

MOVING IN-HOUSE

A resource on in-house legal practice

Updated March 2021

IN-HOUSE CORPORATE LAWYERS COMMITTEE

THE LAW SOCIETY
OF NEW SOUTH WALES

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DISCLAIMER: This document has been produced solely for use by in-house lawyers to provide general assistance in relation to some aspects of in-house practice. It is not exhaustive of issues which in-house lawyers 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 7,226 in-house corporate lawyers working in NSW as at 30 September 2020. This comprised over 20% of all practising solicitors in NSW, compared with 14.6% just over a decade ago.

There are also 4,019 government lawyers in NSW as at 30 September 2020 representing nearly 12% of the profession. As a result, almost one-third of all practising solicitors in NSW are in-house. 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 lawyers.

The Law Society of NSW is pleased to publish this resource for aspiring in-house lawyers. Originally developed by the 2012 and 2013 members of the In-House Corporate Lawyers Committee, and subsequently updated by the Committee in 2020, the resource provides information and tips which may be helpful to those considering a career in in-house practice.

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, they may practice as a:

- sole in-house lawyer;
- team comprising a number of in-house lawyers or smaller teams of in-house lawyers based on their practice area as may be the case with larger organisations;
- team comprising a mix of in-house lawyers, compliance and/or risk staff as may be the case for organisations that do not have separate teams for legal, risk and compliance functions.

Structure

Typically, and particularly with in-house legal teams with more than one lawyer, there is a General Counsel, Chief Legal Officer 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 example, in-house lawyers in insurers can be split into corporate and claims lawyers.

Often in-house lawyers will have prior law firm experience, with few graduate in-house positions on the market.

Role of in-house lawyer

Apart from legal issues, the role of an in-house lawyer is very dynamic with in-house lawyers often responsible for company secretarial, risk, compliance and regulatory functions.

The in-house legal role may be State-based, country-wide or even regional e.g. Australia and New Zealand or Asia Pacific. Working in-house is often more varied, ad hoc and challenging and will require a commercially focused approach due to the direct involvement with the business.

Work environment

In-house legal teams tend to be flatter and less hierarchal with many organisations offering flexible working arrangements. This makes contracting and part-time positions more accessible in-house than in law firms.

It is quite common for private practice lawyers to transition to a senior in-house legal role such as General Counsel. However, some lawyers work in-house (sometimes on secondment from law firms) 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-based, 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 commercial decision-making.
- Development of specialist knowledge of a particular industry.
- Often no time recording.
- Clients are your colleagues and not your customers and so you can share common goals and be treated with greater respect than a legal consultant whose services are being paid for.

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 (i.e. there can be a feeling of unlimited tasks to do as part of an in-house role).
- While there may be greater involvement in decision making, ultimately it is the role of management to make material commercial 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.

HELPFUL HINTS (Continued)

Considering a move in-house? Here are some things to consider.

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, commercially aware advice. 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, as opposed to a purely technical legal focus. Some in-house legal roles can still require a great degree of technical legal focus when the in-house lawyer is expected to be a specialist in a particular practice area.
- An in-house can have a less defined career path but, on the other hand, may present broader career opportunities than a traditional legal role in private practice, remember 'fortune favours the brave!'
- Remember you are a solicitor and part of a profession. First and foremost you are an officer of the court with ethical and professional obligations. You will need to exercise judgment and prioritise legal considerations over commercial ones if there is a conflict
- 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 (e.g. if you have a valuable non-legal contribution to make at a meeting then you should make it and not just be limited to legal contributions as your employer is paying you for all of your skills and contributions, not just the legal ones).
- 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 operates and what the people in the business do. Take time to understand the strategy and emerging priorities of the business (e.g. externally try and subscribe to industry periodicals and podcasts and internally try and attend as many non-legal meetings as you can with as broad a range of departments and stakeholders as possible).
- Learn the language. 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.
- 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 the size of the 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 employer 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 (CLP) and you and your employer client have taken the appropriate steps to protect the communication. This area of law is complex and so we have outlined some basic points below.*
- CLP exists to ensure that communications (whether 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.
- Under the Uniform Evidence Acts "legal professional privilege" is referred to as "client legal privilege" because, as the name suggests, the privilege rests with the employer client and not with you as the lawyer. It follows that a lawyer cannot "save" or backdate communications if the employer client 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 (e.g. other business partners on a project) in the same email.

Independence

Recently the courts have moved away from 'independence' being a separate requirement for in-house lawyers. Instead, the courts have preferred the view that provided an in-house lawyer is acting in his or her professional capacity in relation to a professional matter and the confidential communications came into existence for the dominant purpose of legal advice, then CLP will attach to the communications without the need to separately prove independence (see *Archer capital 4A v Sage Group PLC (No.2)* [2013] FCA 1098 and *Banksia Securities Limited v The Trust Company* [2017] VSC 583). The focus will be on whether you were acting in your professional capacity as an in-house lawyer. See also section 38 of the *Legal Profession Uniform Law*.

Some useful tips:

- **Assess the dominant purpose of the communication** (or intended communication) – If the employer client 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 other employees 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 at 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 CLP). You may also consider asking law firms who regularly advise your employer client whether they would be prepared to run a practical lunchtime workshop for your employer client on this topic.
- **Protect emails you intend to send** – Where the communication meets the CLP test, make sure you mark in both the subject and at 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 with employees of your employer client 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 employees of your employer client commit anything to writing.

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

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 IN-HOUSE LAWYERS

According to the number of practising certificates held in NSW as at June 2020, the largest employers of in-house lawyers in NSW are (in alphabetical order):

- Allianz Australia Insurance Ltd
- AMP Services Limited
- ANZ Banking Group Limited
- Australian Broadcasting Corporation
- Australian Financial Complaints Authority (AFCA)
- Commonwealth Bank of Australia
- Deloitte Touche Tohmatsu
- Insurance Australia Group Services Pty Limited
- KPMG
- The Law Society of NSW
- Lendlease
- Macquarie Group Limited
- National Australia Bank Limited
- NBN Co Ltd
- Qantas Airways Ltd
- QBE Insurance (Australia) Limited
- Telstra Corporation Ltd
- 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 are also emerging as alternatives in the Australian marketplace 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 or within a new industry sector;
- 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.

The 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: www.lawsociety.com.au/legal-communities/law-students/graduate-mentoring-program

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: www.lawsociety.com.au/events/young-lawyers/mentoring-program

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: www.lawsociety.com.au/about-us/advocacy/advancement-of-women/womens-mentoring

ACC Australia Future Leaders Mentoring Program

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

More information: www.acc.com/chapters-networks/chapters/australia/careers/future-leaders-mentoring-program

Email: 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: 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: aicd.companydirectors.com.au/advocacy/chairs-mentoring-program

Email: mentoring.program@aicd.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 35,000 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.

NSW Young Lawyers

NSW Young Lawyers is the largest body of young and newly practicing lawyers and law students in Australia.

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.younglawyers.com.au

The Law Council of Australia

19 Torrens Street
Braddon ACT 2612

Tel: + 61 2 6246 3788
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)

PO Box 422, Collins Street West,
Melbourne VIC 8007

Tel: 1300 558 550 or + 61 3 9248 5500
Email: ausmembership@acc.com
Website: acc.com

Governance Institute of Australia

Level 10, 5 Hunter Street
Sydney NSW 2000

Tel: 1800 251 849
Website: www.governanceinstitute.com.au

Australian Institute of Company Directors (AICD)

18 Jamison Street
Sydney NSW 2000

Tel: + 61 2 8248 6600
Fax: + 61 2 8248 8444
Email: contact@aicd.com.au
Website: aicd.companydirectors.com.au

Australian Securities and Investments Commission (ASIC)

www.asic.gov.au

National regulator of corporates, markets, financial services and consumer credit.

Australian Charities and Not-for-profits Commission

www.acnc.gov.au

National regulator of charities.

NSW Department of Fair Trading

www.fairtrading.gov.au

Regulator of associations and co-operatives in NSW.

Other relevant organisations

- **GRC Institute:** thegrcinstitute.org/
- **Australian Institute of Management (AIM):** www.aim.com.au
- **Australian Securities Exchange (ASX):** www.asx.com.au
- **New South Wales Bar Association**: nswbar.asn.au
- **International Bar Association:** www.ibanet.org
- **The Society of Notaries of NSW:** www.notarynsw.org.au

Different industries have different relevant industry bodies that may be relevant to the in-house lawyer's practice. Examples are:

- **Financial services:** Financial Services Institute of Australia (FINSIA)
- **Franchisees:** Franchise Council of Australia
- **Property:** Property Council of Australia
- **Business:** Australian Chamber of Commerce and Industry

FURTHER EDUCATION

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 institutions that offer postgraduate programs. The content is not exhaustive and should be considered indicative only of the courses on offer at any particular time.

Law

- **Macquarie University**
  Masters of Laws with choice of specialist units of study.
- **The University of NSW**
  Master of Laws, both generalist programs or specialist programs.
- **The University of Sydney**
  Master of Laws with choice of specialist units of study.
- **The University of Technology, Sydney**
  Master of Laws, with choice of specialist units of study.
- **College of Law**
  Master of Applied Law (In-house Practice)

Management

- **Australian Catholic University**
  Master of Business Administration (Executive)
- **Charles Stuart University**
  Master of Business Leadership
- **Newcastle University**
  Graduate Certificate in Business Administration
- **University of Technology Sydney**
  Graduate Certificate in Executive Business Administration
- **Western Sydney University**
  Masters of Business Administration
- **Australian Graduate School of Management**
  Master of Business Administration
- **Governance Institute of Australia**
  Graduate Diploma of Applied Corporate Governance and Risk Management
  Graduate Certificate of Applied Corporate Governance and Risk Management.

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