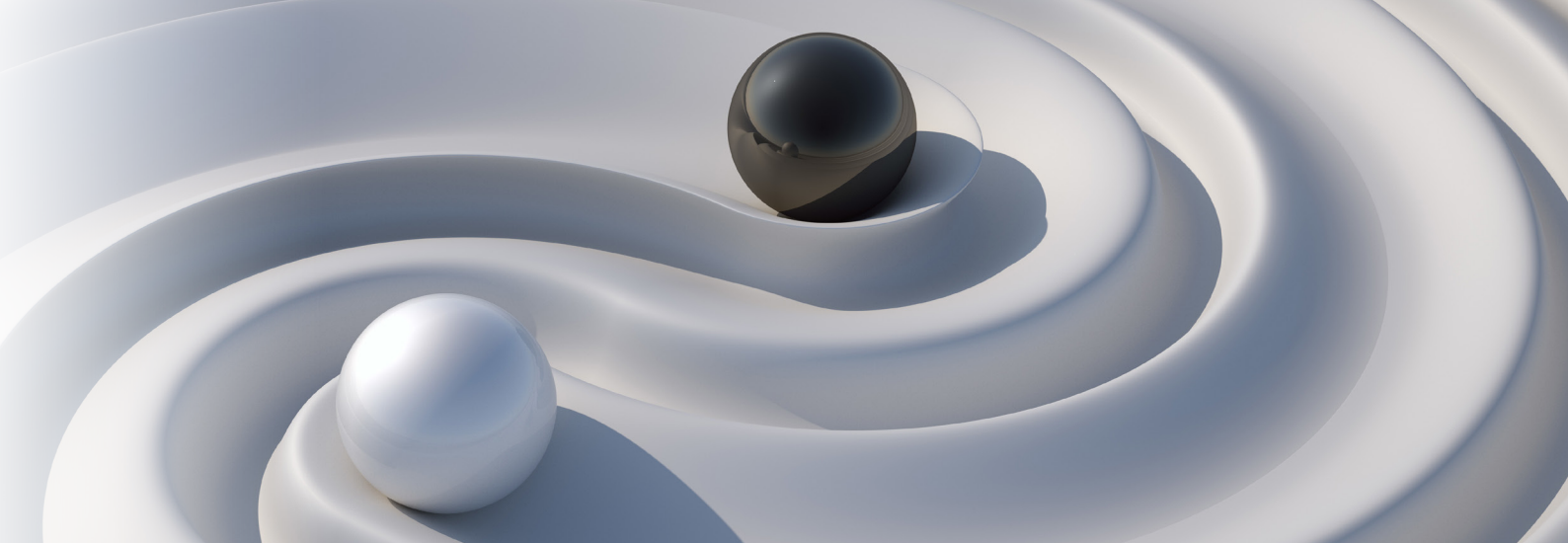
We lawyers tend to work in words—we even used to charge by the folio! But not everyone thinks in words. Some people think in pictures, others in tables.

Working in a corporate environment taught me how to present information differently, in ways that were more receptive to the audience. My presentation tools now include matrices, tables, Venn diagrams and even tortuous business process maps.

The Yang – What was Challenging

Passion and perfection

As I said, there is a yin and a yang to most things. The yang was not to wear out myself and my team members with too much passion and enthusiasm, especially during such a prolonged period of work pressure. It was a case of learning to pick your battles and letting other things go. You can’t influence everything. Or as Kenny Rogers sings, “you have to know when to hold, and know when to fold”.



One of the common foibles of lawyers is that many of us are perfectionists. There was a constant tension between applying our professional ethics to each matter and not investing too much of our limited resources into less significant matters.

Time to do the real work

Finding time to do the 'real' work was often a challenge. By 'real' work I mean providing legal advice or drafting, commenting on policy issues and providing input into legislative projects. The importance of doing 'real' work is not to be underestimated.

First, it is where a general counsel can make the most significant contribution to an organisation. We are employed for our specialist skills and knowledge. These are even more valuable if the general counsel has been in the organisation for a long time and has corporate knowledge and memory built up over the years.

Second, and just as important if not more so, that's why most of us became a lawyer. In my case, it's what fed my work soul.

Time for the lawyers

Finding enough time to meet with the lawyers to provide guidance or be a sounding board was also a challenge. If I gave them my time, then they could get on with their work. That should then have a multiplier effect in the volume of legal advice provided, rather than me being a bottleneck.

The same can be said for making time to recruit a new lawyer for a vacant position—make the time, so you can get them on board and working!

Organisational change

The repeated departmental changes meant a cycle of getting new executives up to speed on the Crown land business. Just when they were starting to 'get it', there would be another change. It felt like running on the spot and required a marathon runner's tactics to last the distance.

At the same time, the future for the legal team might be unknown and so it was difficult to maintain confidence and positivity for myself and the lawyers. Even though I was a manager, I was not impervious to the uncertainties around me.

Organisational acceptance

There seems to be a general antithesis to lawyers, which is no less so working in-house in a government department. We are a necessary evil, with the scales moving between necessary and evil, depending on the composition of the departmental executive and if there was a crisis du jour.

There is no easy solution but to apply yet more clichés—seek support from champions of the legal team, keep on keeping on with the work to demonstrate the team's worth, keep your eye on the ball, and celebrate internally and publicise externally the team's successes.

It was a constant crusade to get our faces in early on significant projects. Networking with the operational officers or other stakeholders was the best way to find out what was going on and seeking to be involved at an early stage.

Management

Ugh! I didn't become a lawyer to be a manager.

Completing the management tasks that did not suit my personality was definitely a constant challenge:

1. Being a self-confessed late adopter of technology is not a useful trait these days. I knew we needed to develop electronic work systems to meet the team's and the department's needs. But how to go about it? Answer—enlist the support of others in the team who see the benefit of developing the systems and who have an aptitude and interest in technology.
2. Having difficult discussions with team members about their performance or manner. Who finds this easy? It is a fine balance of respecting the lawyer having their professional approach to handling legal matters and not wanting to kill their enthusiasm or dedication to the job but needing to ensure the lawyer performs appropriately in all aspects of their job.
3. Having enthusiasm for the corporate business. It was a great opportunity to be in a newly formed department with a common purpose of establishing it as a respected Crown land administration organisation. However, the implementation of such a lofty ideal requires a lot of effort and patience dealing with corporate management models. Then, to have it all dismantled in the next departmental iteration was disheartening. Nonetheless, to take my own advice, you have to keep on keeping on.

The Yin – Right of Reply

For all that was rewarding in the role, the most rewarding was the hard work and dedication of the team being recognised by others in and outside of government. We gained a reputation for expertise in our area of law and served to promote the reputation of the Crown land function as a whole.

The pinnacle of this recognition was the team being awarded the Australian Corporate Counsel Large Team of the Year Award for 2017.

After a considerable number of years of sustained work pressure, the team truly deserved the award and it was my privilege to lead the legal team. 🏆



Sandra Eckert

Prior to her eighteen-year career with the WA Department of Planning, Lands and Heritage, Sandra enjoyed roles at Corrs, the Australian Securities Commission (now ASIC) and a number of boutique law firms. Sandra was awarded ACLA Government Lawyer of the Year in 2012 and IPAA Policy Practitioner of the Year in 2017.

Under Sandra's leadership, the Department of Planning, Lands and Heritage was named Large Legal Team of the Year at the 2017 In-house lawyer awards.

INNOVATION AND THE LEGAL SERVICES SUPPLY CHAIN

Beaton Global outlines the latest research on how your peers manage and what they think about innovation in their legal department.

Contributors in previous editions of the *Australian Corporate Lawyer* have noted the growing importance of in-house counsel, transitioning from being ‘just lawyers’ to becoming increasingly senior members of the strategic leadership team in organisations and government departments. This has been driven, in part, by the increasing prominence of commercial ethics, the widening reach of in-house teams across organisations as more departments find themselves facing compliance risks and the continuing need for legal expertise to traverse the ever-changing political and legislative landscape.

In addition to a seat at the table, you and your team will need to start considering the issue that defines the priorities of many in senior leadership positions ... innovation:

- How are you managing innovation in your department?
- Are you delivering increased value to your end-customers through innovation?
- How are you encouraging your outside counsel to innovate?

Our recently released report on “Client-led Innovation in Legal Services” sheds light on these issues. Based on a survey of clients of the leading Australian law firms (one third of respondents were corporate counsel), this research explores the relationship between innovation and the legal services supply chain.

In the context of this report, we have defined innovation as: “*implementing an idea which addresses a specific need and delivers value for both their clients and the law department.*”

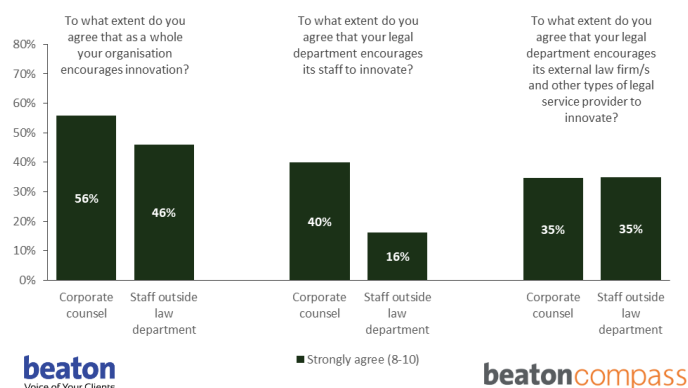
Change in the law department

Everyone recognises that innovation is important. When asked to indicate how much they agreed that their organisation as a whole encourages innovation, it was found that fifty-six percent of in-house lawyers strongly agreed² compared to forty-six percent of staff outside the law department (such as CEOs, board members and managers). This suggests that corporate counsels have a heightened awareness of the pressures on them to innovate and deliver more value to their organisations.

In our previous contribution to this magazine,³ we argued that corporate and commercial legal services was in the buyers’ market stage of the industry lifecycle. New forms of law firm competition and technological augmentation and substitution of lawyers’ services have given in-house lawyers the power to put downward pressure on prices and demand more-for-less. As those most involved in this shift in consumer power dynamics, you are more aware of the scale and breadth of the disruption in the industry and the implications of this for the work you do.

This may explain why, when asked whether they agreed that their law department encourages its staff to innovate, only sixteen percent of colleagues outside the department strongly agreed. This is in contrast to the forty percent of in-house lawyers that strongly agreed. Crucially, when asked whether they believed their law department encouraged its external law firms to be innovative, thirty-five percent of both in-house lawyers and others strongly agreed.

If that was not alarming enough, our research shows that law firms are not regarded as innovative to begin with. Our beatonbenchmarks data, which is based on an annual survey that we have sent every year for the past fifteen years to the clients of professional services firms (which many ACC members may have completed over the years), shows that clients rank innovation as the poorest performing attribute for half of the law firms in the study.



That is, your colleagues outside the law department believe that any innovation of their legal work predominantly comes from law firms and not their own corporate counsel team, while also believing that law firms are not very innovative at all.

This highlights the magnitude of the challenge facing in-house lawyers for recognition of their innovation efforts and value-add. How are you managing innovation in your department?

Do you have an innovation framework in place to encourage new ways of thinking? There is a myriad to choose from: Agile, design thinking, intrapreneurship, using incubators and open innovation, to name a few. Based on our experience in advising law and other professional services firms, as well as this research, we at beaton would advocate for a framework of innovation that puts consumer needs at the centre of the process. We have called this client-led innovation.

Adding value for the client

Whether your clients are internal stakeholders or external end-customers, innovation should be driven by addressing their specific needs. Often firms are advising respond to this by objecting, “that does not improve our bottom line!” They argue that innovations that prioritise the firm’s needs, such as lower overheads or greater efficiency, result in savings that can be passed on to the client making them more satisfied with their service.

Not only is this not necessarily the case (this report found that innovations leading to lower fees were not a strong influencer of firm use and our beatonbenchmarks data have consistently shown that lower costs are not a driver of client satisfaction), but we would respond by saying prioritising clients’ needs will better improve the financial position of the firm. Meeting client needs can differentiate you from your competitors, which leads to greater client satisfaction and an increased prospect of repeat use, as well as a greater likelihood of the client recommending your firm to others, thus forming a virtuous cycle.

We would argue that this same logic applies to law departments. Meeting the needs of internal and external clients substantially increases the value of your work and your department. This study found that twenty percent of the most innovative solutions of law departments were implemented to address client needs. Some examples of these motivations were:

- “Company focus on sustainability and customer needs”
- “Excellence and speed in service to clients and end-customers”
- “Efficiency, customer satisfaction – improving understanding and therefore positive perception of outcomes”

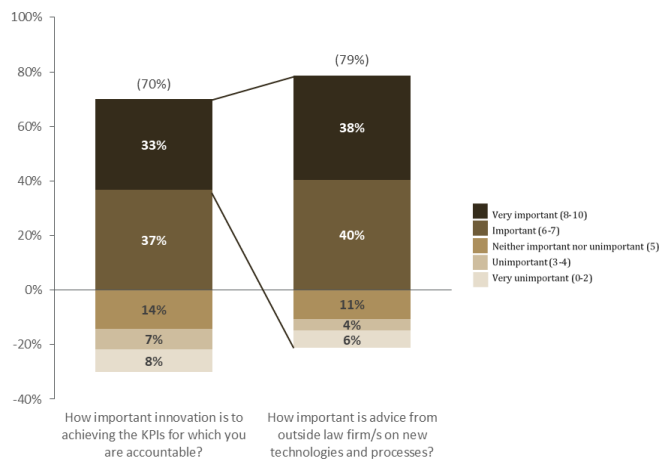
We anticipate this number to rise as law departments become greater drivers of innovation in their organisations. There are some indications that this will happen. When clients of law firms were asked to identify how important innovation was to achieving their KPIs, thirty-three percent said very important⁴ and thirty-seven percent said important.⁵

Managing your outside counsel

Of those thirty-three percent that said innovation was important to their KPIs, thirty-eight percent indicated that advice from their outside law firms was very important and forty percent said it was important. In many instances you can, and should, be using your law firms as an invaluable resource to assist in your innovation activities.

If your goal is to meet your clients' needs and your law firm's goal is to meet your needs, then by the law of transitivity, your law firm's goal should be to meet your clients' needs.

Has your outside counsel asked you how they can innovate to better suit your needs? This study found indications that this was not happening, with three in four respondents indicating that they could not name a single outstanding example of innovation from a law firm they knew. As discussed above, clients of law firms have much higher purchasing power than they have ever had. You should be exercising this power and suggesting to your outside counsel how they can better serve your needs (and thereby your clients' needs).



Without this guidance from you, their clients, law firms will continue to make their innovation investments in legal technologies. While there are many dividends to the digitalisation and digitisation of legal services, many clients do not believe technology alone is innovation. When asked to describe law firm activities that they considered innovative, just fifteen percent indicated something to do with technology. Some suggested that such innovations were mostly marketing gimmicks that did little to add value to the service being provided by the firm.

In contrast, when respondents to the survey were able to identify an outstanding example of innovation by a law firm (three in four could not), forty-seven percent said that the example was initiated as a joint effort between themselves and their law firm. This highlights the importance of collaboration for the meaningful development of change that has tangible effects on client needs.

Innovation workshops, such as those offered by beaton (which includes copies of the full sixty-four page report), can help identify your needs and facilitate the co-development of solutions that add value to your department, organisation and end-customers. Our experience indicates that innovations developed using our framework have much higher success rates.


The question is not whether your outside counsel is innovating, but whether they are asking you *how* they can innovate and how they can help *you* innovate.

Conclusions

The legal services industry lives in times of great change. While the dynamics between BigLaw and NewLaw firms play out, corporate counsel are gaining in stature and assuming positions on the strategic leadership teams of their

organisations. This newfound authority carries with it many responsibilities, chief among them is to innovate and deliver added value.

Our recently released report into "Client-led Innovation in Legal Services" found that for many in-house lawyers, their colleagues have yet to recognise the relationship between the law department and innovation. We argued that the best way to achieve this was through listening and addressing the needs of your internal stakeholders and external end-customers. Although only one in five respondents engage in this kind of innovation, we anticipate this number will grow as more corporate counsel assume leadership roles.

One way to accelerate this process is by leveraging the existing relationship between you and your law firms. Collaboration and co-development of innovative solutions is in the best interests of your firm, you and, most importantly, your end-customers. 

Footnote

1. This definition draws on the work of Nick Skillicorn, first published as "What is innovation?" (2016): <https://www.ideatolive.com/inno/nickskillicorn/2016/03/innovation-15-experts-share-innovation-definition/>
2. On a scale of 0–10, they rated from 8 to 10.
3. "General Counsel should be more demanding" (2016), Dr George Beaton, The Australian Corporate Lawyer, Volume 26, Issue 4.
4. On a scale of 0–10, they rated from 8 to 10.
5. On a scale of 0–10, they rated from 6 to 7.

By arrangement with beaton, if you or your law firms would like to purchase a copy of the "Client-led Innovation in Legal Services" report or would like to arrange to have an innovation workshop to identify and address your needs, email compass@beatonglobal.com. Mention this article to receive a 10% discount.



Shanan Kan

As Product Manager, Shanan oversees beaton's research publication beatoncompass, which investigates how client insights guide firms' strategies. He is a strong advocate for evidence-based decision-making and co-developing research initiatives with clients. Previously a social researcher, Shanan studied at Swinburne University and the Australian National University, where he graduated with first class honours for his research on gamification.



George Beaton

As Executive Director of beaton, Dr George Beaton consults to professional services firms in Australia, New Zealand, Asia, UK, US and Canada. He is regarded as a leading researcher and independent authority on professional services industries and their firms. His particular research interest is in the imperative for law firms to remake their business models, on the subject of which he wrote NewLaw New Rules in 2013 and co-authored Remaking Law Firms – Why and How, published by the American Bar Association in 2016.

COMMUNICATING THROUGH A CRISIS: THE COST OF NOT SAYING SORRY

In this age of round-the-clock company scrutiny, we see almost as much focus given to how a company handles a crisis as the crisis itself.

With turbulence in our world growing and the ‘always on’ nature of the news, the potential for crisis has become an almost daily consideration for business. Globalisation, investor activism, regulatory change, political and cyber risks are all contributing to increasing business vulnerability and the need for Boards to carefully consider their ability to respond effectively.

Anatomy of a crisis – research study

With this in mind, FTI Consulting has undertaken a piece of proprietary research of approximately one hundred recent incidents that have made the headlines. Our objective was to shine a light on these crises and assess how they played out with a view to helping businesses successfully navigate future disruptive events of their own.

The crises we reviewed span the last twenty years and include oil spills, cyber hacks, plane crashes, cases of fraud, product recalls and many more. We were interested to see what patterns emerged from these events—patterns that might be instructive for Boards and communicators when facing their own crisis scenarios.

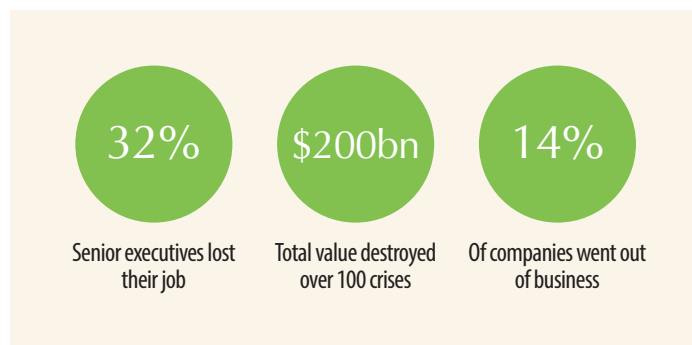
Our findings

1. Existential impact

As we all know, the effects of a crisis can be significant and long-lasting. Therefore, we started by analysing just how significant that impact could be. The findings revealed that in fourteen of the one hundred cases, the crisis event had been so catastrophic that they had resulted in companies ceasing to exist. Additionally, in almost a third of the one hundred cases, a senior executive of the company lost their job. This idea of a sacrificial lamb is nothing new, but such a high number suggests that Boards’ tolerance for missteps is low.

- \$200bn of market value was lost in the 100 cases studied.
- Fourteen companies went out of business and in 32 cases a member of the senior management team lost their job.
- Companies can expect a thirty-five times increase in media coverage following a crisis event—for social media, it’s even more.
- Companies are hit much harder where the public perceive a degree of culpability on the part of management.
- The financial cost of not saying sorry—measured in terms of share price impact—easily outweighs the total cost of litigation.

In terms of share price impact, we discovered that around \$200bn of value was lost as a result of the crises we analysed. In addition, nearly a quarter of the surviving public companies in the study (twenty-three percent) failed to recover their share price to pre-crisis levels in the time since.



2. Impact on share price

Next, we wanted to analyse the typical course of share prices in the aftermath of a crisis to see whether any trends could be seen. The typical pattern is to see a big drop in share price at the end of day one. This continues through the first week and only starts to plateau after a month or so.

However, we saw huge discrepancies in the way that share prices behaved following different types of crisis.

For example, as the chart below shows, a month after a crisis event had become known, the average share price decline across cases of systemic financial mismanagement was seventy percent, whereas individual corruption cases showed a decline of just five percent.

In terms of recovery after a crisis, those same cases of mismanagement were still, on average, sixty-three percent below their origin after three months, whereas individual corruption cases had recovered most of their value, on average, sitting at just 1.9 percent below their origin.

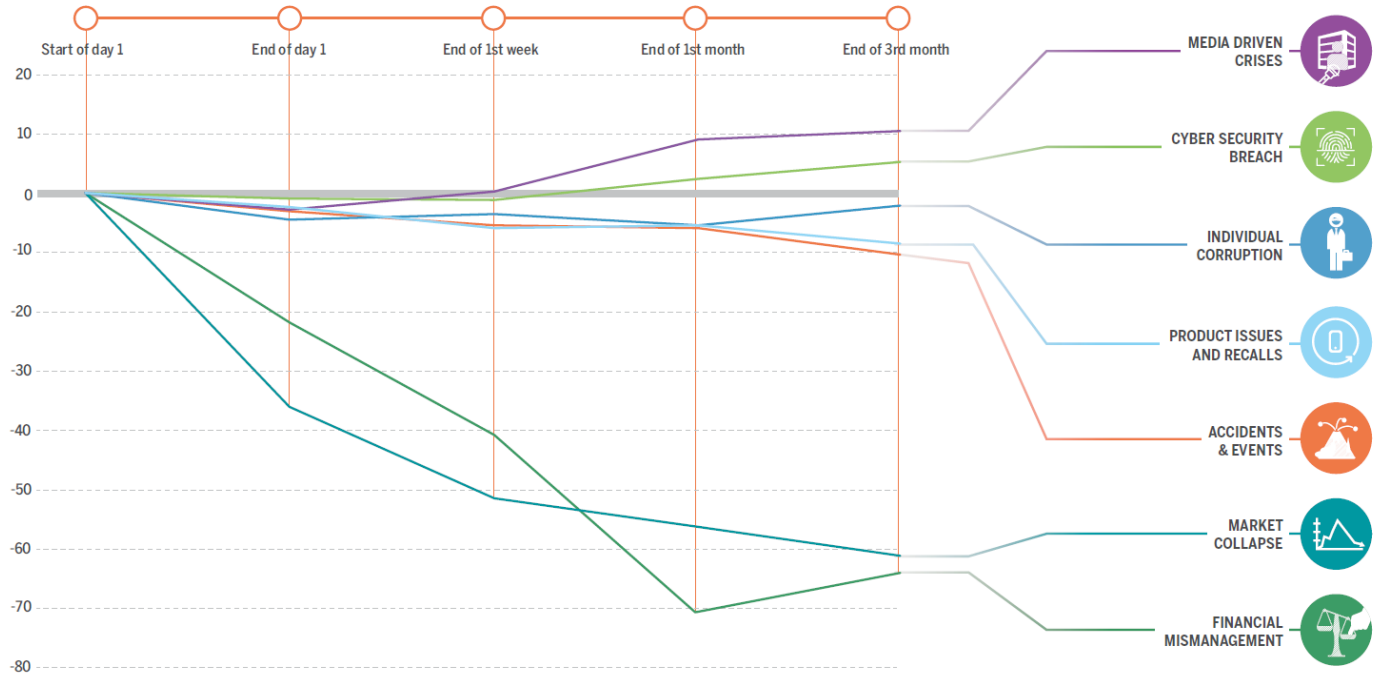
3. Media coverage

And what about media coverage? Instinctively, we know that a crisis would dramatically increase the media’s interest in a company, but even we were surprised to discover by how much.

Our study found that in the month after a crisis, a company could expect to receive almost thirty-five times the amount of media coverage than the month beforehand. In terms of social media impact, the post-crisis month saw, on average, two hundred and eighty times more mentions than a month before the crisis.

These are significant numbers. Indeed, the magnitude of traditional and social media interest around these events begins to shed light on another central learning from our study, namely the intangible impact of a crisis beyond clear and well-understood value proxies such as market capitalisation. This goes to the heart of the unseen element of crisis preparedness and management that all boards need to consider. Are they geared up for this kind of onslaught? Are there relevant processes in place? How can they best respond and continue to protect the day-to-day operations of their business?

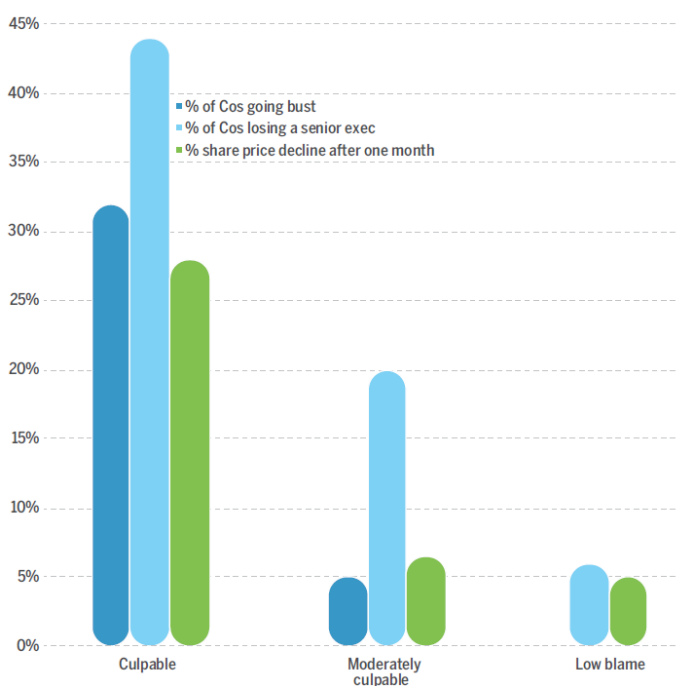
Average share price performance in the aftermath of crisis (by crisis type)



4. Culpability

As we began to see variations in the way that different crises behaved (when we cut our media analysis by crisis type we discovered that it showed a similar pattern to share price impact), we began to wonder whether companies are hit harder when external audiences perceive a culture of mismanagement. In other words, were investors hitting the share price more heavily or does the media apply more scrutiny to events where management is perceived to be to blame? Clearly, the degree of culpability in crisis situations contains a heavy degree of subjectivity from the outside looking in but our analysis did show that in crises where the management is deemed to be at fault those instances are punished more heavily.

Impact of crisis depending on perceived culpability



5. Saying sorry

We finally turned to the all-important issue of 'the apology'. Many CEOs instinctively feel that it is right to apologise but some are advised that

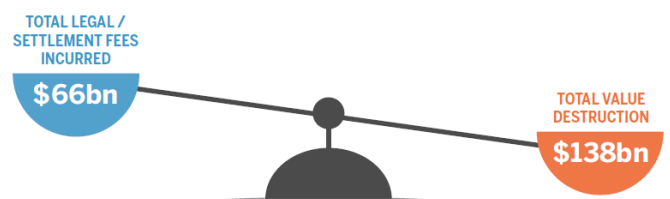
they should not. The argument against apology is that it is tantamount to an acceptance of guilt and that it opens the door to potential litigation. Reputationally, however, the lack of apology can have a significant influence on the credibility of management and the reputation of the wider firm. Therefore, do apologies work?

Interestingly, apologies were found to be relatively few and far between in our study. Indeed, we found evidence of a public apology in only thirty-seven of our one hundred cases. We also found that most of those apologies arrived slowly—only sixteen of the thirty-seven apologies were issued within two weeks of the crisis incident becoming known to the public.

The main charge against the apology is that it can be bad for business—that it can lead to protracted and expensive legal liabilities. We wanted to see whether there was some way of comparing the financial impact of apologising with the impact of not apologising.

The most effective way to do this was to compare the total cost of litigation and compensation, for as many crises as we could, against the relative value destruction in terms of market capitalisation for those companies. We considered the damage to the value of the owners' shareholdings to be the best proxy for reputational impact under these circumstances (although it is fair to note that the cost of litigation will impact share price itself).

We discovered thirty-seven crises where the cost of litigation was publicly reported. The total cost of litigation and compensation relating to those crises was \$66.73bn. This compares to a total destruction in market capitalisation for the same businesses of \$138.36bn.



By this measure, it could be argued that if you don't apologise, you will double your litigation costs in terms of value lost.

Conclusion

When starting this project, we expected some of our intuitions about crises to be confirmed. We expected share prices to take a hit and the events we surveyed to be a lightning-rod for media coverage. The research supports these views, but the depth and variety of the impacts we saw surpassed our instincts. The three most significant learnings can be summarised as follows:

- Boards need to consider the impact of not apologising in a crisis situation. The effect of reputational damage in terms of share price destruction easily outweighs the cost of litigation.
- The crises that hit hardest are those where management is clearly culpable or endemic cultural decay is evident. For example, the report suggests that culture and effective employee engagement are even more important than planning for cyber risks.
- Companies need to be prepared for the explosion in traditional and social media interest that will come their way in a crisis situation. Does the company have the necessary teams and structures in place to cope?

We anticipate that the findings here will lead companies to think more carefully about how they prepare for their 'nightmare scenario' events. Are they ready? Are they taking these issues seriously enough? Prevention, as we all know, is always preferable to cure. [a](#)

Original article authored by FTI Consulting's James Melville-Ross, Senior Managing Director, and Adam Davidson, Director.



Cameron Morse

Specialising in crisis and issues management, media relations, shareholder communications, stakeholder campaigns and litigation support. Large multinational corporates, large and small Australian listed companies and SMEs have utilised Cameron's expertise and knowledge. As Managing Director, Strategic Communications at FTI Consulting, Cameron draws on 13 years' of experience in the media and as a communications consultant to develop, manage and implement effective corporate communications and issues management strategies for some of Australia's most prominent companies.



Ben Hamilton

As Managing Director – Strategic Communications at FTI Consulting, Ben has worked with a number of clients across the public and private sectors. Drawing on an extensive communications background and through the development and execution of complex communication projects, Ben has been involved in formulating strategies around rebranding, asset sales and business restructuring, crisis and issues management, stakeholder management and industry advocacy.



Rebecca Harrison

Regularly advising on government and media relations, reputation management, corporate positioning and campaigning; Rebecca works with listed and private organisations to achieve positive policy and regulatory outcomes, support businesses to navigate issues and recover from crisis events and protect corporate reputations. Now Director – Strategic Communications at FTI Consulting, Rebecca has extensive experience delivering integrated public affairs strategies defusing community and stakeholder activism and supporting major new infrastructure builds.

MENTORING: UNVEILING THE UNKNOWN KNOWN

With the ACC Australia mentoring program launching for 2018, we examine the breadth of benefits derived from a positive mentoring relationship.

A question that often eats at me is: *How do I know what I don't know and how do I know what I think I know is actually true?* No, this isn't "who's on first base" banter, nor is it a deep existential question. It's a question about my blind spots and second guessing my instincts and current knowledge.

We're all aware we have blind spots but how does one find out where those blind spots are?

Tools such as 360-degree feedback are useful, but the anonymous nature of this can create even more confusion as there is a lack of context or deeper discussion regarding suggestions for improvement. Professional coaching is a powerful way to challenge your thinking and move you quickly to a solution; however, it's costly and often the coach has not been in your situation and is only able to coax out of you what you know.

From my experience, mentoring is the most effective way of not just revealing blind spots, but of confirming our instincts and decisions that 'feel' right but may not actually be the best option. Because mentoring is a committed relationship that runs over time, it enables a slow-cook effect, whereby little by little questions build upon one another, the mentee can go off and test ideas, looping back to the mentor to debrief, fine tune and refine. This allows for a deeper transformation in thinking and greater confidence in one's own understanding, not only for the mentee, but also for the mentor.

... mentoring is the most effective way of not just revealing blind spots, but of confirming our instincts and decisions that 'feel' right but may not actually be the best option.

Rob Stribling, finalist in the *2017 ACC Australia Mentor of the Year Award* and Head of Legal at Eni Australia has been mentoring for many years. He explains that not only is it intrinsically rewarding to be instrumental in another's personal development journey, it has also helped his own professional development. "I learn as much from mentoring as my mentee does. As I reflect on the experience of my mentee, it often opens my eyes to things I may be doing within my team that could be done better".


A common theme I hear from mentees after completing a programme is that they discovered aspects of themselves they had never even considered. Margarita Varigos, winner of the *2017 ACC Australia Mentee of the Year Award*, shakes her head in disbelief when she speaks about her mentoring relationship.

"Before the program I pretty much hid myself away at work. I would never have gone to a networking event. My mentor helped me see that I could do it, that I was capable of more than I realised. Within months of mentoring I had stepped out of my comfort zone and was learning more about my abilities. If you had have told me twelve months ago that by this time next year I would have joined a committee, done public speaking and secured my absolute dream job overseas, I would have laughed at you!" Margarita now lives in Seattle and is Corporate Counsel at Amazon.

Margarita's mentor, Nick Willetts, General Manager at Thales Australia and winner of the *2017 ACC Australia Mentor of the Year Award*, could see Margarita's potential from the first meeting and felt it a great honour to help her learn more about herself through their mentoring sessions. "Margarita had a great desire to achieve and she was ready to be challenged, however, she had no idea of how many answers she already had within herself. All I did was help her explore and nudge her to reach a bit further than she might have otherwise."

Self-discovery was also something Marnie Troeth, finalist in the *2017 ACC Australia Mentee of the Year Award*, found to be a highlight of her mentoring experience. Having been almost six years in her role as Legal Counsel at Karingal St Laurence Ltd, she entered the programme feeling that she was capable of more, but with no clear concept of what that was. Marnie's mentor, Sharyn Cowley, Senior Legal Counsel/Assistant Company Secretary at Telstra Super, provided the confidential sounding board Marnie needed to find new levels of confidence in what she already knew. Sharyn encouraged Marnie to trust her instincts and back herself.

The more Marnie shared her thinking out loud and Sharyn confirmed the strengths in Marnie's ideas and approach, the greater Marnie learned to value what she had to offer and gained confidence to start putting herself forward at work. As a result, Marnie went from being a sole lawyer to a confident and highly valued general counsel managing a small team.

Mentoring helped each of these participants discover more of what they didn't know, attain new knowledge and then build on it. More importantly, it gave them confidence to believe more deeply in what they did know and the encouragement they needed to come out of hiding and take their place as a person of value within the workplace. 

Applications for the ACC Australia 2018 Mentoring Program will open June 04, 2018. Visit the ACC Australia website for more information.



Dr Karina Butera

A training and development specialist with a core focus of helping businesses give their employees the best chance of success, Karina champions conversational and experiential learning as the most relevant and powerful form of professional growth. A keen artist, Karina also boasts a PHD in Sociology and along with consulting, team and leadership training, Karina facilitates the ACC Australia Mentoring Program.



ACC GLOBAL UPDATE

Cybersecurity Spending on the Rise for Corporate Legal, ACC Foundation Cybersecurity Report Finds

More than forty percent of in-house lawyers stated their companies plan to change data security standards, notification procedures and incident response plans because of the upcoming European Union General Data Protection Regulation, according to the *Association of Corporate Counsel (ACC) Foundation: The State of Cybersecurity Report*. Released by the ACC Foundation, which supports the mission of ACC and underwritten by Ballard Spahr LLP, the report incorporated data and insights from more than six-hundred in-house lawyers at over four-hundred companies in thirty countries.

In-house lawyers anticipate that their role in cybersecurity prevention and response, as well as cybersecurity budgets, will increase over the next twelve months. In fact, sixty-three percent of respondents noted growth in company funds dedicated to cyber incidents, compared to fifty-three percent in 2015. Chief legal officers and general counsel at large companies are also more likely to serve as members of a data breach response team than those at small companies.

The report further underscored the importance of company-wide preparation and awareness

to thwart the possibility of a breach. Among organisations with a total gross revenue of \$3 billion or more, sixty-two percent track mandatory training and attendance for all employees, fifty-eight percent test employees' knowledge following required training and forty-five percent hold simulated response drills. Additionally, fifty-seven percent reported their company is covered by cybersecurity insurance—up ten percentage points from 2015.

Recent Global Advocacy – India and the United Kingdom

ACC recently submitted comments to the Government of India on the Whitepaper of the Committee of Experts on Data Protection Framework for India, encouraging the government to develop clear standards to regulate cross-border transfers of data and avoid policies that could disincentivise corporate compliance with new privacy requirements.

Working with the India Corporate Counsel Forum and Compliance and Ethics Committee on the comments, ACC noted that India's data protection law should facilitate efficient cross-border data flows, as barriers would be a hindrance for global businesses. ACC also recommended that India follow a similar

approach to Canada—adopt a flexible method to consent requirements by only requiring express consent for handling sensitive personal data. Further, ACC advised that liability for harm caused by a data incident should be based on an organisation's failure to implement the necessary protection measures, rather than subjecting data controllers to a strict liability regime.

ACC also submitted comments to the United Kingdom Financial Reporting Council (FRC) on revisions to the UK Corporate Governance Code and Guidance on Board Effectiveness—urging the FRC to incorporate a recommendation on the role of the legal function in influencing corporate culture.

Legal and regulatory matters are increasingly central to the implementation of business strategies. Inclusion of the law department in the development of business decisions signals to the company's stakeholders that ethics, compliance and other legal risk considerations are top priorities for the company. In its comments, ACC applauds FRC's direction to boards and chief executives to consider how they are promoting corporate culture within their organisations, but further advocates that the general counsel's seat at the executive leadership table is similarly critical. ¹



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