



THE LAW SOCIETY
OF NEW SOUTH WALES

MOVING IN-HOUSE

A resource on in-house legal practice

CONTENTS

Introduction	2
Working in-house	3
Helpful hints	4
Client legal privilege	6
Large employers of lawyers	7
Secondments in-house	8
Mentoring programs	9
Industry groups and associations	10
Further education	13

Disclaimer: This document has been produced solely for use by legal practitioners to provide general assistance in relation to some aspects of in-house practice. It is not exhaustive of issues which practitioners may encounter, nor does it constitute legal advice. It is a general guide only and practitioners must take care to fully consider the circumstances and laws applicable to their circumstances. While every care has been taken in the production of this document, no legal responsibility or liability is accepted, warranted or implied by the authors or The Law Society of New South Wales and any liability is hereby expressly disclaimed.

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INTRODUCTION

There were more than 5,797 in-house lawyers working in NSW as at September 2016. This comprised over 19% of all solicitors in NSW, compared with 14.6% a decade earlier.

The continuing increase in the number of in-house lawyers corresponds with a growing recognition of the important and rewarding work undertaken by solicitors working in-house. In-house practice offers challenging legal work embedded in a business environment and is critical to the everyday function of the economy and the community. In-house legal practice has seen growing popularity from new graduates to experienced private practice solicitors.

The Law Society of NSW is pleased to publish this resource for aspiring in-house lawyers. Originally developed by the 2012 and 2013 by members of the Corporate Lawyers Committee, and subsequently updated in 2016, the resource provides information and tips which may be helpful to those considering a career in in-house practice.

The Corporate Lawyers Committee also publishes a bi-monthly newsletter and hosts a LinkedIn group for Law Society members. Information on these and other events for in-house lawyers, including continuing professional development and networking events, is available on the Law Society website at www.lawsociety.com.au.

WORKING IN-HOUSE

Organisations are becoming increasingly sophisticated in understanding the benefits of recruiting in-house legal staff and managing their legal costs more effectively. This is evidenced by the steady growth in the numbers of in-house lawyers.

Depending on the size and nature of the organisation, the structure of an in-house legal team can vary quite significantly, for example:

- sole in-house lawyer;
- team comprising a number of in-house lawyers – with the general rule being that the larger the organisation, the more in-house lawyers;
- team comprising a mix of in-house lawyers, compliance and/or risk staff.

Structure

Where the in-house legal team comprises more than one lawyer, typically there is a General Counsel or Head of Legal, reporting to the CEO or Managing Director. The General Counsel or Head of Legal will have responsibility for managing the legal team. In larger organisations with a sizeable in-house legal team, there may be several General Counsel reporting to the Group General Counsel or a General Counsel with one or more Deputy General Counsel.

Due to their support role within the business, in-house lawyers will usually be located in the head office or in reasonably close proximity to the senior executives of the business.

In-house lawyers can be found in large organisations such as banks, insurers, large corporate entities and professional services firms, working in groups in various parts of the organisation in Australia and overseas. For insurers, in-house lawyers can be split into corporate and claims lawyers.

Role of in-house lawyer

Apart from legal issues, other responsibilities of in-house lawyers increasingly include company secretarial, risk, compliance and regulatory functions.

Often in-house lawyers will have prior law firm experience. Graduate positions are relatively rare.

The in-house legal role may be state-based, country-wide or even regional e.g. Australia and New Zealand or Asia Pacific.

Work environment

Many organisations offer flexible working arrangements so contracting and part-time positions may be more accessible in-house than in law firms.

Some lawyers work in-house and then return to law firms or over time take on non-legal roles in their organisation.

HELPFUL HINTS

Considering a move in-house? Here are some things to consider. If you are considering a move from private practice to an in-house legal role, you should be aware that the work of an in-house lawyer may present a different set of challenges to private legal practice. There are perceived advantages and disadvantages of in-house legal roles. Some of these are outlined below.

Perceived advantages:

- The ability to develop broad, general skills - e.g. regulatory, risk, compliance, work, health and safety, employment, trade practices/consumer protection, environmental issues, corporate governance, intellectual property, information technology and international laws and practice.
- Many in-house teams retain high quality legal work in-house - enabling lawyers to maintain their high-level specialist skills.
- A sense of being part of (and adding value to) a business and contributing to the bottom line.
- Greater involvement in decision making.
- Development of specialist knowledge of a particular industry.
- Often no time recording.

Perceived disadvantages:

- Some in-house teams outsource legal work as a risk management strategy resulting in a “matter management” focus (as opposed to a technical focus).
- There can be little difference in work/life balance between in-house and private practice roles. Many in-house lawyers find themselves working similar hours to private practice lawyers and taking work home.
- While there may be greater involvement in decision making, ultimately it is the role of management to make decisions.
- Possible lack of specific legal resources and limited access to legal research materials.
- There may be an expectation of self-sufficiency (i.e. not the same level of secretarial or administrative support).
- Experience may be seen to be restricted to the industry within which the business is operating.
- Often open plan office environments.

HELPFUL HINTS continued

Is it for you?

- **Your client is the business.** You need great client service, customer-focused skills, an ability to anticipate your clients' needs and insight as to how you can add value to the business.
- **Be prepared to move out of your comfort zone.** By moving in-house you will become part of a business which will require quick, commercial decision making. Some say that a different mindset is required from in-house lawyers when compared to private practice lawyers - there is a need to have a much greater commercial and strategic focus.
- **Remember you are a solicitor.** First and foremost you are an officer of the court with ethical and professional obligations. You will need to exercise judgment and balance commercial considerations against legal ones.
- **In-house lawyers help the business achieve its goals and objectives, requiring a much wider set of skills such as strategic thinking and the ability to manage and lead.** Be prepared to up skill as it is a vastly different environment and you need to be effective in a business context. Development of non-legal skills is important.
- **Be part of the business.** In order for you to be able to help the business achieve its goals, you will need to understand how the business works and what the people in the business do. Take time to understand the strategy and emerging priorities of the business.
- **Learn the lingo.** The people in the business will not like receiving over-complicated, wordy advice. You need to be able to not only interpret, but to simplify (in plain English) and give a very clear direction on what the organisation should do as a result of the advice you provide.
- **To help the business achieve its top priorities,** be proactive (as well as reactive), be strategic (as well as tactical).
- **Work fast and keep track.** While time sheets are not common practice in the in-house environment, by monitoring your time you will be able to assist in business improvements/enhancements/streamlining, as well as demonstrate your value to the business.
- **Try before you buy.** If possible, a secondment is a great way to find out if working in-house is for you. It is also very useful in extending your network for future positions.
- **Make the move early.** At 3-5 years post qualification experience, you will have solid private practice experience and organisations can still compete on salary.
- **Think outside the square.** If you have great general commercial experience, think about the industries to which your skills could readily be transferred.
- **Create your target list and do some due diligence.** Look for organisations that interest you. Consider size of business/organisation (which will affect the size of the legal team and ultimately the responsibility and ability to share work), industry sector and culture.
- **Maintain work/life balance.** Many roles may require long hours so once you decide to move in-house, remember to maintain your work/life balance.

CLIENT LEGAL PRIVILEGE

Privilege and confidentiality

Any experienced lawyer will tell you that once you or your business partner (i.e. internal client) put something in writing, be it in an email or a letter, it may no longer remain confidential as between you and the recipient/s. It is more likely to remain so if it satisfies the test for client legal privilege and you and the business partner have taken the appropriate steps to protect the communication. This area of law is complex and so we have outlined the basic points below.*

Client legal privilege (CLP) exists to ensure that communications (oral or written) between a lawyer and his or her client that are of a confidential nature and satisfy the CLP test remain that way. This test is that the communication remains confidential and that the dominant purpose of the confidential communication is in relation to actual or reasonably anticipated litigation or the giving or receiving of legal advice.

The renaming of what used to be called “legal professional privilege” to “client legal privilege” is helpful because, as the name suggests, the privilege rests with the client (or business partner) and not with you as the lawyer. It follows that a lawyer cannot “save” or backdate communications if the business partner has inadvertently failed to keep a communication confidential or sends emails addressed to you as their lawyer with instructions to a number of other non-lawyers (i.e. other business partners on a project) in the same email.

Some useful tips:

- **Assess the dominant purpose of the communication** (or intended communication) – If the business partner seeks your legal advice (or you are giving it) or there is actual or anticipated litigation, it is likely that this will trigger the protection of CLP.
- **Distinguish between communications which attract CLP and others** – In-house lawyers often have roles which are non-legal, including company secretary. You should think about

the role or position which is the reason you are having the communication and distinguish between those which might attract CLP and those which would not. It may be sensible to have more than one electronic “sign-off”, one for communications as a lawyer and others for communications in a non-legal capacity.

- **Protect emails you may receive** – Make sure you inform business partners through regular training not to copy you on emails but rather, that they should always send an email directly to you (and only to you or other lawyers) and mark it in both the subject and the top of the email “Confidential and legally privileged” (remember for correspondence to be privileged it must remain confidential so by copying others in you may risk waiving the CLP). You may also consider asking law firms who regularly advise your business whether they would be prepared to run a practical lunchtime workshop for your business on this topic.
- **Protecting emails you intend to send** – Where the communication meets the CLP test, make sure you mark in both the subject and the top of the email “Confidential and legally privileged”. It is also useful to state at the top of the email that the communication is “Not for distribution”.
- **If in doubt** – Use the phone or meet your business partner in person instead. Once the meeting concludes ensure you properly inform yourself or request assistance from your colleagues and/or external advisers about how to protect the communication before you or your business partners commit anything to writing.

Note: While we refer to email in this note the same applies to a letter or any other written document.

Most large law firms maintain a “Publications” page on their websites where more detailed analyses and case notes about CLP may be found.

* This is not legal advice and we do not suggest that by following the above your communications will be protected, however it should at the very least highlight the importance of having a good understanding of the considerations which apply.

LARGE EMPLOYERS OF LAWYERS

According to the number of practising certificates held in NSW as at May 2016 the largest employers of lawyers in NSW are:

- Allianz Australia Insurance Ltd
- AMP Services Limited
- ANZ Banking Group Limited
- Australian Broadcasting Corporation
- Commonwealth Bank of Australia
- Credit & Investments Ombudsman Limited
- Deloitte Touche Tohmatsu
- Insurance Australia Group Services Pty Limited
- KPMG
- Law Society of NSW
- Macquarie Group Limited
- National Australia Bank Limited
- NBN Co Ltd
- Qantas Airways Ltd
- QBE Insurance (Australia) Limited
- Telstra Corporation Ltd
- UBS Ag
- University of Sydney
- Westpac Banking Corporation
- Woolworths Limited

SECONDMENTS IN-HOUSE

Many legal practices (both in-house and private practice) offer opportunities for secondments to in-house teams, pro bono organisations and/or private practice firms. The availability of secondments will vary significantly across in-house legal teams.

Secondments may be available

For in-house lawyers, to:

- other legal or business teams internally in an organisation;
- law firms, particularly from those organisations with panel firm arrangements in place; or
- pro bono or community organisations.

For lawyers in private practice, to:

- in-house teams, particularly in organisations to which the firm provides legal services; or
- pro bono or community organisations.

Secondment-based legal providers (such as Lawyers on Demand and Plexus) are also emerging as alternatives in the Australian markets to provide contract legal staff to organisations, including law firms, on a fixed-fee basis.

The benefits of undertaking a secondment

There are numerous benefits of undertaking a secondment (from a lawyer's perspective), including:

- development opportunities including the opportunity to develop legal commerciality within a business;
- a chance to gain a deeper understanding of a business, its stakeholders and its risk appetite;
- extending networks and client relationships; and
- challenging, testing and possibly improving existing processes and procedures within a business.

Issues for consideration

Some of the issues for consideration in undertaking a secondment include:

- demonstrating a business case and outlining business benefits – to both the organisation and the lawyer;
- the secondment agreement;
- professional indemnity insurance;
- supervision, training and support;
- duration of a secondment;
- recognition of the secondee's work;
- maintaining contact with the employer during the secondment; and
- dealing with conflicts of interest.

MENTORING PROGRAMS

A number of organisations offer mentoring programs to help practitioners at different stages of their careers, either as a member service or at a cost to participants. The information below has been sourced from the relevant websites and is not exhaustive

Law Society of NSW Graduate Mentoring Program

The Graduate Mentoring Program unites final year law students and first year law students with Young Lawyers who are within 2 to 5 years of practice. These mentors provide support and guidance as students and graduates transition into practice.

More information:

Website: www.lawsociety.com.au/about/StudentHub/MentoringProgram
Email: graduateservices@lawsociety.com.au

Law Society of NSW Young Lawyers Mentoring Program

The NSW Young Lawyers Mentoring Program unites newly admitted lawyers seeking guidance and support with more experienced practitioners who are willing to volunteer their time to assist those just starting out in their careers. The program operates annually from March to November and participants must be members of the Law Society of NSW.

More information:

Website: www.lawsociety.com.au/about/YoungLawyers/Getinvolved/MentoringProgram
Email: ylmentoring@lawsociety.com.au

Law Society of NSW Women's Mentoring Program

The Law Society runs a dedicated mentoring program for women lawyers who are members of the Law Society. This mentoring program has been developed specifically for female lawyers who are 5+ years post admission. This is a time when key decisions are being made about career progression and the balance with personal commitments.

More information:

Website: www.lawsociety.com.au/ForSolicitors/AdvancementofWomen/Mentoring
Email: womensmentoring@lawsociety.com.au

ACC Australia Mentoring Program

The ACC Mentoring Program is a 12 month program with confidential matching of mentors and mentees.

More information:

Website: www.acla.acc.com/careers/apply
Email: aus.mentoring@accglobal.com

Women on Boards Program

Women on Boards offers a mentoring program to guide and support subscribers to develop a more structured approach to their professional career and board roles.

More information:

Website: www.womenonboards.net/en-AU/Services/Mentoring

Australian Institute of Company Directors Chair's Mentoring Program

The Chair's Mentoring Program introduces highly experienced and qualified emerging female directors to chairs and experienced directors from ASX200 boards for a 12 month mentoring relationship. The AICD website also provides the Coach and Mentor Connect directory of AICD members who advertise coaching and mentoring services.

More information:

Website: www.aicd.companydirectors.com.au
Email: contact@companydirectors.com.au

INDUSTRY GROUPS AND ASSOCIATIONS

A number of industry associations and groups operate in the legal profession and associated fields. The information below relates to industry groups and associations relevant to in-house practice. Information has been extracted from the relevant websites and is not exhaustive.

The Law Society of NSW

170 Phillip Street
Sydney NSW 2000

Tel: + 61 2 9926 0333

Fax: + 61 2 9231 5809

Email: lawsociety@lawsociety.com.au

Website: www.lawsociety.com.au

The role and responsibilities of the Law Society of NSW are numerous. The Law Society is the voice of the legal profession of NSW, representing the interests of over 30,000 solicitors, encouraging debate, driving law reform issues and maintaining open dialogue with government, parliamentary bodies and the courts.

The Law Society has co-regulatory duties with the Office of the Legal Services Commissioner to ensure that both the community and the legal profession are served by ethical and responsible solicitors.

In addition, the Law Society provides a range of membership services and helps members to stay in touch with legal developments through a number of publications and CPD and networking opportunities.

The Law Council of Australia

19 Torrens Street
Braddon ACT 2612

Tel: + 61 2 6246 3788

Fax: + 61 2 6248 0639

Email: mail@lawcouncil.asn.au

Website: www.lawcouncil.asn.au

The Law Council of Australia (LCA) is comprised of the State and Territory legal profession associations and Law Firms Australia. The Law Society of NSW is the largest constituent member.

The LCA addresses issues of national and international importance, federal law and the operation of federal courts and tribunals. The LCA advises governments, courts and federal agencies and represents the Australian legal profession overseas.

The LCA (together with its constituent bodies and specialist sections) also organises seminars, workshops and conferences on a range of legal issues.

INDUSTRY GROUPS AND ASSOCIATIONS continued

Association of Corporate Counsel (ACC)

Level 5, 84 William Street
Melbourne VIC 3000

Tel: 1300 558 550 or + 61 3 9248 5500

Fax: + 61 3 9248 5500

Website: www.acla.acc.com

Email: ausmembership@acc.com

The Association of Corporate Counsel (ACC) Australia is part of a global network of more than 40,000 in-house counsel employed by over 10,000 organisations in more than 85 countries. ACC Australia's role involves advancing in-house practice knowledge and skills by providing conferences, seminars and publications and representing in-house lawyer members by being a voice for the in-house sector.

Governance Institute of Australia

Level 10, 5 Hunter Street
Sydney NSW 2000

Tel: + 61 2 9223 5744

Fax: + 61 2 9232 7174

Website: www.governanceinstitute.com.au/home

The Governance Institute of Australia, formerly known as Chartered Secretaries Australia, represents over 7,000 chartered secretaries, governance advisers and risk managers and is the leading independent authority on best practice in board and organisational governance and risk management. CSA also offers accredited and internationally recognised education and training for governance and risk professionals.

Australian Institute of Company Directors (AICD)

Level 30, 20 Bond Street
Sydney NSW 2000

Tel: + 61 2 8248 8400

Fax: + 61 2 8248 8444

Website: www.companydirectors.com.au

Email: contact@aicd.com.au

The Australian Institute of Company Directors (AICD) is a national organisation for directors and senior leaders from business, government and the not-for-profit sectors, with over 38,000 members.

The AICD provides leadership on director issues and governance in Australia.

Financial Services Council (FSC)

Level 24, 44 Market Street
Sydney NSW 2000

Tel: + 61 2 9299 3022

Fax: + 61 2 9299 3198

Website: www.fsc.org.au

Email: info@fsc.org.au

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees.

The FSC engages in advocacy on behalf of its members regarding the development of the social, economic and regulatory framework in which its members operate.

The FSC has over 123 members who are responsible for investing more than \$2.3 trillion on behalf of 11 million Australians.

INDUSTRY GROUPS AND ASSOCIATIONS continued

Association of Superannuation Funds of Australia (ASFA)

Level 11, 77 Castlereagh Street
Sydney NSW 2000

Tel: + 61 2 9264 9300

Fax: + 61 2 9279 4204

Website: www.superannuation.asn.au

The Association of Superannuation Funds of Australia (ASFA) is a not-for-profit national body which provides policy development, research and advocacy for Australia's superannuation industry. Members of the ASFA include superannuation funds from the corporate, industry, retail and public sectors, as well as service provider membership for self-managed and small APRA funds.

Financial Services Institute of Australasia (FINSIA)

Level 18, 1 Bligh Street
Sydney NSW 2000

Tel: + 61 2 9275 7900

Fax: + 61 2 9275 7999

Website: www.finsia.com

Email: membership@finsia.com

The Financial Services Institute of Australasia (FINSIA) is a membership organisation for the financial services industry.

FINSIA has over 16,000 members and through policy, research and professional development opportunities, it aims to advance the careers of its members and strengthen the financial services industry.

Members of FINSIA work in the following areas: corporate finance and wholesale banking; financial markets; managed funds and superannuation; and private wealth management and retail banking.

Other relevant organisations

GRC Institute

www.thegrainstitute.org

Australian Institute of Management (AIM)

www.aim.com.au

Australian Securities Exchange (ASX)

www.asx.com.au

Commercial Law Association of Australia (CLA)

www.cla.org.au

Harvard

www.harvard.edu

INSEAD

www.insead.edu

International Bar Association

www.ibanet.org

Law Council - Business Law Section

www.lawcouncil.asn.au/BLS/

Law Society of NSW Young Lawyers

www.younglawyers.com.au

Melbourne Business School

www.mbs.edu

The Society of Notaries of NSW

www.notarynsw.org.au

Women Lawyers Association of NSW

www.womenlawyersnsw.org.au

FURTHER EDUCATION – LAW

Many Australian, and some overseas, universities have campuses in Sydney, with popular courses for in-house lawyers being offered by law and management faculties.

Information is set out below in relation to a range of postgraduate programs. The content is not exhaustive and should be considered indicative only of the courses on offer at any particular time.

Macquarie University

Postgraduate coursework programs

- Master of Laws, with specialisations in:
 - corporate and commercial law
 - environmental law
- Masters of Environmental Law
- Masters of International Law, Governance and Public Policy
- Master of Commerce with a specialisation in Financial Crime and Governance
- Masters of International Trade and Commerce Law
- Masters of International Trade and Commerce Law/Masters of International Relations

The University of NSW

Master of Laws

Generalist program or specialisations including:

- corporate and commercial law
- corporate, commercial law and taxation
- criminal justice and criminology
- dispute resolution
- environmental law
- human rights and social justice
- innovation law
- international business and economic law
- international law
- media and technology law
- taxation

The University of Sydney

Master of Laws

Allows a choice of specialist units of study:

- administrative and government law
- Asian and Islamic law
- climate change law
- commercial, corporate, finance and business law
- criminology
- dispute resolution
- energy and resources law
- environmental law

- health law
- human rights law
- indigenous law
- intellectual property law
- international trade law and international commercial arbitration
- international law
- jurisprudence
- labour law
- law and international development
- law and business
- law and social justice
- taxation law

The University of Technology, Sydney

Master of Laws

Six areas of specialisation are:

- corporate and commercial law
- dispute resolution health law and policy
- international law
- intellectual property
- postgraduate legal research

College of Law

Master of Applied Law (In-house Practice)

The LLM (Applied Law) focuses on developing technical and practical proficiency through innovative problem-based learning. It is designed on the basis of learning by doing – the application of legal skills to realistic tasks and scenarios that practitioners encounter in practice. The LLM facilitates flexibility and easy access with online delivery, supported by regular communication with lecturers and mentoring by practitioners from the relevant areas of legal practice. It comprises of eight subjects to be completed with a focus on the commercial aspects of being an in-house lawyer. Students can choose to exit the degree at an earlier stage and be awarded a Graduate Diploma of Applied Law (In-house Practice).

FURTHER EDUCATION – MANAGEMENT

Australian Catholic University

Master of Business Administration (Executive)

Designed to accommodate professionals who may need to balance the competing pressures of family, work and lifestyle. The course is offered in intensive mode over 24 weekends.

Charles Sturt University

Master of Business Leadership

Comprises eight subjects and three electives including:

- leadership theory and practice
- the leadership challenge
- contemporary issues in leadership
- leadership in teams
- difference and leadership
- power and leadership
- toxic leadership and social impact

Completion of the first three subjects allows students to exit with the Graduate Certificate in Business Leadership.

Newcastle University

Graduate Certificate in Business Administration

Choice of two of the following courses:

- managing under uncertainty
- foundations of business analysts
- organisational behaviour and design
- accounting and financial membership

The University of Technology Sydney

Graduate Certificate in Executive Business Administration

Provides foundation skills used in the general management of a business unit or enterprise for non-graduates who have at least eight years of relevant business experience.

Western Sydney University

Masters of Business Administration

Designed to set the foundation of knowledge and skills in the core competencies of business and management. Specialisations include:

- finance and investment
- management
- marketing
- logistics and supply chain management
- hospitality and tourism
- sustainable business
- innovation and entrepreneurship
- human resource management
- property
- information and communications technology

Australian Graduate School of Management

Master of Business Administration

Courses offered:

- MBA (full-time)
- MBA (Executive)
- MBAX (Technology, Change, Social Impact)
- MBA (Extension)

Governance Institute of Australia

Graduate Diploma of Applied Corporate Governance

Six subjects to be completed on governance and risk management areas.

Graduate Certificate of Applied Risk Management

Four subjects to be completed over 12 months.

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