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PRESIDENT'S REPORT



Justin Coss
National President

I had hoped that I would have been writing this message from the ACC Annual Meeting that was to take place in October in Philadelphia. While that was not to be, the ACC Annual Meeting was nevertheless a very successful conference as a virtual event with over 2,500 attendees, 40 virtual sessions from speakers spread worldwide and several innovative networking sessions to provide our members with the opportunity to mix with their peers.

I am looking forward to our own National Conference here in Australia, which is also a virtual event and will take place from 16 to 20 November. Our Board, staff and programming committee have been working tirelessly to provide an amazing conference experience for you. It is a huge bonus this year that the conference registration cost has been heavily discounted to allow as many members to attend as possible. In addition, as you can attend the conference from the comfort of your study or home office or maybe even the kitchen table, you don't have to worry about travel or accommodation costs! If you haven't signed up already, I encourage you to register as soon as possible.

After COVID-19 first arrived in Australia 10 long months ago with its first recorded case on 25 January, it is pleasing to see that infection rates are at an all-time low and most States and Territories have either returned to relative normality or are on an advanced path to easing social restrictions.

Here in Australia, the ACC Board and staff are continuing to serve our members by operating on a mainly virtual basis, but we are also now beginning to reintroduce in-person events on a State-by-State basis. I want to assure you, however, that the safety of our valued members and sponsors is of paramount concern to ACC. Accordingly, all proposed in-person events will be conducted in accordance with the relevant State laws.

2020 has been the *annus horribilis* for many of us but for one of our members, there was at least a positive note to remember this year and that is none other than our very own Lori

Middlehurst, the current NSW President, who was recently named the ACC Member of the Year globally. This is ACC's highest honour and reflects the amazing volunteer work that Lori has done over many years for ACC as a presenter, mentor, office bearer, Board Director and valuable contributor to the ACC NSW division generally. I want to again extend my congratulations to Lori for this amazing accolade.

Congratulations also go to the 39 ACC Australia members who successfully completed the ACC in-house Certification program during August. Delivered successfully worldwide for the past two years, this was the second time the program was delivered in Australia and having been re-engineered for a virtual environment, the typically four-day intensive program was delivered over a three-week period.

ACC is always developing additional resources to help and inform you, our members. In this regard, keep your eyes out for the **ACC Australia Compensation Survey** that was recently released. In addition, it is well worth investing the time to look up a valuable resource recently compiled by the ACC in conjunction with **Edelman**, the global communications firm, *Trust in Business Report*, a survey of chief legal officers (CLOs) and institutional investors on their perceptions of how to increase public trust in businesses. This is the first collaboration of its kind, measuring the factors that impact corporate trust from the perspective of CLOs and institutional investors.

I want to acknowledge and thank two of our Board members who will be retiring this month as ACC Directors after each serving a colossal 10 years on the ACC Australia Board – Karen Grumley (QLD) and Gillian Wong (VIC). Both Karen and Gillian have served as State Presidents and National Presidents and have guided ACC Australia through thick and thin including perhaps most notably our successful alliance with ACC Global in 2015. On behalf of our Board, staff and members, I extend my heartfelt thanks to both Karen and Gillian without whose dedication and commitment ACC would not be the success that it is today!

And finally, I want to extend a warm invitation to you our members, to join us at our Annual AGM to be held virtually at 1pm AEST on Friday 20 November 2020, where the Board Executive will present the Annual Accounts for the financial year ended 30 June 2020, provide an update on our activities in this past year and share our plans for the year ahead. I hope that you will join us and as always, I invite you to either submit questions in advance to ausevents@accglobal.com or ask questions of the Executive on the day.



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Anna Tichborne

As a General Counsel with over 17 years' experience working for large and small-medium sized organisations in New Zealand, Australia and the USA, Anna has experience across varied practice areas including corporate/M&A, competition and consumer law, privacy, dispute resolution and employment law across multiple jurisdictions. Anna is currently General Counsel for Megaport, a global telecommunications business and is responsible for leading its global legal activities.

I love being a corporate lawyer! It truly is what I enjoy doing—mainly because I enjoy being 'more than just a lawyer' and being a corporate lawyer gives you the scope to do this. Having a legal qualification seems to suggest to people that you are generally smart and might know the answer to 'everything!' I always tell people that I know a lot about a lot of different things, but mostly I just know how to work things out, where to go to get the answers and to ask lots and lots of questions.

I am constantly learning and striving to learn more. I think I reached a point in my career where I felt like I knew a fair amount of 'stuff'; I have an extensive career background, having worked for many interesting and successful people (I have always worked for entrepreneurs) and I felt like I had the time and energy (finally) to give back to the community who has given me so much over the years.

I joined Cherish Women's Cancer Foundation ('Cherish') as a Director in 2015. Cherish is a not-for-profit organisation that raises money

to find better, kinder and more effective treatments for women with gynaecological cancers. Cherish was established in 2012 to raise crucial funds to support research projects that have the potential to produce real outcomes for those touched by gynaecological cancers.

Our primary goal is to find and fund clinical research that results in better treatments for gynaecological cancer patients that can be developed and implemented quickly. Our secondary goals include funding research into prevention, early detection and a cure.

If we don't create ways to fund research into gynaecological cancers, we simply won't improve survival rates, treatment options, our knowledge about ways to prevent it and ways to detect it earlier. This is because the only way to fund improvements in this area is through fundraising.

Each year in Australia, more than 6,000 women are diagnosed with gynaecological cancers and this number is increasing each year. Almost a third will not survive their disease. More than ever before, we need to increase research into quality treatments as this group of cancer is costing Australia approximately \$182 million a year, affecting women's quality of life and having an impact it shouldn't be having in this day and age.

Annual funding into research by the Australian Government has been drastically reduced since 2008, from \$14 million to \$7 million, even though all of the statistics show it is an increasingly prevalent cancer type among women.

The opportunity with Cherish arose when a friend contacted me to see whether I might know of a lawyer who was interested in joining a board of a not-for-profit organisation to raise funds for research of women's gynaecological cancers. Of course, I knew someone ... me. This was exactly what I was looking for—an opportunity to give back. Everybody, I am certain, knows someone who has suffered a loss due to the evil that is cancer and many organisations do 'breast cancer' and we see pink everywhere and that is wonderful but nobody talks about 'gynae' cancers—the first thing I had to do was to learn how to spell it. These

cancers are often not talked about because of where they are located, but they are brutal and the treatments are incredibly invasive. What I have also learned through my time with Cherish is that these cancers are not just in 'old' women, they affect women of all ages.

When I joined Cherish in 2015, the board was relatively big and contained a wealth of experience and knowledge. However, like any business and particularly a young business it needed more structure and governance and, over time, the board changed—members retired and new members joined—and Cherish has continued to evolve and grow over time. Initially, my role was to provide legal advice to the board to improve its structure, ensure it was adequately protected and reduce any risk that it might have. I would advise on things like protection of IP, review third party contracts, prepare charters and memorandums of understanding and provide general business best practice advice. I had the opportunity to take on the Vice Chair role in November 2016, a role I thoroughly enjoyed until I retired from this role in 2019 when I relocated to LA for my employment. Today, I remain an active Director on the board.

As I have said, I love being a corporate lawyer but the work I do with Cherish is most rewarding. I don't get paid, my time is entirely voluntary but each time I meet a patient or a survivor and I hear their story, and what they have sustained, then every moment of my time spent helping Cherish to raise more funds and decide how those funds will be used is worth it. If we can succeed in our pledge and aid a woman's cancer journey and that of their loved ones, then we are successful.

I would recommend any lawyer to join a not-for-profit organisation—we have incredible skills and these skills can be used to help others in our community. If you are interested in joining a board, I would suggest looking on LinkedIn or Seek for Board opportunities, make it known that you are available and what you can bring to that board. I know you will find it as incredibly rewarding as I do. 🙌

For more information
www.givenow.com.au/cherishfoundation



Katie Butterworth

As a budding young lawyer who works for the world's largest aerospace company, Katie's work covers all facets of labour and employment law including complex conflict of interest reviews, investigations, industrial disputes, and commercial and government contracting for Boeing businesses in Australia, New Zealand and South East Asia. Katie is in the final semester of her Master in International Law degree.

A DAY IN THE LIFE

KATIE BUTTERWORTH

Global Law Associate, Boeing

7.00 am **Seize the day!** I silence the alarm, drink my first half-litre of water as the sun warms the apartment and water my plants. Working from home days are brilliant in that they allow me to aim to get the recommended 8 hours of sleep, and not have to rush around or fill up on caffeine to get through the day. I'm grateful for this peaceful time before my working from home (WFH) colleague (partner) occupies his office (our dining space).

7.30 am **Connecting with the mothership.** The workday starts with two back-to-back team calls with our labour and employment law leader and colleagues in the US. The first is dedicated to 'race conversations' training; one of many we've had over the course of the year. I'm proud to work for a company that takes race equity issues as seriously as Boeing. The second call serves as a virtual check-in, a download and celebration of recent wins, and a discussion of the most relevant and interesting labour and employment law issues faced by the team. As the only 'international' team member on this call, learning about the differences between the US and Australian labour landscape is always fascinating, and they are equally interested in my report-out on how our disputes and projects are being managed 'down under'.

9.00 am **Ab-solutely fabulous.** Over time, I've learned that my most powerful workouts take place before the workday starts, but given that my early mornings are sometimes taken up by meetings with the US to meet time-zone challenges, flexibility is key. My exercise commitments haven't been consistent since COVID blurred the boundaries between work and home life, but I've recently developed an enjoyable at-home routine with some trusty body-pump and aerobics sessions to keep me energised. Today,

I give 'body combat' a go and almost develop abs from laughing so hard at my limited martial arts skills, but nevertheless it gets my heart rate up.

9.30 am **Determining conflicts of interest.** I prepare a quick bite to eat and make a start on some substantive written work. There are several requests concerning conflict of interest checks for prospective employees filling my inbox this morning. As the conflict of interest focal for the region, I complete complex conflict analysis for employees in the defence environment to protect Boeing from competitors' restraint of trade claims, and so that Boeing's defence business is protected from claims when submitting tenders for programs often worth tens of millions of dollars. Several conflict checks require more due diligence, so I flag relevant issues with my Senior Counsel for labour and employment law, as well as the Supply Chain Management and Ethics team to find practical and workable solutions to the risks posed to the business.

10.30 am **Contributing to national defence objectives.** Having recently been read into a coded project for a cutting-edge program that is significant to Boeing's defence business, the Senior Counsel for that business emails me a request to review some purchase order terms and conditions for a commercial arrangement with a key supplier. There are several terms in the contract that would not be compliant with our Boeing contracting policies, so I discuss the issues with the senior lawyer and draft a lengthy advice document on the issues so the business can further negotiate with the supplier.

11.00 am **Implementing business and human rights due diligence.** I am scheduled to brief two executive leaders from Boeing's

commercial business on the proposed introduction of a new contract clause in Boeing's standard templates. The new clause was drafted in response to federal legislation on modern slavery and is just one deliverable from a detailed compliance project and framework that I have project managed for Boeing's ten Australian subsidiaries over the past year. The briefing goes well and, backed by our Regional Counsel, we're able to inform the business leaders of Boeing's legal obligations, corporate social responsibility, and sustainability objectives, and answer concerns they have regarding the implementation of deliverables for the hundreds of suppliers in their supply chain.

12.00 pm Coordinating business functions. Having recently worked through increased numbers of complex conflict of interest checks, my Senior Counsel and I convene a meeting with other key business functions to determine the best process for tracking risks, so they do not affect important contracts and tenders. One of the intricacies of my (and my team's) role is the connections with business functions and leaders required for us to improve processes and create solutions. As we have 10 subsidiaries in Australia with different leaders and functions supporting each, you quickly realise that without the right contacts, it is difficult to solve problems effectively. Today, we bring together team members from Ethics, Business Development and Human Resources. Our concerns as to best practice processes are quickly relieved, and we end the meeting with a slightly amended process to achieve best in class compliance.

12.20 pm WFH goals. The previous meeting is run efficiently so, in true WFH fashion, I use the extra time gained to quickly knock over some errands, including heading to the post office and pharmacy at the end of my street, and to the florist to pick up a friend's birthday gift. I'm out and back again in time to answer a request from the Talent Acquisition team before

commencing the next project for the day.

1.00 pm Best in class compliance. I receive a call from a key contributor to the business and human rights compliance project I am managing to discuss her particular business's interest in expanding their reach and completing even more competent due diligence, going further beyond what the law requires. We discuss project timelines, aligning the other Australian businesses with the US, and looping in another person with expertise who we suspect will be able to speed the process along.

2.00 pm Knowledge is power. While I catch up on some email requests, I also use this time to watch two pre-recorded webinars for a personal lunch 'n' learn session. One is a business deep-dive into one of Boeing's defence programs. Working for an engineering company as a lawyer, it can sometimes feel like the business is speaking a different language. This webinar furthers my understanding of the program's strategic objectives and the actual product, which will be vital when the business requests contract advice about it. The second session is by The Resilience Project, an organisation providing a 10-week education piece on resilience and mental health to all Boeing Australia employees; a profound webinar with some excellent tips that I will try to implement in my personal and professional life.

3.00 pm Policy and process improvements. I tend to a request from the Global Diversity and Inclusion leader for the region to ensure that the equal employment and opportunity policy for the commercial business is current and legally compliant.

3.30 pm Empowering functional partners. Working in-house for a large corporation with numerous business and functional partners, I am regularly involved in providing email updates and virtual presentations on legal and compliance matters to our most important business clients. I've

been tasked with drafting and planning three more training sessions for the 50+ members of the Australian Human Resources team during Q4 regarding the most pertinent recent issues that have arisen in the employee relations space. My Senior Counsel has taught me the importance of building the capacity of our business partners to understand basic legal matters because the better their understanding and the more comprehensive the advice requests we receive, the better and more efficient advice we can provide. I look forward to co-presenting the training and empowering the team on these topics.

5.30 pm Master of none. While I think it is incredibly important to separate home and work life wherever possible in a WFH environment, my finish time is normally dependent on how full the work docket is and the levels of urgency for requests. Today, I can finish on time and prioritise completing study for one of the final assignments for my Master of International Law. I'm both privileged and grateful to be able to complete full-time postgraduate studies while managing work and life commitments, but I'm certainly looking forward to getting a better hold of my wellbeing and life-balance again when I graduate next month!

7.00 pm Drag Queen Bingo. This evening is an anomaly as I'm venturing out on a 'school night' to celebrate a friend's birthday. A weeknight social event is not normally typical of a day in the life of me, but with the gradual easing of COVID restrictions, the recent introduction of daylight savings for summer, and a huge year of hard work with not much play, I simply cannot turn down the opportunity to attend dinner and 'Drag Bingo' tonight. I freshen up, head to the venue and enjoy the fun-loving event. As 2020 starts to draw to a close, I am reminding myself of the importance of living and appreciating face-time with loved ones more than ever. [a](#)

CREATIVITY: BEYOND DR SEUSS – SOLVING LEGAL PROBLEMS AND ENHANCING WELLBEING THROUGH CREATIVE THINKING

Creativity, no longer associated solely with great artists and writers, it is now one of the most sought-after qualities in the workplace. Recognised as the cornerstone of solving problems, sparking innovation and productivity, it can also support our wellbeing, help to increase our happiness and is an important quality for the modern in-house lawyer. You can help harness and cultivate your own (or your team’s) creativity by increasing positive emotions, getting into ‘flow’ and harnessing the power of the unfocused mind.

Creative people are described as more open and enquiring, more autonomous and curious. They are less constrained by existing categories and boundaries, valuing expertise, push their own boundaries and those of others. They have been described as not only artists, writers and academics, but also scientists, engineers and lawyers.

Creativity is broadly associated with two types of thinking:¹

- **Convergent thinking** – logical, rational, deductive and focused, aimed at producing “the single best answer to a problem with little or no ambiguity”. It involves recognising familiar patterns and stored information and emphasises speed and accuracy. Sounds a lot like a lawyer!
- **Divergent thinking** – spontaneous and free-flowing, described as “true creativity”. It explores more possible solutions (often in parallel) and makes unexpected connections. Divergent thinkers are often “non-conformists, curious, willing to take risks, courageous, persistent and resilient”. Sounds a lot like what most lawyers wish they had the time for in the workplace!

While creative thoughts often involve both convergent and divergent thinking, it is well documented that divergent thinking becomes limited during times of stress when our ‘fight or flight’ mode is activated. Stress or any negative emotion (eg anger) narrows our actions to “focus our attention on a specific behavioural response such as running or fighting and therefore do not expand our thinking to other behavioural alternatives”.² While negative emotions have important functions (eg anxiety promotes vigilance) they often “linger on beyond their usefulness, producing unnecessary irritability and increases in heart rate and blood pressure”.³

In addition, the shortcomings of limited focus are analogous to a flashlight:

while a bright and narrow beam of light cast straight out in front of you is terrifically helpful if that’s where you need to be looking, what about your peripheral vision and the light you might need to see into the murky middle distance?⁴

In-house lawyers need both focus and peripheral vision to solve problems in their day-to-day roles. For this, we need to access creativity and broaden our minds. One way to do this is to increase our positive emotions.

Why and how can we ‘broaden and build’ our positive emotions?

Social psychologist, Dr Barbara Fredrickson,⁵ says “through experiences of positive emotions people transform themselves, becoming more creative, knowledgeable, resilient, socially integrated and healthy individuals”.⁶ Fredrickson developed the ‘broaden and build theory’ based on the underlying premise that happiness has a very important evolutionary purpose.

Where negative emotions narrow our actions down to fight or flight, positive emotions conversely broaden the number of possibilities we process. Dr Fredrickson described the 10 most positive emotions—joy, gratitude, serenity, interest, hope, pride, amusement, inspiration, awe and love⁷—as sharing the ability to broaden people’s momentary thought-action repertoires (widening the array of thoughts and actions that come to mind). For example, joy sparks the urge to play and be creative, and interest sparks the urge to explore and learn.⁸ These emotions then build people’s personal resources including:

- cognitive/intellectual resources (help concentration, creativity and focus);
- psychological resources (help ward off exhaustion, depression and anxiety);
- social resources (help build and maintain relationships and give/receive emotional support); and
- physical resources (increased immune systems so we are healthier and have more energy).

The broaden and build theory is based on what Fredrickson calls two core truths of positive emotions because “by opening our hearts and minds” they:

- make us more receptive and more creative; and
- allow us to discover and build new skills, new ties, new knowledge and new ways of being.⁹

By broadening thinking and building enduring psychological resources such as resilience, positive emotions “trigger upward spirals toward enhanced emotional well-being ... any positive emotion you experience today not only feels good now, but also increases the likelihood you will feel good in the future”, which has been proven with studies tracking the same individual over time.¹⁰ These broadened mindsets build enduring personal resources, which function as reserves to be drawn on later to manage future threats.¹¹

Research has shown that the 'broadening effect' of increasing positive emotions floods our brains with dopamine and serotonin, both feel-good chemicals, which Shawn Achor, a leading expert on happiness, says help to dial up the learning centres of our brains to higher levels—help us to organise new information, keep it in the brain for longer and retrieve it faster. He goes on to say that positive emotions "enable us to make and sustain more neural connections, which allows us to think more quickly and creatively, becoming more skilled at complex analysis and problem solving".¹² When we feel "safe" and no longer feel "threatened" we feel soothed, quiet and content and "become confident enough to look beyond the immediate needs of survival". We begin to look outwards through "idle curiosity", scan the world for interesting new ideas, "weave together patterns" and come up with new concepts, which cultivates divergent thinking and "the enhanced perspective that this produces lies at the heart of creativity".¹³ Fredrickson found a practical consequence of positivity's mind broadening powers is enhanced creativity—"a broad mind changes the way you think an act, when you see more ideas come to mind and more actions become possible".¹⁴

Studies on the effects of positive emotions show that increasing positive emotions:

- expands our peripheral vision – people primed for either positivity or negativity were shown a series of photos. Those in a good mood saw everything, while those in a negative mood missed substantial parts of the background;¹⁵
- opens our minds and promotes creativity – two groups of students were asked to help a cartoon mouse escape a maze. For one group, there was a piece of cheese at the maze's exit (a positive or approach-orientated puzzle), while the other exit showed an intimidating owl poised to kill the mouse (negative or avoidance-orientated puzzle). All the students completed the simple mazes in minutes and then took creativity tests. The group who avoided the owl did 50 percent worse than those who had helped the mouse find the cheese. The owl had triggered the avoidance systems of the students, closed down their minds and left them with a lingering fear of failure. This reduced their flexibility and "hamstrung their creativity" whereas the students who helped the mouse were "open to new experiences and far less cautious. The experience had opened their minds".¹⁶

While positive emotions can help counterbalance the effects of negative emotions, our brains are wired towards a negativity bias. Rick Hanson has described the brain as having "Velcro for negative experiences and Teflon for good ones".¹⁷ Fredrickson therefore suggests that we need to aim for a ratio of positive to negative emotions that is at least three to one. She found that the most flourishing individuals and work groups, those that manifest growth and resilience, all show ratios of more than three to one.¹⁸

Ways to increase your positive emotions (and incidentally your wellbeing) include:

- practising mindfulness, which boosts both convergent and divergent thinking by boosting working memory, clarity of thought, resilience, courage and happiness;¹⁹
- meditating, including 'Metta' meditation, which Fredrickson and her colleagues found increased the pleasure and intensity of feelings including curiosity, hope and joy and they built the four personal resources for a happy and creative life—cognitive, psychological, social and physical;
- introducing small positive practices into your weekly team meetings;²⁰
- following any of the 12 happiness boosting activities identified by Sonia Lyubomirsky, eg expressing gratitude, cultivating optimism, avoiding overthinking and social comparison, practising acts of kindness, nurturing social relationships, developing strategies for coping, learning to forgive, increasing 'flow' experiences, savouring life's joy, committing to your goals, practising religion and spirituality and taking care of your body (eg meditation);²¹
- identifying what restores and what depletes you. For Tal Ben Shahar, it includes being late to an appointment or being anxious because he is almost late. He decided that "rather than trying to manage his time with maximum efficiency, scheduling everything like clockwork to arrive at the last possible minute", he reduces negativity by arriving early, usually with something to do like read a book, "it's a small adjustment that makes a big difference to his level of happiness";²²
- journaling about positive experiences (eg writing down three things every night);²³
- expressing gratitude;²⁴

- reminding yourself of your daily progress (eg completing a report) rather than just checking your 'to do' list; studies show these people are happier and more productive and creative;²⁵
- reviewing Fredrickson's list of 10 positive emotions and creating ways for yourself or your employees to experience these more frequently, including whether they can be included in leadership principles (eg curiosity); and
- using a signature strength because every time we use a skill, whatever it is, we have a burst of positivity.

Using our strengths and what a strength of creativity looks like

We are all good at something and using our strengths contributes to our positive wellbeing. Strengths are:

- something you are good at and enjoy doing;²⁶
- patterns of thinking, feeling or behaving that, when exercised, will excite, engage and energise you, and allow you to perform at your optimal level;²⁷ and
- a pre-existing capacity for a particular way of behaving, thinking or feeling that is authentic and energising to the user and enables optimal functioning, development and performance.²⁸

Research shows that exercising strength of character is even more fulfilling than using a skill.²⁹ The 2004 Values in Action signature strengths skills assessment³⁰ examines 24-character strengths within six categories or virtues.³¹ Creativity is one of these strengths, described as thinking of new ways to do things, and is found in highly creative individuals to people solving problems. If your strength is creativity, you are likely to:

- be open to new experiences or have cognitive flexibility;
- share new ideas at team meetings; and
- brainstorm easily, offering contributions quickly and often.³²

Ways to increase creativity include encouraging your team to:³³

- 'be creative' before a thinking task or problem-solving activity;³⁴
- generate multiple alternative solutions instead of searching for one 'correct' solution (increasing divergent thinking). Brainstorming rules include expressing any ideas that come to mind without criticism or evaluation, and combining or building on ideas to develop new ones. Pay attention to ideas presented by all group members, encourage reticent group members to speak up, question how and why individuals approach a problem and actively engage in combining the ideas of team members;³⁵ and
- download an app promoting creativity/free thinking and use it daily.³⁶

Using any strength consistently can increase wellbeing and creativity. For example, travelling over 300 days a year makes it difficult for Achor to use his strength of "love of learning" as he can't visit museums. Instead, he learns one new fact per city, which makes "an enormous difference in my mindset".

Whatever your strength, strengths expert Michelle McQuaid describes "consistently hitting the golden mean of your strengths – when you're using them in ways that are just right for the situation and outcomes you want - lies in the art of what psychologists call 'flow'".

The science and magic of 'flow'

Mihaly Csikszentmihalyi coined the phrase "flow"³⁷ describing it as:

*a state in which people are so involved in an activity that nothing else seems to matter; the experience is so enjoyable that people will continue to do it even at great cost, for the sheer sake of doing it.*³⁸

He emphasised the importance of flow in our lives:

*The best moments in our lives are not the passive, receptive, relaxing times ... The best moments usually occur if a person's body or mind is stretched to its limits in a voluntary effort to accomplish something difficult and worthwhile.*³⁹

Csikszentmihalyi described several different elements involved in achieving flow:

- the task is just outside our grasp, but we believe we can reach it (there is a balance between challenges and skills);
- we can focus all of our effort and attention on the task;
- our goals are clearly defined every step of the way;
- we receive immediate feedback (which can include corrections);
- our time spent on the task seems effortless;
- we feel a sense of autonomy over our actions;
- self-consciousness disappears;
- the sense of time becomes distorted; and
- the activity is autotelic (where an activity is done for the experience itself rather than a future benefit).

Achieving flow requires the right balance between the challenge and your skillset, including “using . . . character strengths.”⁴⁰ A challenge well beyond your skills can induce stress and anxiety, whereas a challenge well below your skills can leave you bored and distracted. Flow expert, Tanya Caldwell,⁴¹ describes it as the “emotional midpoint between boredom and anxiety, in what scientists call the flow channel – the spot where the task is hard enough to make us stretch but not hard enough to make us snap”. According to Steven Kotler, Executive Director of the Flow Research Collective, the general thinking is that, “if you want to trigger flow, the challenge should be 4 percent greater than the skills.”⁴²

During flow, the brain releases five powerful neurochemicals that affect performance:

- norepinephrine and dopamine (both help tighten focus and shut out distractions);
- dopamine (increases attention, information flow, and pattern recognition and is a skill booster);
- endorphins (help block out pain and work hard without burning out);
- anandamide (promotes lateral connections); and
- serotonin (the feel-good chemical Kotler claims “bonds teams together more powerfully than the best intentioned offsite”).⁴³

When in flow, the prefrontal cortex, often described as the CEO of the brain (in charge of problem solving, strategising, self-regulation, impulse control, attention and empathy) temporarily deactivates in a process called transient hypo-frontality.⁴⁴ This temporary deactivation of the prefrontal cortex may trigger feelings of distortion of time and loss of self-consciousness and the inner critic (deactivating the dorsolateral prefrontal cortex). Without our inner critic, “creativity becomes more free-flowing, risk taking becomes less frightening.”⁴⁵

Our neurobiology also changes during flow, moving from fast-moving beta waves (our normal waking state) to slower alpha waves (associated with daydreaming) to theta waves (found in deep relaxation, daydreaming, meditation and hypnosis). Theta brainwaves can be a source of creativity and enhanced concentration.

Kotler describes four stages in the flow process:

1. **Struggle** where we are taking in information and often feel stressed, anxious and overwhelmed.
2. **Release** when we accept the challenge and take a focused break aimed to activate the parasympathetic nervous system, relax the brain and allow our subconscious mind to consider the first stage of flow.
3. **Flow** where our brain connects the dots, solves any problems and the neurochemicals above are released.
4. **Recovery** where our brain rewires and stores the experience of flow. We need the right type of rest and active recovery techniques including meditation, exercise, sleep or Epsom salt baths.

Flow makes us more productive (top executives in a McKinsey study reported being five times more productive). Harvard professor Teresa Amabile also found that people are more creative both in, and after, flow.

When asked how we can trigger more flow within our teams, Caldwell stresses that the essential first step is having the ability to minimise distractions and constant interruptions:

Flow follows focus. When you want time to focus, agree on clear signals with your team about when they should not be interrupted, such as a sign on your desk or door or wearing headphones. While flow drives peak performance and creativity, it boosts and protects psychological wellbeing too because many of the triggers and foundations for flow are practices grounded in positive psychology”.

The benefits of flow include better emotional regulation, help us cope better with negative emotions and stress, and people are found to be more cheerful, strong, active creative, have higher self-esteem and can cope better with life. Getting into flow includes strategies to relax the brain, which includes ‘unfocusing’ the mind, which itself promotes creativity.

The power of the unfocused mind

Research shows that the brain operates optimally when it toggles between focus and unfocus, needing both to allow the unconscious brain to make connections.

Dr Srin Pillay has shown that access to the brain’s default mode network (DMN) (a collection region that is active during rest and usually deactivated during focused tasks), known as the unfocus network, is just as important as the focus network. The process of ‘unfocusing’:

- recharges your brain, reducing amygdala activation and creating calmness;
- activates the prefrontal cortex and enhances innovation;
- improves long-term memory; and
- increases activity in the DMN.

In addition to the flashlight analogy, Pillay illustrates the shortcomings of too much focus with the well-known invisible gorilla study. Participants were asked to watch a basketball game between teams wearing white and black shirts and had to count how many times the white-shirted team members passed the ball to one another. A person in a gorilla suit walked right through the game and most participants, focusing on counting the passes, missed the “gorilla”. The theory of defocused attention considers that highly creative people having “defocused attention or a wider spotlight that gives them access to more elements” have “greater potential to generate more unusual ideas, as they have a wider array of elements than can be combined with the focus of their attention.”⁴⁶

Pillay suggests practices to engage the DMN, including a few described below. He suggests first introducing them during periods of the day when the brain would be in a natural slump eg after lunch or in the middle of the day:⁴⁷

- using positive constructive daydreaming – a specific type of timed (eg 15 minutes) mind wandering. Start by engaging in a low-key activity such as knitting, gardening or walking and let your mind wander to something positive (eg lying on a yacht or a beach). This wandering then helps us ‘wander over to a solution’. If you are walking, he recommends walking on a curved path to increase creativity;⁴⁸
- napping – a five to 15-minute nap gives one to three hours of clarity and should be done a few times a week at most. Occasionally, if you need it for creativity, try napping for 90 minutes;⁴⁹
- engaging in psychological Halloweenism – pretending to be someone else when trying to solve a problem⁵⁰ and this can be done with a team during an offsite;
- doodling – suggested during a conference call as it helps a bored or tired mind stay awake a little longer. A 40-person study in 2009 found that those who doodled during a 2.5 minute dull and rambling voice mail message recalled 29% more details from the message when tested; and
- create a ‘tinkertable’ – block out time for daily breaks you find undemanding (eg walking or crosswords), weekly events to break up the monotony of the week and ensuring you take regular vacations.

Hiking and meditating can also help to engage the DMN or 'unfocus' the mind.

“**You do not like them. So you say. Try them! Try them! And you may.**”⁵¹

While this is a basic overview of some complex theories, hopefully you try some suggestions on yourself and your team to help boost your creativity and increase your wellbeing.

One final suggestion—give people a limitation when asking them to solve a problem (eg a time limit). After all, Dr Seuss wrote *Green Eggs and Ham* on a bet that he couldn't write a book with 50 or fewer distinct words. That's an exercise in creativity (and brevity) most internal clients would greatly appreciate. 🍷

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With special thanks to Tanya Caldwell, director of Relativity 4 for her contribution to this article.

WHAT YOU HAVE BEEN EXPERIENCING IS NOT THE FUTURE OF WORK

At the start of the pandemic, millions of Australians pivoted to remote work in a matter of weeks as an unprecedented set of measures restricting mobility was put in place to flatten the curve. While increased flexibility and productivity have been positive outcomes from the shift to remote work over the past seven months, organisations are now grappling with what to make of the new ways of working and how to sustainably drive change over the long term.

During the shutdown, this is where I worked every day of the week (see photo). I shared the space with my daughter who is in primary school (that is her geography assignment hanging proudly above my laptop). My husband, who works for a major bank, also worked from home during this period. We rotated through this space as we supported our daughter through her first experience at online learning while balancing full-time jobs.

Without warning, preparation, planning, or design nearly 88%¹ of business organisations globally mandated or encouraged their employees to work from home at the start of the pandemic. Initiatives that normally take five or more years aimed at changing ways of working, digitisation, reskilling, innovating business models and transforming the company culture were compressed into a few short months. In other words, many organisations started the ultramarathon at a pace that is not sustainable nor healthy.

On 7 October 2020, the World Health Organization announced that “many countries have been reporting an increase in ‘pandemic fatigue’ – people are feeling demotivated about following recommended behaviours to protect themselves and others from the virus.” This comes at a time when organisations worldwide are focused on returning to the office in an effort to stimulate the economy and support workers who are experiencing burn out and mental health issues associated with prolonged periods of remote work and feelings of isolation. The speed and scale of change that we have experienced over the last few months have caused a shift in the nature of work. But surely, this cannot be the best of what the future of work has to offer?

Understanding the impact of COVID-19 on the future of work through three lenses

Organisations are beginning to settle in for the long haul with expectations that returning to ‘normalcy’ may not happen until early 2022. The ‘experimentation’ phase that many organisations found themselves thrust into at the start of the pandemic is starting to yield discoveries and learnings about the future of work that will set the table for driving sustainable and pragmatic change.

Korn Ferry defines the future of work as a series of choices that organisations and teams make to operate effectively and sustainably in the new world of work. Over the past two decades, the dominant headlines about the future of work involved technological advances (automation, artificial intelligence (AI), robotics), shifts in demographics (ageing population, rise of the millennials), environmental challenges (climate change and the role of industries and society) and regulatory and geopolitical change. Given the spectrum of possibilities, it is important to focus on how to make choices about what the future of work means for your workforce and your organisation’s mission or purpose. The future of work is, after all, human. We recommend considering your choices using the following three lenses:

1. **Work** (what work will get done and how)
2. **Place** (where work happens)
3. **Workforce** (who will do the work).

This article examines key future of work trends that have been accelerated by COVID-19 across the dimensions of work, place and workforce and the actions organisations are taking to make the future of work ‘work’ for them.



In my line of work, meeting with clients is core to my job. The agenda for most client meetings I conducted via video conference during the shutdown began with getting acquainted with each other’s kids, pets and favourite books (all of which could be seen on the video) and placing bets on how often we expected to be interrupted during the video conference. Many who have recently returned to the office a few days a week look back on the early days of the pandemic with relief that “we’ve made it”. But this is not a sprint—it’s an ultramarathon where the finish line is not yet fully known.

1. Remotability of job roles – redesigning what work will get done and how

The acceleration of digitisation and the automation of work will continue to gather steam throughout the pandemic and beyond. According to the Future of Jobs Report from the World Economic Forum², 84% of global businesses have accelerated the use of digital tools and video conferencing to enable remote work and 50% have accelerated the automation of tasks. The need for organisations to optimise costs in the face of declining revenue and uncertain growth prospects has created a burning platform to complete transformation projects in months rather than years.

Lessons learned from the early days of the pandemic suggest that it is time to pause and zoom out to understand how we can make the future of work ‘work’ for everyone in a healthy and sustainable way. When organisations transitioned their workforce to remote work in a matter of days, there was little to no time to redesign roles, understand what work could be done remotely and develop a full appreciation of the impact of remote work on teams and individuals. In the medium term, organisations will likely devote more resources and time towards understanding the remotability of jobs, exploring which tasks or activities could be delivered effectively from anywhere, which tasks could be automated and which tasks require in-person or onsite delivery to execute the task (think customer facing activities, complex projects that require a high level of collaboration or activities that depend on others who cannot work remotely). While organisations are turning their attention to returning to the office, improving the productivity of remote work will be an enduring trend in the post-pandemic world.

Organisations and governments have already begun the process. For example, a large Australian financial services company has been using big data and AI to begin mapping their teams and organisation’s jobs into tasks to understand the impact of remotability on different job families. Restructuring and planning activities are based on predictive models that enable the organisation to understand which roles require redesigning to improve productivity. Redesigning the role may involve augmenting the role with digital tools or identifying tasks that must be done onsite. Tasks that require individuals to be on site can be scheduled and rostered appropriately to enable social distancing. Lastly, the organisation is using the output from the remotability modelling as an input to their talent strategy as they plan to offer reskilling and upskilling to workers aligned to building the necessary skills and capabilities for identified ‘future-ready roles’.

To further illustrate the impact of quantifying ‘remotability’ by job family, see Figure 1. Produced by Faethm, an AI and augmented analytics platform, the analysis indicates the level of remotability by job family based on the billions of workforce data that the Faethm AI engine is trained on. Korn Ferry has been exploring opportunities with Faethm to help organisations chart their course back to growth with greater precision and predictability using big data, AI and success profiles. For example, Figure 1 indicates that 80% of the activities that are delivered by roles in the legal job family could be performed remotely while 20% of the activities are non-remotable. This suggests that when periods of remote work may be necessary to support social distancing and restrictions of movement during the pandemic period, there is a potential 20% hit to productivity due to the nature of the activities that cannot be delivered remotely. The implication of this data does not mean the solution is to make all activities in the legal job family 100% remotable. Rather, the insight regarding the remotability of legal roles enables broader questions about how the 20% of non-remotable work gets done today and what could be reimaged to further augment workers with digital tools.

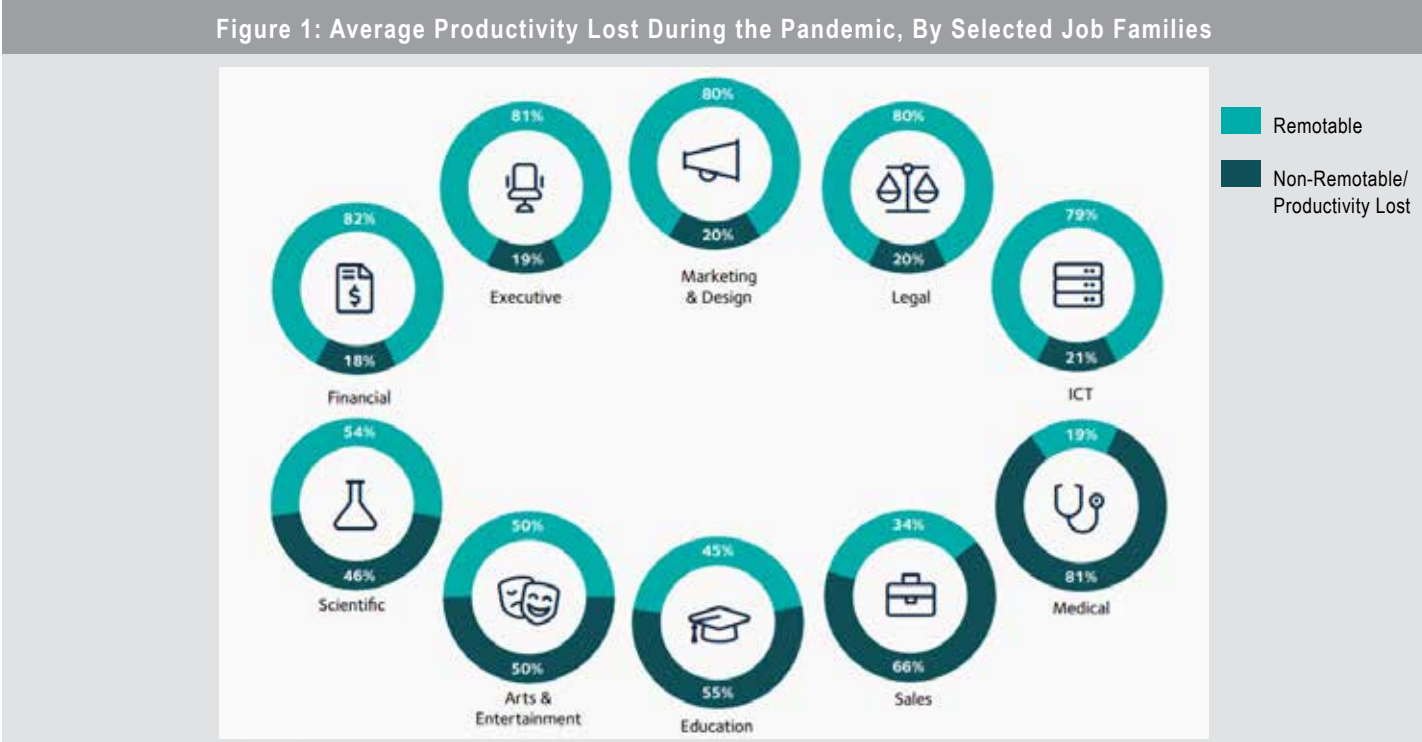


Figure 1: Summary of average productivity lost based on the remotability of roles. Graphic is from the September 2020 report produced by Faethm: Harnessing Emerging Technology to Enable the COVID-19 Taskforce Response

In summary, organisations and leaders will benefit from taking a data-driven view on how work has changed at the activity/role level because remote working, with all of the various shapes that it could take, is here to stay. A total of 75%³ of Australians surveyed believe that post-COVID-19 their employers are more likely to support working from home than they did before the

pandemic. The automation and digitisation of work are not slowing down. In fact, it has accelerated at an unprecedented rate. It is crucial for organisations to take deliberate steps to reimagine how work could be performed in the new world to provide meaningful roles for workers that increase engagement, offer flexibility and support mental health and wellbeing.

2. Return to the 'office' – the changing role of the workplace

Organisations are increasingly turning their attention to returning to the office. Recent surveys point to a higher number of workers who want to return to the office compared to six months ago. Overwhelmingly, most workers simply want the option for flexibility. Offering flexible work options was a powerful trend before COVID-19 and now, the role and purpose of the workplace faces a defining moment as the scale of change the world has experienced over the past several months necessitates greater personalisation of 'place' in the future of work.

Organisations and leaders should design the role of the 'workplace' aligned to the changing nature of work and the needs of the workforce rather than 'snap back' to pre-COVID-19 ways of working of 'one-size-fits-all'. The implications of ignoring the needs of the workforce could result in an unwanted backlash by employees. In a Sydney Morning Herald interview conducted on 26 October 2020⁴, Professor Rae Cooper, an employment relations expert at Sydney University's Business School, stated that she expects many employees will push back against a full-time return to the office after demonstrating their productivity while working from home. "I think the rebellion will happen if there is no accommodation of the needs of people for flexibility," Professor Cooper said. To further reinforce Professor Cooper's comments, the Australian Bureau of Statistics conducted its monthly survey of households in September 2020 and showed that one-third of the Australian working population worked most days at home in September despite restrictions having been lifted in most states.

The future of the workplace must embrace flexibility and a changing world so that when teams need to come together in the office, they flock to the office because the design of the space enhances productivity, supports multiple styles and ways of working, and is equipped with the right tools and technology. Increasingly, organisations such as Deloitte and PWC are investigating the use of the 'hub and spoke' model. For years, organisations have made use of a central office location in the CBD connected to satellite offices in other major cities or states. Because of the pandemic, the hub and spoke model is undergoing an upgrade according to David Cairns, Senior Vice President, CBRE Canada⁵. Cairns sees a future where hub and spoke 2.0 (see Figure 2) features satellite offices near where workers live. The satellite offices could be offerings such as street-front level or neighbourhood-centric flexible space that is bookable by the minute. According to Cairns, "This is space where people can have meetings, collaborate, and just get out of the house and into an office environment. It's for people like me who don't want to go all the way down to a downtown office most of the time." It could also be a place to meet customers where they are, which can be difficult to accommodate using a centralised downtown office.

In summary, organisations and leaders should avoid the trap of designing a one-size-fits-all solution for the return to the office. Now is the time to put the employee experience at the heart of workplace design. Aligning workspace design and purpose to the changing nature of work and the needs of the workforce is a call to action to avoid a backlash from employees who are looking for flexibility and an improved work-life balance.

Figure 2: Hub and Spoke Model



3. Reimagining organisational and team structures – enabling the inclusive, future-ready workforce

The future-ready workforce is connected to the work through shared purpose and engagement with others to deliver outcomes from anywhere.

What we have learned thus far from the pandemic is that it has resulted in a seismic shift towards the future of work. At the same time, the pandemic has amplified the barriers and challenges that existed pre-COVID-19 where, in some cases, the disproportional impact of COVID-19 threatens to push society and businesses backwards.

For example, the pandemic has disproportionately impacted women and minority groups worldwide. Last month alone, nearly **900,000 women** reported being unemployed, a stunning four times the number of men who were without work according to a Korn Ferry study. That goes against a historical trend where men disproportionately lost jobs during economic fallouts, and suggests the pandemic not only threatens the progress women have made in the workplace—but it also disrupts the pipelines that firms were building for future female leadership talent. "It has the potential to be a total wipeout," says Jane Stevenson, Korn Ferry's global leader for CEO succession and vice chairman of the firm's **Board and CEO services practice**. With the financial impact of the pandemic likely to bleed at least into next year and possibly longer, Stevenson says more women are going to leave the workforce before they start coming back—if they do at all. "This trend isn't done yet".

Reimagining how organisations and teams come together aligned to new ways of working and equitable access to workplaces and support is a recipe for success that existed well before COVID-19. Executing the strategy will be critical in the post-pandemic world. Leaders play a critical role in driving the culture change that will help organisations see their way through to the future of work.

We live in a time of volatility, complexity and transition, and it is here to stay. As Canadian Prime Minister Justin Trudeau stated during his 2018 address in Davos, "The pace of change has never been this fast, yet it will never be this slow again. There's enormous opportunity, and enormous potential, in that realisation." Organisations that lead rather than consume the shift to the future work must begin to take deliberate steps to lean-in to a new definition of job roles and careers, embrace new ways of working supported by the workplace rather than the other way around and drive a culture of continuous learning and inclusive leadership. **a**

Footnotes

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COACHING FOR THE IN-HOUSE TEAM

The popularity and prevalence of coaching has risen exponentially over recent years, but the actual task of engaging a coach can be confusing and often perplexing. If done well, the benefits of coaching can be transformative for wellbeing and productivity.

Embarking on the coaching journey for in-house lawyers is particularly challenging. Being a cost centre, it can often be difficult to raise the requisite funding to support a coaching program, whether for team or one-on-one coaching. In-house legal budgets are traditionally focussed on engaging external providers for specific technical advice or during periods of work overflow and, more recently, investing in technology to assist lawyers in doing more with less.

In these times of change and uncertainty, and the challenge this brings to mental health and overall wellbeing, there have been significant impacts on organisational productivity. Coaching may be seen as a privilege just for senior executives, but it is increasingly becoming a necessity to support the development of the mindset and capacity to remain productive and innovate during times of change. If planned and managed well, coaching has the capacity to pay dividends long after the coaching program has ended.

What is coaching?

So, let's be clear at the start what coaching is and isn't.

Coaching is essentially a conversation that influences goal-directed behavioural change. It is not therapy, counselling or an open-ended excuse for a talkfest. It is invested in the process of expanding perspectives, learning and behavioural change. Each session should end with clear actions that are aligned to meet the stated goals.

Goals need to be agreed upfront as these are important for the team or individual and can cover a wide range of priorities such as improving productivity, performance and team dynamics, managing difficult situations or building a better work/life balance.

Unlike other forms of training or development, coaching is tailored to the individual or team and their unique situation and specific requirements. Therefore, better outcomes are more likely if you structure your coaching engagement with clear objectives.

Where to begin?

Before diving into developing a business case, I suggest reaching out to a range of coaches asking for detailed proposals to get a feel for what they offer, cost structures and an overview of their coaching approach. You need to feel comfortable with who you plan to work with and have confidence that they will deliver on your objectives for the coaching.

Having completed a Master of Science in Coaching Psychology, I would lean towards engaging a coach who adopts an evidence-based approach to their practice. This means techniques and methodologies are used that have been proven effective scientifically through clinical trials. Using techniques that have been shown to work will help you measure the potential success of the program and bolster your business case when seeking resources to fund coaching.

When to bring in a coach

Often it is hard to know when the conditions are right to bring in a coach, as not every scenario or event will be a suitable trigger. In my experience, the best outcomes for individual coaching have been achieved when working with people who have had specific feedback that they are motivated to work on. Coaching is fundamentally about growth and change and can be quite challenging. Making sure you are ready to embark on this journey and are committed to following through with the agreed actions are key for a successful engagement. I have found great progress when working one-on-one with lawyers who are seeking to expand their perspectives to help deal with work situations that are confronting, or when they are seeking to improve their performance in a world that is constantly changing.

When coaching a team, I find it most useful to start with introducing the team to current concepts that help build team performance and engagement. This is usually followed by more specific facilitated discussion on issues of concern, which often functions as a springboard for deeper discussion prompting an environment of collective problem solving and discovery. Some of the most successful team coaching in my experience has been working with teams going through organisational change and disruption. By directly addressing and naming the challenges they are experiencing and describing how they are playing out in their day-to-day interactions develops shared ways of understanding and working together. This has positive flow-on impacts on team problem solving and productivity.

Building a business case for coaching – Benchmarks for success

In our current environment, there are the natural benefits of embracing a conversation to help support team health and wellbeing. The immediate effect of coaching is the best place to start, where specific goals and behaviours can be agreed on and worked towards, which is the baseline impact of coaching. Additionally, investing in coaching conversations assists both the team and its members to open up, vocalise and identify emotions and reactions to stressors. These factors have beneficial impacts on team cohesiveness and mental wellbeing by helping develop broader perspectives that support different approaches to problem solving.

At the personal level, coaching can assist you in learning how to leverage your strengths, understand yourself and others more clearly, and develop new ways to work with and respond to others that help you achieve your goals. Research has shown that skills learnt through coaching can unexpectedly emerge in other areas of life, meaning the positive effects have a broader impact and have been shown to be evident up to a year after the end of formal coaching.

There is further evidence at the systems level of the ripple effect of coaching. Research from the University of Sydney has shown



that working with individuals or groups can have a positive impact more broadly across the organisation, and not just for those directly involved in the coaching. Therefore, the positive effects of coaching are emanated by those directly involved in coaching and indirectly passed on to whoever they interact with more broadly in the organisation. This means more positive relationships can be developed with stakeholders and senior leaders.

Building your business case, therefore, needs to cover both the tangible and the intangible impacts of coaching. Starting with the intended purpose of the coaching engagement, with clearly articulated benchmarks for success, translated into prospective financial impacts is important for demonstrating a clear return on investment for the coaching engagement, while being clear that intangible benefits may be much broader and longer-lasting and, therefore, harder to quantify.

Monitoring and progress – Room to shift objectives

It is important to be monitoring your team's progress towards their stated goals. When doing this, flexibility is a key factor. Coaching may often uncover hidden issues that need to be addressed before working on the originally agreed goals. Being flexible and having room to pivot is important to allow the change journey to unfold.

Often the full benefits of coaching can take some time to manifest. While coaching will deliver immediate benefits through measured progress on specific goals, longer-term benefits and behavioural change, such as perspective shifts, may only become apparent over time. New learning and behaviours are embedded iteratively; therefore, a focus on supporting what has been learnt will mean the investment you have made in coaching will generate sustainable returns. At the conclusion of an engagement, I suggest asking your coach for follow-up strategies or tips on how you can best support the embedding of new behaviours and ways of working that have been developed throughout the coaching engagement.

Building a support network

Coaching cannot take place in a bubble, and it is important to take a systems approach, which means looking at the engagement from a number of different perspectives. Naturally, there is the personal level at which one-on-one coaching occurs, but there is also the team perspective and then the broader organisation that the team sits within.

Engaging with the priorities and desired outcomes for coaching at each of these levels will ensure you design a program to deliver outcomes that meet a range of corporate perspectives. By doing so, you build buy-in from key stakeholders, which is important to

CASE STUDY:

Angela engaged me recently to address feedback that she needed to work on managing difficult situations, in particular tough conversations when managing her team's performance. Angela is a GC reporting to the CEO and has eight direct reports. We met up for eight sessions spread over a 10-month period.

Angela's main challenge was her reluctance to have tough conversations with her team. She is more comfortable advising her senior stakeholders and finds the challenges of managing a team often overwhelming. This means that in team meetings, the more vocal senior lawyers tend to dominate, making progress on any change initiatives difficult, and she avoids more confronting issues in one-on-one catch-ups as she prefers to maintain a pleasant working relationship with her team, which means important issues are often not fully addressed.

Angela realised that she needed coaching to help her overcome her reluctance to have harder conversations related to managing her team. She came to me motivated to learn but also somewhat fearful of what change would involve. I worked with her to break down her overall objective into smaller, more achievable goals, which she could work on between sessions. This strategy helped make the project a little less confronting and allowed her time to settle into a different way of behaving. Examples of these smaller steps included learning to be aware of how she felt when she needed to give difficult feedback and observe her reactions, experimenting with different ways

to build stronger relationships with her team other than through consensus, and exploring why she found difficult conversations confronting and experimenting with new ways to approach them.

I also worked with Angela's team for a half-day session, which allowed me to get to know the team dynamic. I used this session to introduce the team to relevant concepts, perspectives and behaviours around dialogue and feedback, which was linked to the work I had been doing with Angela. We also spent time working through the role of feedback as part of the performance cycle and coming up with different ways feedback could be used to improve performance.

At the conclusion of the engagement, Angela and I agreed on strategies she would use to help embed the new behaviours both at the team and individual level. She now understands how to better work with certain team members that once caused her challenges and is no longer overwhelmed when sharing difficult feedback. She feels her team is beginning to follow her lead and are becoming more agile as a result, able to respond to challenges without unhelpful behaviours creeping in to hinder productivity.

Angela's feedback – "I'm so happy I took the leap and worked with a coach, the conversations opened my eyes to possibilities I did not see and allowed me to develop the confidence to try new things, helping me build a much better relationship with my team."

support funding of the program, but also recognition of the work that you and your team are undertaking to improve and change. If each key stakeholder can see how the coaching program links to and benefits their priorities, it creates a positive environment to help support the change process.

So – what next?

How do I find a coach? Coaching is a thriving sector, but it is largely unregulated. The International Coaching Federation provides a global credentialing process that is highly regarded. They take a rigorous approach to ensuring their accredited coaches are trained and have the requisite experience.

While accreditation and education are important, I also suggest looking for someone with relevant experience in your sector. Thus, they understand your challenges and constraints better to be able to work with you for sustainable results. Often word of mouth or recommendations will lead you to the right coach.

Start with an informal discussion to explain your challenges and priorities to paint a picture of where you see your team or specific individuals heading and where you would like them to be at the end of the process. I would then ask prospective coaches to submit a proposal outlining how they would deliver a program that meets

your needs, including setting out the role you would play, regular feedback and reporting. Price is clearly one factor; however, more importantly is the relationship you feel you can establish with your provider. If you find the right person, they can become an ongoing, trusted advisor to assist you in the ongoing process of growth and change. 📍

Monica Sanki



As an experienced lawyer having worked in top-tier legal firms and in-house corporate environments, Monica advises senior leaders and leading high performing in-house legal teams. She brings a unique approach to coaching legal professionals, leveraging her extensive hands-on achievements leading in-house legal teams with the evidence based approach of coaching psychology to support change. Monica holds a Master's of Science (Coaching Psychology).

BALANCE LEGAL AND COMMUNICATION COUNSEL IN A CRISIS – OR SUFFER THE CONSEQUENCES

When mining giant Rio Tinto dropped its CEO and two senior executives over the deliberate destruction of 46,000-year-old Aboriginal heritage sites, it triggered widespread public discussion regarding corporate accountability, social licence to operate and the good governance influence of major shareholders.

Importantly, the incident also raised important questions regarding the divergence between what's legally permitted and the potential risk to reputation.

This is the matter at the heart of the age-old dispute between lawyers and communicators, and how organisations can navigate through conflicting advice during a crisis.

While communication people are typically not reluctant to share their opinions about lawyers, I wanted to know what lawyers think about their own role in a crisis and what they think about the professional communicators they have to work with.

To find out, I partnered with reputation and change management consultancy SenateSHJ and its PROI overseas network to interview experienced crisis lawyers in Australia, New Zealand, Canada, the US and the UK. The full detailed results of this first-of-a-kind survey appear as an entire chapter in my new book *Crisis Counsel: Navigating Legal and Communication Conflict* (Rothstein Publishing 2020)

What lawyers think

The lawyers interviewed said that although the relationship with communicators is improving, most acknowledged that conflict between legal and communication advice is still very real.

The lawyers believe one of the areas particularly prone to conflict relates to public statements and disclosure. Specifically, they think the tendency of communicators to communicate openly and transparently means they risk disclosing information, which may lead to liability or future litigation. The lawyers are also concerned about the lack of legal awareness among communication professionals.

Another perceived area of potential conflict was balancing speed and accuracy. Almost every lawyer emphasised what they saw as the need for certainty before communicating during a crisis.

This response appeared to show little appreciation that it is very common in a genuine crisis that decisions must be made quickly on what is known at the time, which is typically incomplete.

Although litigation was identified as an area particularly prone to conflict, when the lawyers were asked to nominate the main strength they bring to a crisis, the most common response was not their legal expertise but an ability to be calm and predictable.

Several noted that they are "officers of the court" and, accordingly, have a duty to integrity and truth and honestly representing the

law. However, one respondent added a further strength is being able to see beyond the strict letter of the law. "A strength we bring," he said, "is knowing what is appropriate and good judgement, not just what is legally possible."

When asked to identify what communicators bring to a crisis, the lawyers' focus was not on tactical skills, although they broadly recognised the communicators' ability to develop succinct messages. Instead, the lawyers nominated the main strength of communicators as their understanding of stakeholders. Some of the lawyers conceded they were inclined to over-complicate messaging. Indeed, as one lawyer commented: "They understand the imperfections of human nature better than lawyers. They understand the gladiatorial nature of media better than lawyers."

Despite these differences—and despite some of the lawyers expressing a continuing lack of trust in communicators—a striking theme was the recognition that both 'sides' need to develop a better appreciation of each other's roles. The sense was that improved understanding would lead to greater mutual respect for what lawyers and communicators can each contribute when a crisis strikes.

When conflicting advice arises, several lawyers in the survey stressed the importance of what they called a "hand-in-glove" approach. That was the key, they said, to achieving the best possible outcome for the organisation as a whole.

Yet, when asked who should take the lead in a crisis, most of the lawyers said it should be them. Some went even further, saying they could not envisage crisis situations when the communicator should take the lead.

However, every corporate counsel knows that sometimes their advice is accepted and sometimes it isn't. One of the lawyers in our survey commented: "It's important that the client knows my job is to advise, but you don't have to follow my advice and I won't be offended if you don't, because there may be reasons why you follow some and not all of it, or not any of it." Another added: "In the end a lawyer simply needs to be clear about their advice and the consequences of not accepting it – and the client will make the final decision."

Moreover, the likelihood of disagreement, and the severity of consequences, is never greater than in the pressure-cooker environment of a crisis.

In the best-selling legal thriller *Predatory Kill*, novelist Kenneth Eade wrote: "Most people, faced with two difficult choices, prefer not to choose at all." However, outside the world of fiction, when a crisis strikes, decisions must be made and they must be made quickly, often on limited information when it is impossible for all the facts to be immediately apparent.

The Legal Response Syndrome

Faced with this challenge, some organisations fall back on what I call the Legal Response Syndrome—where every crisis is treated as if legal considerations override all others. Think no further than the options facing Rio Tinto, which reportedly exercised legal authority to demolish the Aboriginal heritage caves, but at the cost of public outrage, major investor pressure and the loss of the CEO and two other senior executives.

There is a good reason why legal advice is important in crisis management, as just about every crisis or potential crisis has a distinct legal component. At the same time, no crisis or potential crisis is ever *solely* about legal matters.

Of course, it's important that all legal angles are appropriately addressed. Executives and boards have a statutory obligation to act in the best interests of their shareholders.

However, the Legal Response Syndrome arises when legal counsel is allowed to trump all other advice, which applies well beyond just needing to balance legal and communication advice. It may also apply to advice from operations, business, marketing, human resources, accounting, government relations or a host of other disciplines.

American attorney Adam Treiger has written: "When your client has a crisis that could put it out of business, call the crisis manager first, think about legal issues later. If you do it the other way around your client might not survive to utilise your keen legal analysis."

Put another way, if you eventually appear in court because of the crisis, those legal proceedings will likely be years in the future. However, the court of public opinion is already in session and the public 'jury' is already deciding the fate of your reputation.

To the over-cautious executive with a team of persuasive lawyers, it is tempting to treat every crisis or potential crisis solely as a legal problem. Yet, irrespective of the nature of the problem, just about no crisis or potential crisis is ever solely about legal matters. Failure to recognise that reality leads to the Legal Response Syndrome, serious functional disagreement and the possibility of a very costly mistake.

Areas of disagreement

While there are countless opportunities for conflicting advice, my research identified five areas which are most prone to disagreement:

1. **The clash between liability and responsibility** – when the organisation needs to step forward, even when it might not be clear who was responsible for the crisis.
2. **Why and how to apologise** – to sincerely admit fault and avoid legalistic non-apologies, which may be worse than no apology at all.
3. **Product crises** – assessing public risk from a faulty product against the cost of a recall.
4. **Defending patents and trademarks** – when over-zealous litigation might look like bullying.
5. **Marathon legal proceedings** – when the prolonged pursuit of some legal principle puts reputation at risk.

In each of these areas—and more—conflicting legal and communication advice can exacerbate a serious issue or trigger a crisis.

That impact is well illustrated in the case of Canadian Deborah Kudzman, who became the centre of a legal marathon as well as trademark litigation.

A Canadian soap opera

Ms Kudzman launched a line of boutique soap under the brand Olivia's Oasis, a name she chose because Olivia was her daughter's name and because her products contained olive oil.

She promptly received a legal letter from Quebec-based drinks giant Lassonde Industries, known for its Oasis brand fruit juices. Lassonde's lawyers demanded she immediately stop using the name, recall all her merchandise from stores and hand over any profits she had made. (Bear in mind that her annual sales were approximately \$250,000 compared with Lassonde's revenues of \$700 million).

After five years of legal argument, the Quebec Superior Court found that the trademark claim was groundless. Lassonde was ordered to pay the fledgeling businesswoman \$25,000 in punitive damages and \$100,000 to cover legal costs.

In response, Lassonde management made a crucial legal decision that eventually brought them undone. The case had not attracted much media or public attention and the company lawyers apparently believed they had good grounds to appeal.

And they were right. Following a further two years of legal proceedings, in 2012 the Quebec Court of Appeal found in the company's favour, leaving Ms. Kudzman to pay her ballooning legal bills.

However, when the court finding was reported in a local newspaper the following Saturday, it unleashed a social media storm of indignation that a major drinks manufacturer would go after a boutique soap maker on the grounds that consumers might confuse their products.

The weekend backlash reached a climax when popular TV host Guy Lepage tweeted to his 100,000 followers that he would boycott Oasis drinks to protest the company's treatment of Ms. Kudzman.

To her surprise, she received a visit on Easter Sunday from a Lassonde senior executive offering an undisclosed settlement, sufficient to cover all her legal costs.

"I spent seven years fighting this," she told reporters, "and within basically 48 hours, because of the outpouring of support, it was resolved."

The resolution of the Oasis case is rather baffling. After fighting for seven years, the company won in court, then virtually overnight walked away from the verdict in what they called an "amicable settlement."

It was certainly a costly exercise that must have seemed certain to damage the reputation of the enterprise and it demonstrated the decisive impact of social media and a high-profile influencer.

The Oasis case might not be as dramatic or as significant as what happened at Rio Tinto, which generated global headlines. But the lesson seems to be the same. As one of the participants in my lawyer survey observed: "Legal is only ever one input into the way you deal with a crisis."^a

Dr Tony Jaques (PhD)



As a recognised expert in issue and crisis management, Tony has worked for more than 20 years as a Crisis Manager for a major American multinational. He is now Managing Director of Melbourne-based Issue Outcomes P/L which specialises in developing and evaluating corporate response systems. Tony lectures and writes widely in the field and his latest book is Crisis Counsel: Navigating Legal and Communication Conflict (Rothstein Publishing, 2020).

TECHNOLOGY ACCELERATES FINANCIAL SERVICES REFORMS

The Australian Senate Committee's Interim Report into RegTech and Fintech has made a number of key recommendations, and coupled with the upcoming Corporations Act review and ongoing National Blockchain Roadmap, some real opportunities are arising for disruptive innovation and regulatory evolution. Michael Bacina, partner in Piper Alderman's Financial Services and Blockchain Group, discusses these developments.

The tides are turning. Emerging technology and the ongoing digitalisation of the economy have sparked a series of significant developments in the FinTech regulation space. The Australian Senate Select Committee's Interim Report on FinTech and RegTech, published in September 2020, was followed closely by the **Australian Law Reform Commission's (ALRC)** commencement of a three-year review into improving the efficiency of Australian financial services regulation. Fast forward to 6 October 2020, when the Morrison Government released the 2020–21 Federal Budget, which included sizeable amounts being allocated to digital transformation, blockchain pilots and cyber security strategy. To cap it off, as recently as 30 October, the Attorney General's office has also commenced a review into whether the *Privacy Act 1988* (Cth) (**Privacy Act**) is fit for the digital age.

Although there is no ability to predict with any precision the outcome of these developments, to provide better insight into what the future of FinTech might look like considering these movements, it would be helpful to review them:

The trailblazer: Australian Senate Select Committee into FinTech and RegTech

The goal of the Australian Senate Select Committee into FinTech and RegTech was two-sided—on the one hand, to investigate and report on the size and scope of opportunity presented to Australian RegTech and FinTech businesses, and on the other, to identify the barriers to the uptake of new technologies present within the financial sector. The Committee also expanded its focus to include the challenges and opportunities for the sector considering the COVID-19 pandemic.

The Committee received over 180 submissions and several public hearings were held, which this author was honoured to have appeared at. The Committee members were highly engaged in these public hearings, the transcripts of which are available on Hansard. These submissions and hearings culminated in the Committee publishing an Interim Report in September 2020, which included 32 recommendations on a broad range of issues affecting the FinTech and RegTech sector from tax and regulation, through to consumer data rights and access to skills.

Having extended its final reporting date until 16 April 2021, the Committee will continue to consider the submissions.

Second up to the plate: The ALRC Financial Services Reform Inquiry

Following the release of the **Interim Report** by the **Committee**, the ALRC confirmed on 11 September 2020 that it will be

kickstarting a three-year review into how financial services regulation could be more efficient.

In a nutshell, the ALRC's three-year review is an inquiry into the potential simplification of laws that regulate financial services in Australia, forming part of the Morrison Government's response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry released in February 2019.

While the Senate Select Committee and ALRC inquiries are entirely separate, there is little doubt that the ALRC will also consider the Senate Committee's 32 recommendations from the Interim Report and the Final Report once released on 16 April 2021.

The Terms of Reference of the ALRC inquiry focus on the provisions of the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth) while also referring to other financial services legislation and legislative instruments.

Unlike the Committee, the ALRC is not tasked with recommending policy changes regarding the content of the obligations on financial service providers. It is instead seeking to facilitate a more adaptive, efficient and navigable framework of legislation within the current policies.

The three sub-topics specifically identified by the ALRC are:

Definitions in Legislation -

A first interim report focusing on the appropriate use of definitions in corporations and financial services legislation; due 30 November 2021;

Hierarchy of Laws -

A second interim report focusing on regulatory design and the hierarchy of primary law provisions, regulations, class orders and standards; due 30 September 2022;



Chapter 7 - Financial Services and Markets -

A third interim report focusing on potential reframing or restructuring of Chapter 7 of the Corporations Act; due 25 August 2023.

With over a year until the ALRC’s first interim report is due (November 2021), we expect to see the submission process opening shortly, awaiting if and how the Final Report of the Senate Select Committee informs this first ALRC interim report.

A sign of policy change: Federal Budget 2020–21

Historically, Hon Scott Morrison MP has been a strong advocate of FinTech development in Australia and its ability to change how business is done. In 2016, he stated:

“FinTech is not just about digitising money, it’s about monetising data... More digitised transactions support greater audit capability, transparency in payment systems and security in transactions by reducing risks and are also reducing the need for regulation. In this world, de-risking and deregulating an environment actually go hand in hand.”



This has also been reflected in the 2020–21 Federal Budget, which showcased some key measures aimed at supporting startups, FinTech and the financial services industry more broadly:

Digital transformation

Aiming to streamline interactions with the government by combining the dozens of disparate registers into one location, the budget allocates a further \$419 million to fund the development and implementation of the Modernising Business Registers program. Over the next two years, the government will invest \$256 million in the expansion of its Digital Identity system as well as provide an additional \$9.6 million for FinTech trade and investment flows. Part of the Modernising Business Register program involves the introduction of director identification numbers.

At a federal level, e-invoicing will become mandatory for all agencies by 1 July 2022, with over 80 percent of invoices being able to be received electronically by 1 July 2021. A further \$11.4 million will be invested into a new RegTech Commercialisation Initiative, ambiguously intended to “make it easier for businesses to comply with regulations”.

Blockchain pilots

Announced soon before the publication of the Budget was released, the government confirmed \$6.9 million was being allocated over two years, from 2020 to 2021, to support industry-led blockchain pilots. These pilots will be demonstrating the application of blockchain technology to quantify its ability to reduce regulatory compliance costs and encourage broader take-up of blockchain technology by Australian businesses.

Cyber Security Strategy

The federal budget also provides for an additional \$201.5 million to deliver the **2020 Cyber Security Strategy**. As part of the Strategy, among other initiatives, the government has planned to invest \$128.1 million to counter cybercrime and \$37.7 million in developing Australia’s cyber security skills.

Simplification of Export Market Development Grants

The popular Export Market Development Grants Scheme (EMDG) is being “simplified and reoriented” to more effectively support export-ready small and medium enterprises. This change was expected and aims to implement the recommendations of the **independent review** of the EMDG scheme.

But wait, there’s more: The Attorney General’s review of the Privacy Act.

In addition to all the above, the Attorney General’s office has launched a review considering the Privacy Act’s aptitude to keep up with an increasingly digitised economy. The review includes a raft of potential changes proposed by the Australian Competition and Consumer Commission’s **landmark digital platforms inquiry** in July 2019, which recommended an overhaul of Australia’s privacy laws to provide greater transparency regarding the collection and use of consumer data by companies.

Given its dual purpose—to strengthen privacy protection for consumers and streamline privacy law compliance for global businesses—**experts have commented** that the proposed makeover has a very similar feel to the European Union’s General Data Protection Regulation.

The Attorney General’s review will envisage a slew of potential changes to privacy law including whether the law should be changed to expand the definition of what constitutes personal information and allow consumers to bring lawsuits, including class actions, for privacy breaches.

The deadline for submissions on the review paper is 29 November 2020 and a discussion paper will be released next year announcing any desirable options for reform.

Where to from here?

As technology continues to drive change and disrupt industries, the appetite for substantive law reforms and greater investment in the FinTech and RegTech space is likely to grow. Of course, these review processes will not conclude for over three years. Even then, there is no guarantee that any recommendations made will be adopted. However, when submissions open for the above reviews, this will be an important and rare opportunity to influence changes in the financial services and FinTech regulatory framework for the better. 🗳️

Michael Bacina



A Partner in Piper Alderman’s FinTech Group based in Sydney, Michael is knowledgeable and a sought-after speaker in the workings of and legal issues surrounding virtual currencies and cryptocurrencies, blockchain projects, smart contract deployments as well as FinTech and RegTech projects. He’s currently serving on the Department of Industry, Science, Energy and Resources National Blockchain Roadmap.

With thanks to Tom Skevington, Associate, and Jade McGlynn, Law Clerk, both of Piper Alderman, for their assistance with this article.

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INTERVIEW

LIFTING THE LID ON CORRUPTION

Each year, International Anti-Corruption Day is recognised on the 9th of December. Corruption destroys society's trust and confidence in public administration, undermines due process and has an adverse financial impact on the operations of both the public and private sectors. In-house counsel play a critical role in advising on the risks and liabilities caused by corruption, bribery, misconduct and fraud.

Amy Salapak, Senior Lawyer – Corruption and Crime Commission (WA) recently spoke to the senior in-house lawyers leading Australia's anti-corruption and integrity agencies about the challenges and opportunities in combatting corruption.

What do you enjoy most about working at your agency?

Rod Jensen, Director, Legal Services, Independent Commissioner Against Corruption (SA): The best part of my job is the satisfaction I receive from knowing that I am making a contribution to upholding integrity in public administration.

Geoff Kennedy, Director, Corruption Legal, Crime and Corruption Commission (QLD): The work has meaning. My work, and the work of the QLD CCC, make a difference. My work and the work of the people I work with makes a small contribution to ensuring Australia is as corruption-free as possible. I don't want to live in a country where graft, bribery and corruption are rife, like some other countries. I enjoy that.

Nikki Bensch, General Counsel, Australian Commission for Law Enforcement Integrity (ACLEI) (Cth): It is very satisfying knowing I am contributing to making our community a fairer place, by ensuring staff of Australian Government law enforcement agencies act with integrity when exercising their powers and responsibilities and, where they don't, ensuring corrupt conduct is detected and investigated.

Wendy Endebrock-Brown, Director, Legal Services, Corruption and Crime Commission (WA): It sounds clichéd, but it is definitely the people. I work with an amazingly talented, motivated and dedicated bunch of lawyers, paralegals and Commission officers, who love what they do and contribute significantly to the incredible results being achieved by the Commission here in WA.

What has been the best advice given to you in your career?

Helen Fatouros, Executive Director, Legal, Independent Broad-based Anti-Corruption Commission (VIC): When I first started as a junior prosecution lawyer, it was the power of a good file note and not being scared to say I'd made a mistake. As an executive, it was having perfectionism figuratively 'beaten' out of me through lots of direct feedback. Figure out when you need to be at 100% versus 80% and if you want to have a shot at work-life balance, master the art of precise accountable delegation!

Chrissy McConnel, In-House Legal Counsel, Office of the Independent Commissioner Against Corruption (NT): Never to be afraid of being myself, challenging myself or embracing change.

Nikki: Your attitude is everything. Nelson Mandela said it best: "I never lose. I either win or learn."

Wendy: "Do what you love, and love what you do." Without this advice from my dad as a very junior lawyer, I would not be the lawyer, or the person, I am today.

"Nelson Mandela said it best: "I never lose. I either win or learn."

Nikki Bensch

What does effective leadership look like to you?

Chrissy: To my mind, effective leaders are those who lead by example and, through good communication and self-awareness, inspire confidence and trust. Effective leaders appreciate the value brought to an organisation by each team member and recognise and respect individuality.

Helen: When I think about the leaders I have worked for that have motivated me to give my best, leaders who have achieved real results for the community, it's those leaders who were driven by purpose and knew how to set and communicate strategy or the horizon we were travelling towards and why. The best leaders then built teams that worked to achieve that end, with a seemingly prescient ability to anticipate risks and opportunities along the way, all while not losing sight of the horizon. The most effective leaders also built trust, were courageous, self-aware and often annoyingly persistent; all while genuinely caring about their staff not just in terms of their performance, but also in terms of developing them to become better public servants.

Nikki: Effective leaders are courageous and committed, to both the organisation and the people within it. They keep their word, admit their mistakes and lead by example.

Rod: Effective leadership involves assisting people to achieve their best by exciting in them a sense of purpose and commitment. It is one thing to give a person a task to undertake, it is quite another to excite in them a sense of purpose when undertaking the task and a commitment to completing the task to the best of their ability.

“It is one thing to give a person a task to undertake, it is quite another to excite in them a sense of purpose when undertaking the task and a commitment to completing the task to the best of their ability.”

Rod Jensen

How do you create an ethical organisational culture?

Helen: It is easy to say live the values, but alongside recruitment, it really is key. “Culture eats strategy for breakfast” is one of my favourite quotes. You can have the best strategy, policies and procedures in the world, your values can be written large on glossy tea room posters, but if you are not role modelling what those values mean through visible leadership and behaviours that set the standard, you are probably going to struggle to create an ethical organisational culture. That means holding yourself and others to account through honest and, at times, difficult conversations that need to be happening at all levels of an organisation on performance and, importantly, behaviour.

Geoff: It must start at the top. The senior people in the organisation must be beyond reproach in how they conduct themselves. If they are not modelling the very best behaviours, what hope do the regular employees have?

Chrissy: Ethical leadership is integral to fostering a culture in which honesty and integrity are the norms. In my experience, organisations where leaders behave positively, communicate openly and honestly and demonstrate respect to others are those in which an ethical culture thrives.

Rod: An ethical organisational culture is created by providing an environment in which people are clear on what is expected of them and ensuring that everyone is modelling the behaviours that realise these expectations. It is not enough to simply set expectations. The expectations set must be communicated clearly, exemplified and abided by in everyday practice and monitored for compliance in a meaningful way.

What do you consider to be the top three skills needed to be an effective in-house lawyer working in an integrity/anti-corruption agency?

Wendy: Two of the three top skills required to be an effective in-house lawyer in an integrity/anti-corruption organisation are the same, in my view, as those required to be effective in any in-house role—exceptional people skills and excellent communication skills. The third is a little more unique to integrity/anti-corruption and law enforcement agencies—a thick skin. The organisations we work for can be the target of focussed and sustained negativity from individuals and the media. Having a thick

skin allows us to keep our perspective and stay focussed on our purpose and the extremely important work of our organisations.

Geoff: Integrity and honesty is a must. Resilience, as integrity agencies often attract criticism. We are mostly dealing with unhappy people. Complainants and people who are being investigated and prosecuted are generally not happy with us! They will not hesitate to criticise the work we do if given the chance. Patience, the work we do is sometimes painstaking, and the need to be correct and accurate is very important.

Rod: To be an effective in-house lawyer working in an integrity/anti-corruption organisation you need to have a clear understanding of the remit of the organisation you are working for, especially when the functions and powers of that organisation are governed by statute. It's also important to be able to understand the dynamics of the investigative process and take those dynamics into account when considering and providing advice. Finally, it's critical to be able to maintain your independence when acting in your capacity as an in-house lawyer.

Nikki: In-house lawyers working in an integrity agency must set and maintain the highest ethical standards, act independently and fairly (particularly when exercising coercive powers) and approach each task with tenacity and commitment.

“There are the ‘Seven Deadly Sins of Corruption’: greed, power, influence, ignorance, impunity, complacency and poor governance.”

Wendy Endebrook-Brown

What are some misconduct or corruption risks that in-house counsel should be alive to in their organisation, and why?

Helen: Good in-house counsel know how to balance advice that enables the agency to meet its purposes while also managing risk. Reasonable minds might differ as to the interpretation of a case or statute, or the specific strategy or option to be deployed. However, often the risks that in-house lawyers need to be alive to are as creators and custodians of the policies or decision-making frameworks that ensure transparent evidence-driven choices and decisions are made in the public interest. For example, around procurement and the use of public money, the use of powers that impact rights, the review of decisions made by others or the fair handling of complaints.

Wendy: There are the ‘Seven Deadly Sins of Corruption’: greed, power, influence, ignorance, impunity, complacency and poor governance. No-one has described them better than our former Commissioner, Hon John McKechnie QC, on International Anti-Corruption Day in 2015. Every in-house lawyer should **watch it**.

Geoff: Wherever money is involved! Procurement is always a risk area, in both government and private organisations. Are your procurement processes and checks and balances watertight? Is there a risk someone is getting a kick-back for awarding that contract or recommending a particular supplier? Are there complaints, murmurs or rumours that someone is taking bribes or embezzling money? If so, do something about it. Quick.

Chrissy: Conflicts of interest, both actual and perceived, are a key risk—recognising when you need to declare one, and managing these, which includes ensuring all those involved in a matter are aware if you have a conflict so there's no inadvertent information sharing. Not managing conflicts of interest can have huge ramifications for several areas including procurement and HR/recruitment. Misusing resources and inappropriate performance of official functions, such as breach of trust, abuse of power and incompetence, are key themes that have appeared in our data over the last year.

“ Misusing resources and inappropriate performance of official functions, such as breach of trust, abuse of power and incompetence, are key themes that have appeared in our data over the last year.”

Chrissy McConnel

What are some of the impacts caused by corruption and misconduct?

Nikki: ACLEI considers allegations of corrupt conduct against staff members of law enforcement agencies. The loss of community confidence in the people and organisations who are entrusted with law enforcement powers has far-reaching consequences for our community. At its worst, it may impact on the confidence of the community to provide information to the agencies, which will impact on the ability of the agency to identify and investigate criminal conduct.

Chrissy: Cynicism and mistrust among the community towards public sector agencies can be very divisive, particularly in a small jurisdiction where the public sector is the largest employer and the actions of a few can undermine and devalue the good work done by many. There is also a financial cost if the misconduct and corruption involve the abuse of resources as it can hinder economic development.

Geoff: I think it's a cancer to organisations and, ultimately, to our country. Do we want to work for an organisation where bribery is an accepted part of business? Or to live in a country where bribery and corruption is a part of life? I don't, and I think most Australians feel the same. We rightly take pride in our nation being an open, fair and transparent one. This is eroded every time there is corruption and bribery, even on a small scale.

“ We rightly take pride in our nation being an open, fair and transparent one. This is eroded every time there is corruption and bribery, even on a small scale.”

Geoff Kennedy

What does International Anti-Corruption Day mean to you?

Rod: International Anti-Corruption Day provides an opportunity to raise awareness about the existence of corruption and its impact on society at the local, national and international level. However, raising awareness on one day a year will not alone defeat corruption. It must be matched by an ongoing commitment to detect and weed out corruption wherever it occurs.

Geoff: It's an opportunity to hopefully get people outside the integrity agencies thinking about what it would be like to live in a country where corruption is rife, and to appreciate the institutions, laws and infrastructure we enjoy in Australia to keep us mostly free from corruption.

Nikki: International Anti-Corruption Day provides an opportunity for us all to reflect on the corrupt conduct that might exist in our workplaces and communities, and to consider what steps we can take to address it.

Helen: Every day should be Anti-Corruption Day; however, having a dedicated day helps to increase awareness, build partnerships and share knowledge on how to fight corruption. For me, it is about using the day to have discussions about a complex concept that needs to be understood beyond just the popular images of corruption by making it relevant to the quality of our everyday life and how we all have a stake in being informed and vigilant in protecting how our democracy and its institutions operate to serve the public interest.

Wendy: For me, Anti-Corruption Day is an opportunity to pause and reflect on the importance of the work that we do and how fortunate all Australians are to live in a country where corruption is not a way of life. Each year, the Corruption and Crime Commission recognises International Anti-Corruption Day with an awareness campaign that encourages WA public servants and members of the community to report suspected corruption to the Commission, as well as educating new WA Police Force recruits about our role overseeing police. These promotions generally take the form of an integrated online, media and event campaign. This year, the Corruption and Crime Commission plan on targeting under-reporting agencies and the industries who do business with them.

Chrissy: We hope to use International Anti-Corruption Day as a platform for community awareness and education on what the Office of the ICAC (NT) does, and what we have achieved in the short time that we have been operational. We will engage directly with key stakeholders across the public service to provide education and information about corruption awareness and prevention. [a](#)

“ Every day should be Anti-Corruption Day; however, having a dedicated day helps to increase awareness, build partnerships and share knowledge on how to fight corruption.”

Helen Fatouros

ACC Australia would like to sincerely thank each of the participants in this interview for their time and contribution towards this article.

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Geoff Kennedy, Director, Corruption Legal, Crime and Corruption Commission (QLD)

Nikki Bensch, General Counsel, Australian Commission for Law Enforcement Integrity (ACLEI) (Cth)

Wendy Endebrock-Brown, Director, Legal Services, Corruption and Crime Commission (WA)

Helen Fatouros, Executive Director, Legal, Independent Broad-based Anti-Corruption Commission (VIC)

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Amy Salapak



Currently a Senior Lawyer at the Corruption and Crime Commission of Western Australia, Amy Salapak is a former Fulbright Scholar with a keen interest in the issues surrounding ethics, regulation, law and governance in the public and private sector.

Amy is a member of the Association of Corporate Counsel (ACC) WA Divisional Committee.

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IS INCLUSION WORTH IT?

Diversity in all its forms is about inclusion, whether that is for women, people of colour, religion, age, gender—the list goes on. All are measured against the means of white, male and christian. As I can speak from experience, this article will predominately talk about the diversity of women in workplaces (or lack thereof). However, I do recognise that the lack of diversity for other people is real and needs addressing.

Equal pay for women for equal work became law in Australia in 1969, so it is more than disappointing that the percentage of women in senior roles in Australia is still far behind that of other western countries. This lag is across all sectors including politics, corporations and board directors. Data from a study by the Workplace Gender Equality Agency (WGEA) undertaken in 2018–19 shows that while women make up half (50.2%) of the private sector workforce, they make up only 31.5% of key management positions, 26.8% of directors, 17.1% of CEOs and 14.1% of board chairs (www.wgea.gov.au/topics/women-in-leadership).

When I was appointed Managing Director of Apple in 1997, it was the first major IT company in Australia and only the second Apple subsidiary to appoint a woman to the helm. However, my observations of a lack of gender diversity and diversity, in general, go much further back. My own mother, who left school at 15 and became a secretary, constantly claimed she wasn't intelligent enough to finish school. Of course, at that time, most women left school after the intermediate (year 10) to take up a short-term career until they were married. This was the expectation placed on women from a young age. I doubt that the idea of considering women as potential leaders was in the vernacular.

Born just after the end of WWII, I was extremely fortunate to have a father who considered education for girls was equally as important as education for boys. As an architect who focused on the mathematics of architecture in managing light, heat and noise in building constructions and in the community, he was always my supporter. It was a time when the white Australia policy was firmly in place, and our First Peoples were not able to vote. Our Indigenous folk did not receive the right to vote until 21 May 1962. Until then, they were not considered citizens. Women could vote but were seen primarily as homemakers for their working husbands and children. Was inclusion of interest to organisations? Not at all.

Fast forward to my own schooling in a selective public high school for girls in Sydney. Students were generally encouraged to take additional foreign languages if they were doing well, and just over 50 percent of my cohort continued on to university. In comparison, at the boys' school, almost 80 percent went on to university, even though the criteria for the school selection was identical.

Combined with this disparity was the fact that out of almost 120 girls at my school, only approximately 25 completed mathematics and science at the higher levels. Girls were encouraged by the careers advisor to consider teaching and nursing as appropriate careers. I selected teaching, took the teachers' college scholarship that was offered to me and enrolled in science. This was just a couple of years after Indigenous Australians were given the right to vote (1962) and the white Australia policy was renounced by the federal Whitlam Government in favour of a policy of multiculturalism (1973). Regardless of the significant changes occurring at the time, university students were predominantly

white and male. My interest and focus on science were unusual then and remain so to this day.

Throughout the next 30 plus years, from 1968 to 2001, the lack of women involved in STEM (science, technology, engineering, and mathematics) subjects and, more broadly, in leadership positions became more and more apparent. Personally, I didn't understand how girls could do so well at high school and university and yet not gain the promotions they deserved in the workplace.

How is it that equal pay for equal work was passed by the federal government in the late 1960s and yet even today, this is not the norm? One only needs to look at the WGEA report each year to understand our leaders are not committed to implementing this policy. At least WGEA keeps pay equity in the spotlight. Little is done to measure the effect of those who come from ethnic and religious backgrounds or those who identify as LGBTIQ on pay or leadership positions.

I am delighted that, in my career, I was able to break the mould. My own career traversed the globe through the United States, Canada and Portugal where I followed my husband's roles and took opportunities when they appeared. I didn't ponder on this too much as it was clear from the social norms of the day that when I had my children (in the mid-1970s), my career would become secondary in every way to my husband's. Women could work if it didn't interfere with 'keeping a good home'.

When I started working at Apple in 1983, it became more and more apparent to me that promotion opportunities came more readily to the men in the organisation. Not only that, I became aware that equal pay for equal work should not be assumed. In fact, if not questioned about relevant levels and pay scales, my earning potential was much lower than the men, even though I was awarded several trips overseas as a top performer.

As I landed more senior positions by challenging the status quo, I was perceived to be too aggressive and advised to be less so. It is a fine line for women to be determined and achievement-oriented and not be labelled aggressive. In addition, I was forever having to justify myself as a 'woman who works'. Although many of my friends remained in part-time positions that enabled them to carry out their home duties, I was in full-time roles from the time my sons started school. My more senior roles required travel and attracted comments such as "do you cook the meals before you go?" and "you are lucky your husband lets you work", which were uttered frequently to me by men whose wives had chosen to remain at home or were in roles that allowed them to fulfil conventional women's work in the home. I persisted despite the sniping and in 2000, under my direction, Apple Australia won the Best Employer award.

Upon stepping down from my Managing Director role at the end of 2001 after a significant bout of breast cancer, I reflected on the Best Employer award from 2000 and what it meant to me, to Apple and Australian workplaces. Boasting an engagement

score of 90% made me realise that involving every member of the company had given those working with me a feeling of value and belonging.

I was proud to receive that award and to be considered a Managing Director who embraced inclusion. At the time, 20 years ago now, inclusion was not in the day-to-day vocabulary. The foundation of inclusion includes the ability to work in a place where you feel valued, both financially and personally, whatever your role and to have a sense of belonging and contributing in the workplace. When I talk to women, especially those of a different heritage, there are often the comments: "I don't feel like I belong" or "my ideas are often ignored until restated by another person, most likely male."

In 2002, I founded Xplore for Success to build the confidence of women early in their careers to allow them to achieve their career goals while maintaining their lifestyle. The course is named Career Resiliency as women still require significant resilience to achieve their goals in what were, and still are, organisations led by white males. I continue to be surprised at the lack of understanding by many (male) leaders of the privilege that they have.

Xplore continues to expand its work with senior leaders who understand and accept the well-researched advantages of diversity. The first and probably most important insight is that many leaders need to acknowledge and accept the privilege they wear. Here is a privilege 'bingo' that can help. Are you white, male, tall, English speaking, able-bodied? When growing up, did you have a secure home, adequate or even abundant food, medical and dental care, clothing and uniforms to wear while attending a good school? Was the home a haven?

All these factors make a difference to the likely success of your career. As organisations cull applications, many might be eliminated by such things as a strange name, not the right school or university, gaps in education, place of birth or the wrong residential suburb, to name a few.

When a board or senior executive team is made up of white men of similar backgrounds, with wives at home and families who have supported their careers, expecting that team to offer innovative ideas and different perspectives is highly unlikely. Having a diverse leadership team can create the right setting to create a harmonious workplace and improvements in innovation and productivity. However, diversity without inclusion is less likely to provide these benefits. When one is the 'only one'—only woman, only one from a different background, only person of colour—the value of the voice is often not heard and is lost.

So, how can you change your current culture to provide more diversity while building engagement and inclusion?

1. Review your hiring assumptions

When you write a position description, do you really review the language used? Does the language encourage diverse applicants? Are your mandatory requirements actually mandatory? Unnecessary requirements listed as mandatory might discourage women and those from other backgrounds from applying for the position.

2. What is your online company brand?

When a prospective employee looks for your organisation online or at your website, what do they see? Check out the board and senior leaders for 'sameness'. Do their biographies project sameness? Do you have any articles or website labels detailing your commitment to diversity and inclusion?

3. How do you cull applicants?

Are your applications developed in such a way that all the trappings of being privileged do not become indicators of selection? Remove names, genders, schools and home addresses so that unconscious biases don't affect selections.

4. Is your selection process intimidating?

How do you ensure that bravado is not seen as talent and that education is not evaluated based on the school or university attended? Who will make up the selection panel—is there diversity in the panel? Is the interview set up as 'us and them'? How can you make your selection more inclusive?

5. Evaluate your applicants

Did you get diverse applicants? If not, can you get advice on how to change that? If yes, did any people not white and male survive your selection process? Have you developed an inclusive approach to your on-boarding?

6. Your executive group

Have you provided an interactive training forum for your senior leaders offering ways in which any ingrained biases can be explored and overcome? Do your senior leaders have a solid understanding of their personal privilege?

7. Retention

Do you have an exit process that captures the real reasons why your employees are leaving? Often the answer 'seeking a healthier work-life balance' is code for your organisation not providing pathways for all and, at the same time, not speaking up about this; a way to avoid burning bridges with your company. Observe their next steps.

8. Metrics

In almost every part of a business, goals are established and agreed to, metrics collected and outcomes evaluated. This needs to be a part of your diversity and inclusion strategy as well.

In closing, the value of diversity and inclusion is no longer open to question. Research shows that businesses with a commitment to diversity and inclusion in management groups and the company as a whole have far more positive outcomes than companies that are homogeneous (e.g. white, male dominant). This is the case in terms of staff engagement, retention and, importantly for many businesses, the bottom line. Companies that celebrate diversity and inclusion are the companies that will succeed today and into the future. Are you prepared to ignore the challenge and lose the opportunity, or will you make a personal goal to make a difference, to embrace diversity and inclusion? The most effective way of doing this is to set goals (targets) and develop metrics to determine the success. Today is a good day to start! **1**

Diana Ryall



A leading advocate for Equality, Inclusion and Climate Action, through her company Xplore for Success, Diana promotes women achieving their career aspirations, and challenges men to examine their assumptions about women and their careers. A former Managing Director of Apple Australia, Diana became a Member of the Order of Australia in 2010, in recognition of her significant contribution to the education community, her commitment to the advancement of women, and her ongoing and wide-reaching charitable work.

KNOWLEDGE MANAGEMENT – MUCH MORE THAN PRECEDENTS!

Full disclosure up front. I don't write a lot of articles. In fact, since leaving private practice almost a decade ago, I have not written a single article. For me, putting the metaphorical pen to paper feels a bit strange—I'm used to just talking to people. As a result, if it sounds like I am talking to you, rather than writing an article, it is because I am. I hope to make this piece a conversation starter, with lots of questions (and perhaps a few answers).

So, to get us started, ask yourself the following—not counting the lawyers themselves (and their impressive brains), what is the most valuable asset your legal team has? Hopefully, if you've read the title of this article, you might have guessed or even know the answer—knowledge management (KM).

But what is KM, why is it important and, finally, how can we deliver a successful KM strategy?

A bit about KM

KM can broadly be defined as the way in which a team, function or organisation captures and shares the knowledge, learnings and experience of its team members. In practical terms, as lawyers, much of our learning happens on the job as we read and think and process information. Traditionally, this knowledge has only been shared on a need to know basis and often verbally. The Corporate Legal Operations Consortium refers to this as *tribal knowledge* and considers that the overreliance on tribal knowledge *"fails scale as the team grows or changes, forcing costly re-work."*

Good KM is about extracting that learning from the lawyer's brain and 'institutionalising' it or capturing it for the team or the organisation so that it can be used by others now and in the future. Some frequently cited examples demonstrating good KM include:

- Regular meetings or knowledge sharing forums,
- Document management systems with strong search capabilities,
- Well-populated intranet site with self-help tools and FAQs, and
- A precedent suite for the organisation's most frequently used templates.

Why is KM important?

In short, good KM is a way of working that saves time, improves outcomes by making it easier to find answers and builds a collaborative and sharing culture. To expand:

Benefits of good KM for the organisation:

- Better capture of the organisation's intellectual capital,
- The ability to provide consistent legal advice – the team (now and in the future) is 'playing from the same playbook',
- Better use of time and resources – capture what has been done and build on it, rather than re-invent the wheel.

Benefits of good KM for the lawyer:

- Time savings, by having a trusted and preferred source of truth to go to (rather than starting from the beginning),

- The ability to advise consistently and confidently (knowing what has been advised historically),
- Better connection with the legal team and the experts in it,
- Use the time to be more solutions focused, so look good!

One case study I often use to explain the benefits of KM is from the perspective of a new starter. Think about the range of items on your checklist you would step a new starter through:

- The way the team works,
- How you manage matters and external firms,
- How you manage documents and emails,
- What precedents and templates you use, and
- What frameworks you have to measure team targets and performance.

Do you have all these materials in a central repository to ensure you cover everything and then leave a pack with the new starter to refer back to? Continuing with the case study, imagine a few weeks in and the new starter is contacted for urgent advice—do they know where to go for previous advice or a relevant, up-to-date precedent that could give them the answer they are after quickly and efficiently or do they spend all day researching an answer or playing telephone tiggly with a lawyer on leave who might be able to help?

How to develop a successful KM strategy

Well done on getting this far. It is possible that what you have read so far is not new and hopefully most, if not all, of it makes sense. But now for the hard part ... how to get there? How do we develop and implement a successful KM strategy?

Let me begin by saying that there is no single KM strategy that works for all in-house teams alike. The strategy you adopt will need to take into account various factors including your corporate strategy, the composition of your team, the technology available and the budget or resourcing options. There is no point developing a strategy that doesn't take these things into account, so make sure you have them front of mind.

So, noting the parameters of your business case, I believe some common principles apply to any good KM strategy.

Principle one: *Develop and embed a culture focused on KM*

I've heard Origin's outgoing chairman state on numerous occasions, "culture eats strategy for breakfast" (and he may well have been quoting someone else at the time). I couldn't agree

more, having worked on a number of significant change pieces over the years. If you want to develop, implement and, most importantly, embed a new way of working—here a knowledge-based way of working—you need to develop the cultural piece that supports that first, before getting into any of the mechanics.

So, what does a culture that is focused and committed to KM look like? Again, it will depend on the team, but it's a good idea to ask yourselves this question upfront and document the answer. At Origin, we wrote a list at the start of the year calling out what success would look like for this principle. The exercise was incredible because it helped us articulate exactly what we meant when we talked about a culture committed to KM. It included statements such as:

- I always choose to start with the knowledge we have,
- I provide legal services when fully informed from our knowledge basis,
- I demonstrate the use of our precedents and guidance notes,
- I always share knowledge from learnings,
- I continually service our team's knowledge base to maintain and improve, including proactively managing data relevant to me,
- I advocate for this culture with my Origin Legal colleagues.

Principle two: *Design and implement strong and clear infrastructure and processes to capture and share your knowledge*

Once you have the cultural piece in place, the next things that lawyers quite rightly want are a clear framework and processes for tipping in and taking out knowledge. These infrastructure and processes should foster the culture by making it easy to share and capture knowledge, rather than placing too many layers of admin (yuck) on the lawyers.

When you turn your mind to what infrastructure you have or can develop, think of:

- A document management system – not just having one, but ensuring your team know how to use it to file knowledge and find knowledge simply and easy,
- Team protocols and guidance notes – at last count, I drafted 15 guidance notes on things the Legal team did but only knew how to do by word of mouth,
- Approvals and review processes for things such as precedents and guidance notes – consider not just the document itself but the ownership piece and the rules around amending, reviewing and updating, and
- Team meetings, forums and hubs to capture FAQs or frequently used materials.

The infrastructure and processes should, ideally, be designed centrally (but with input from the team) so that there is a coordinated and centralised approach.

Principle three: *Be thoughtful about how you populate and contribute to your team's knowledge*

Finally, we arrive at building up the knowledge itself. In my view, you should only start talking about what is in the knowledge base once

you have a clear path forward on culture and infrastructure, otherwise the knowledge you build up is just as likely to disappear or fall into disuse.

Building up the knowledge base can and should be both organic and strategic:

- The organic knowledge base will be the incidental knowledge that your team acquires through their day-to-day work—learning about a new area of law, a new part of your business. Capturing this should be easy and free flowing and you probably don't want too much 'infrastructure' in the way of approvals or processes to prevent it.
- The strategic knowledge base will be the key documents that your team identifies will help deliver legal services well, such as precedents, guidance notes and self-help tools. They may involve working with your business partners to identify areas of high volume or need, or high risk to the business. For these, you will need both a prioritisation plan (of course we all want it done yesterday!) and clear processes for development, review, approval and maintenance.

In both instances, your team will need to know about the existence of the knowledge and how to use it, so don't forget to close this loop.

Other considerations

A few more practical considerations before we wrap up:

- First, think about how you resource a KM strategy. Do you have an individual who can lead the development and implementation of the KM strategy? If you don't have a dedicated Legal Operations person in your team, you could consider this an incredible development opportunity for a team member, or else think about the many external consultants that can assist.
- Second, how you are going to engage and motivate the team to participate in the KM strategy? What levers do you have at your disposal to incentivise the successful performance? For example, bonuses, rewards and recognition, regular check-ins and visual management boards all help keep the team accountable and on track.


Conclusion

In summary, KM is incredibly important for building a mature Legal in-house team and when done well, can deliver tremendous benefits to your organisation and your lawyers. While there is no blueprint for success, some guiding principles will help you get there, namely:

1. Develop and embed a culture focused on KM,
2. Design and implement strong and clear infrastructure and processes to capture and share your knowledge, and
3. Be thoughtful about how you populate and contribute to your team's knowledge.

So, there you have it, the start of a very important conversation about KM. I'd love to hear what you think. **a**

Katrina Gowans



As the National Legal Operations Lead for Origin Energy, Katrina describes her role as helping the legal team manage change. She has previously held the role of Corporate Lawyer at Origin and before that, Competition and Consumer Lawyer at King & Wood Mallesons. At Origin Energy Katrina has successfully led the implementation of a fully integrated matter and document management system, underpinned by a transformation program to change the way the team worked.

GLOBAL TALENT AND THE INNOVATION IMPERATIVE

The 'global war for talent' is something of a hackneyed cliché, but that doesn't mean the premise is false. International studies show that the next 20 years will bring a talent crunch as a growing number of international organisations compete for a relatively stable number of high talent individuals, particularly in the STEM sector. The problem for business is that numerous studies show that talent, and international talent in particular, is a key driver of innovation.

The last decade has been characterised by a drive for innovation, with 'disruptive' market entrants such as Google, Facebook and Netflix toppling industry leaders and upsetting established markets with trailblazing products and services. To drive innovation, many of these businesses have relied heavily on international talent, as seen in places such as Silicon Valley, a global hub for highly skilled migrants. This strategy is supported by the academic literature, which shows that international talent and diversity are major drivers of innovation and outperform local talent in many categories.

The impact of the COVID-19 pandemic will be to exacerbate the existing talent crunch for business. The travel-suppressed environment, declining economic conditions and government policy realignment to respond to these changes risk making international talent less accessible. The COVID-19 pandemic has already radically altered the Australian immigration environment with a drastic reduction of onshore temporary migrants including international students—many of whom would have otherwise sought to bring their skills to the Australian job market. Longer-term impacts might include fewer pathways for employers to sponsor foreign nationals, as the government seeks to prioritise local employment to address high rates of unemployment.

Attracting skilled migrants to Australia, a small market of 25 million people often perceived as distant from major economies in Asia, Europe and North America, may become more difficult as alternative destinations offer greater opportunity. Australia has long relied on its reputation as an attractive lifestyle destination; however, fewer opportunities to access visas or residency, greater opportunities elsewhere and worsening perceptions of Australia because of policy towards temporary residents place this at risk. To compete, Australian organisations must put innovation, diversity and disruption at the centre of what they do, build an attractive 'culture first' business and engage where possible within the limits of local immigration laws.

It is in this increasingly difficult environment that in-house counsel are being called on to support the strategic goals of innovation and competition. To do so, in-house counsel must ensure the business has the necessary tools to attract global talent (GT), build a culture that can effectively manage non-financial risk and bridge the knowledge gap between people and culture, risk and compliance.

Innovation is the catchcry of the 21st century. The rapid development of computing technologies and the combined effects of machine learning, big data and ubiquitous access to internet services have changed business and our lives in profound and permanent ways. Organisations such as Apple and Google now dominate global markets in ways that Ford and General Motors did in the mid 20th century, using their technological services and near-universal reach. To remain competitive, organisations are focused on replicating

these techniques—building innovative products and services while transforming their existing operations using these same tools.

Innovation has been notoriously challenging to bottle; however, studies have shown that migrants play an outsized role in innovation and business outcomes. In the US, 51% of unicorn companies were founded by first-generation migrants and 40% of Fortune 500 companies were founded by first or second-generation immigrants. One hypothesis for this is that higher-skilled migrants are more likely to seek the best opportunities and are more willing to travel to do so.

International talent does not just deliver results by attracting the best and brightest but also through increasing the level of diversity in teams. Diverse teams have been shown to outperform homogenous teams and organisations can seek to maximise the impact of in-house talent by creating their own 'talent clusters', groups of highly skilled workers who maximise their outputs through knowledge transfers and deliver greater results under these relationships.

Businesses are also increasingly recognising the imperative to create 'culture first' organisations to maximise employee engagement to drive productivity and performance. Combining this employee-centric approach with a focus on acquiring key international talent and organisational diversity has the greatest potential to deliver the best outcomes. In many respects, this combination of talent, culture and diversity to drive innovation is the holy grail that the top tech companies have achieved and others seek to emulate.

However, while the value of diversity, culture first and international talent might be apparent, the means for organisations to effectively secure and maintain access to the right individuals is often less so.

Immigration laws are the primary mechanism that connects employers with skilled international talent. The visa system acts as a filter to sort prospective migrants who are seeking international opportunities and provide them with entry points to the Australian economy. For many foreign nationals, the Australian university system is the first potential pathway to the labour market, through a first-class education and exposure to local job opportunities that accompany it. The second pathway is for employers to sponsor temporary workers through the main Australian work visa, the Temporary Skill Shortage Visa 482 (TSS 482).

For employers seeking to access international talent, these two pathways are useful methods for engaging prospective employees; however, the rapidly changing nature of the immigration system can make securing long-term access to these groups difficult, particularly in the current pandemic and accompanying economic crunch.

TSS 482 is the main Australian work visa and is open to highly skilled individuals in occupations the government has deemed in shortage in Australia. However, the visa has a number of problems including outdated occupations lists, messy compliance obligations and uncertainty around access to permanent residency. Despite this, it is

the primary visa for retaining international talent, and organisations need to come to terms with the challenges.

As the immigration system is subject to significant change, organisations must maintain an awareness of the status quo, whether by appointing a dedicated internal resource to monitor key changes or external relationships, such as with an immigration lawyer or registered migration agent.

Finally, for organisations, accessing international talent through the immigration system brings inherent risks. The sponsorship system has compliance obligations for employers that require oversight, planning and organisation. In-house counsel are well placed to manage and overcome these challenges but a broader culture of risk management must be cultivated across the organisation.

The existing challenges of the TSS 482 visa are rendered more difficult in the COVID-19 environment as the government seeks to balance business demand for international talent with high levels of unemployment among Australians. This is a difficult line for the Federal Government to navigate and worsening economic circumstances risk pushing the government into a defensive position at a time when the economy would benefit most from greater participation of international migrants.

Should the government adopt such an approach, the first step is likely to be a review of the skilled occupation lists to reduce the number of eligible occupations, which would in turn limit or prevent access to sponsorship. Exactly which occupations and industries would be affected would be subject to government determination and organisations would be well advised to engage with industry bodies, state and territory government, and other stakeholders to advocate against the removal of critical occupations for their business.

Two positive changes the government has recently introduced are the new 'GT' streams for high talent individuals, one sponsored and the other independent. The GT individual (GTI) stream focuses on creating access for high talent individuals with an international profile in key technology sectors¹ and the employer-sponsored stream is designed to enable employers to access high-value skills that will generate a strong economic return and support the training of Australians, but which fall outside the standard employer-sponsored visa programs. The number of places for the GTI visa has increased to 15,000 for the 2020–21 financial year, a move that will ensure a number of high talent individuals receive a pathway to permanency in Australia—although these non-sponsored visas will not necessarily align with existing employer needs.

For in-house counsel, the key challenges are understanding how to support the business's talent-focused goals through the immigration system, with its limited visa options, while ensuring operational integrity and appropriate risk management. To do so, in-house counsel must have a high-level understanding of the possibilities, limitations and risks of the systems. Ownership of the broader immigration function may remain with HR or People & Culture, but in-house counsel have a role in ensuring compliance and protecting access to the system.

To achieve this, in-house counsel should ensure the business has a reliable source of information on the system and an understanding of how the current system aligns with business goals. Pinch points, or areas where the system cannot or does not currently deliver essential skills, present an operational risk. Here, in-house counsel can ensure the executive team is appropriately advised on limitations and provide their support to advocates and stakeholders who can promote the business's long-term talent goals through changes to the current system or identifying alternate routes to secure talent.

In-house counsel can support the effective management of compliance obligations and the appropriate dealings with sponsored employees. While this has clear overlap with the treatment of any employee, the needs of sponsored employees may differ due to their temporary status. In this respect, it is important to remember that

the reputational consequences for mismanagement in this space are often more significant than the legal impacts. In-house counsel has an important role to play in ensuring that appropriate internal systems are in place to meet these obligations and provide an effective liaison among the executive, human resources and risk teams.

In-house counsel also plays an important role in ensuring that the critical information regarding the immigration system and compliance does not fall into silos. Larger organisations enjoy the benefit of more resources; however, there is the challenge of ensuring teams can collaborate effectively. Successfully addressing immigration compliance requires building an appropriate culture of non-financial risk management—a broader business need that was highlighted in the recent *Hayne Review*, where failure to do the legally necessary resulted in major failures of accountability.

Ensuring that different elements of immigration management are appropriately divided among HR, the risk management function and the legal team can prevent knowledge gaps within the organisation. Ensuring information sharing between these functions is an important means of providing cross functional visibility to meet the legal requirements of the program and prevent any breaches. The consequences of breaches of immigration laws can include financial penalties, sanctions and, more significantly for organisations that rely on GT, being prevented from sponsoring employees on the TSS 482 visa.

For businesses seeking to increase competitiveness via innovation, accessing GT through the migration system will be increasingly critical over the coming years. The role of in-house counsel as key facilitator and guardian of the business's goals through legal compliance, risk management and engagement across functional teams is essential for guaranteeing access to the international talent pool.

In-house counsel plays a critical role in overseeing and calibrating the risk and compliance approach of organisations to support the business's innovation and competitiveness strategy. Understanding and engaging with immigration legal issues have the potential to ensure the executive is appropriately briefed on how the current environment enables or challenges access to GT and the organisation remains in a positive position to deal with the shifting policy environment.

Through greater engagement, building cross-team knowledge and participation, in-house counsel can support innovation through talent acquisition and diversity. For some, the role of in-house may shift over time as guaranteeing access to talent becomes more business critical and overlaps with existing in-house responsibilities in risk management, workforce management and compliance. However, we can be certain that the in-house function will benefit from greater access to international talent, and the diversity it brings, to build more innovative and entrepreneurial teams. [➔](#)

Footnotes

1. AgTech, Space and Advanced Manufacturing, FinTech, Energy and Mining Technology, MedTech, Cyber Security, Quantum Information, Advanced Digital, Data Science and ICT.

Jackson Taylor



Having practised exclusively in immigration for more than twelve years, Jackson Taylor delivers a range of advice to employers on Australian migration for business, including strategy, government advocacy, compliance, and visa assistance. He is particularly interested in the confluence of immigration and employment law, how visa status affects temporary migrant precariousness, and reform of business migration.

LEGAL OPS FOR SMALL TEAMS

Legal operations is a term that gets used in many different contexts, often with quite varied meanings. The essence of legal operations is optimising an organisation's people, systems and processes. Often, it's larger organisations who have more established legal operations capabilities, but these principles apply to any organisation, regardless of the size of its legal function.

While this article focuses on how legal operations applies to smaller organisations, the principles apply to all organisations. Drawn from my experience managing legal functions and working with teams of all shapes and sizes worldwide, these principles apply to any organisation, regardless of variables such as team size, access to technology and other resources.

Where do I start?

Many legal teams, particularly smaller ones, are overwhelmed with the volume of work and issues that come across their desk. It's very common to hear requests for help that say something like: "We don't have time to think about fixing things ... but we really need to improve them!"

It's really important to be clear on each specific problem you want to solve. This involves identifying and prioritising issues by reference to the magnitude and frequency of their impact. It also involves assessing the resources available to address the issue such as time, money and people.

It is equally important to be realistic about the limitations on what can be achieved. It's very common for well-intentioned improvement initiatives to run out of steam because they lack key elements required to get the job done.

Defining the problem

Some good questions to ask when defining the problem are:

1. Issue identification:
 - a. What key issues do you see personally? Aka: what's keeping you awake at night?
 - b. What issues are your team complaining about? If you're not getting useful information here, consider allocating time to discuss these.
 - c. What is troubling your internal clients? I always found one-on-one meetings with general managers an excellent way to discuss issues openly in a lower pressure environment.
2. What's the impact of these issues, e.g. lost money, lost time, lost deals, poor relationships between internal teams?
3. Who are the people impacted by these issues, e.g. which team/s, customers, counterparties?
4. How often do these impacts occur?
5. What is the size of this impact, i.e. how much money/time, how many deals are being lost, how bad is the relationship?

Prioritising

Most teams, particularly smaller ones, have very limited time for anything outside of dealing with business as usual. It's really important to prioritise. Asking the above questions should provide enough information to map out the obvious candidates for change, and to start to prioritise them.

Once you have your 'shopping list' of problems to solve, it's important to overlay the level of resourcing available to allocate to solving them. This involves reflecting on questions such as:

1. Who in your organisation 'owns' the process/es most impacted by these issues?
2. What would success in solving that issue look like?
3. How would you measure success?
4. How much time, money and specialist skills will be required of you personally, your team and other impacted teams to fix the issue?
5. How available is the anticipated level of time, money and specialist skills?

What's the strategy?

It's amazing how few legal teams have their own strategy, or have one that actually works for them. A legal team strategy is a crucial document to focus the team's finite resources on the specific activities that matter most to their organisation. Without this strategy, legal teams run the risk of being passively pulled in every direction, without their hard work being sufficiently focused or recognised by the rest of the business.

Legal's strategy doesn't need to be 'War and Peace'. Great legal team strategies can be put together very quickly and documented on a single page. They should link to the key organisational objectives, which typically set targets in areas such as improving revenue, reducing cost, improving safety and improving compliance.

These overarching objectives provide a solid foundation for identifying the specific things that the legal team can do to help enable these objectives. Your shopping list of problems to be solved can be assessed against each of these organisational goals to help decide which are the most material ones that justify allocation of your team's finite resources.

Alignment

Legal's strategy should be agreed with your organisation's executive team. Frequently, I hear legal teams report that highly-skilled individuals are spending too much time on low-value tasks. Examples of this include formatting documents for lazy internal clients, becoming quasi-contract managers or losing hours in meetings, calls and walk-ups where legal's skills are not required. I'm yet to hear a CEO say that this is how they want their lawyers to work.

Developing a strategy involves not only identifying the activities that the lawyers will prioritise, but also the areas that they will deprioritise. Identifying these tasks informs the development of appropriate measures to manage these tasks where legal will do less hand-holding, such as providing internal clients with training or guidance materials to help them navigate certain issues, with the ability to escalate to legal where needed.



Road map

Armed with a legal strategy, you're well placed to develop a road map to achieve change at a manageable pace. Few teams have sufficient bandwidth to achieve change on top of business as usual, particularly smaller teams. This makes it really important to prioritise initiatives and be realistic about what can be achieved alongside everything else going on. The trap many teams fall into is to dismiss the possibility of solving problems because they're 'just too busy'. I believe legal operations projects are also harder for many general counsels to get their heads around, because the variables and skills involved—including technology, change management and the risk of uncertain outcomes—make it harder to assess whether their hard-earned political capital is well spent on this type of exercise.

The team needs this

The exponential increase in the pace and complexity of contemporary legal work, overlaid with more recent changes such as COVID-19, make it increasingly difficult to avoid the need to take sensible steps to overcome existing challenges and take advantage of new opportunities to work more effectively. It's also an important way to help manage the wellbeing of the team by ensuring that they're all working in an efficient and sustainable way that delivers benefits to them personally as well as to the wider organisation.

Start small

Often process change is a good place to start, because:

- It requires less permission or input from other teams,
- It often requires no expenditure,
- It can lay the foundations for subsequent, more complex improvements.

Eating the elephant one bite at a time

Improvements usually work best when based on a continuous cycle of smaller, manageable changes rather than radical changes. Smaller improvements generally:

- Are faster and easier to implement,
- Are less likely to require major capital investment or permission from other stakeholders,
- Require less change management than major changes.

Breaking complex issues down into smaller, more manageable parts increases the likelihood of delivering tangible benefits rather than a 'big bang' approach that can be much more difficult and disruptive.

Agile is not a dirty word

It's less risky to make incremental changes rather than imposing drastic changes on how your legal team and internal clients work. Iterative, Agile-style 'sprints' also allow changes to be tested quickly and feedback to be obtained (informally), which helps tweak solutions to make sure they fit. This is usually a better approach for smaller teams than large 'waterfall' style change projects, which often try—unsuccessfully—to plan out all the work despite an unmanageable number of variables that can't sensibly be planned for.

In addition to the 'running out steam' dynamic that can hamper larger projects, many never get past the planning phase due to the number of stakeholders required to support complex solutions.

We need to talk about ... technology

Often technology plays a valuable role in legal operations projects. It's important to be clear when and why technology solutions are appropriate.

If the underlying process is problematic, it's usually a good idea to look at those process issues before implementing technology. Otherwise, there's a risk of not solving the intended problem or—worse—creating new problems that might be harder and more expensive to fix than the existing ones.

What do you need exactly and why

Documenting the specific problems to be solved puts you in a great position to assess your technological needs. It's a good idea

to look at the tech you already have and ensure it's being used to its full potential before you start adding to your tech stack.

If you do go to market, spend the time to develop a clear list of requirements so you can drive the conversation rather than being passive. This takes some work—allocate the responsibility to someone who knows what they're doing or get help if you need it (whether internal or external).

These requirements should reflect your:

- Prioritised needs,
- Legal strategy,
- Available funding (both for implementation and ongoing licence costs),
- Available resourcing to support both the onboarding phase and beyond (internal to your team/business and external),
- Appetite for change.

Typical challenges with onboarding new tech

Once you have a good idea of your requirements, some key issues to be aware of when assessing technology solutions are listed below:

ISSUE	Elements to consider
Stakeholder paralysis	<ul style="list-style-type: none"> • How many people would need to approve a decision to buy new tech within your business? Often this includes heads of IT, Finance, Procurement, Risk etc. • What does the process to get these approvals involve exactly?
Budget	<ul style="list-style-type: none"> • What's needed (a) now and (b) ongoing? • Do you have this budget: <ul style="list-style-type: none"> o If you have this budget, what are you required to demonstrate to justify the expense? o If not, what do you have to do to get it? How long will this take?
Time	<ul style="list-style-type: none"> • How long will it take to get this new solution on the ground? • For some organisations this process can take over a year—can you wait that long?
Project management	<ul style="list-style-type: none"> • Be clear on the roles and responsibilities of your organisation and the vendor. You may need to bring on a secondee and/or free an internal team member of other duties to play this role. • Confirm the required frequency and format of meetings and reporting.
Integrations	<ul style="list-style-type: none"> • What level of integrations do you need? • Many legal tech platforms either don't integrate with the systems the rest of the business uses or can require significant expense and effort to achieve this, including managing changes over time. • Problems can arise when legal is the only one using a certain platform e.g. 'one source of truth for document management'.
Change management	<ul style="list-style-type: none"> • Be realistic! This is one area that almost everyone underestimates. • Start early with the legal team and non-legal colleagues. • Everyone will ask 'what's in it for me?'—have the answer to that question up in lights. • Don't try to go from 0 to 10 overnight. 'Moving fast and breaking things' works for certain startups but doesn't fit the risk appetite of most established businesses. • If the platform is to be used by legal and internal clients, this will significantly increase the complexity.
Training and ongoing support	<ul style="list-style-type: none"> • There will be work involved in training people up for things like UAT, platform adoption, ongoing support. • Who will provide the training and ongoing support? • For external support, how much will this cost? • For internal support, what will be the impact on performance of their other responsibilities?
Data security	<ul style="list-style-type: none"> • Know what you need and how well the proposed platform aligns with those requirements. • Understand and plan for the process involved to get this cleared.

Measurable metrics

It's amazing how often I hear from highly capable senior people that they have no idea what their legal team actually does all day. I'd love a dollar for every time I've seen an email singing the praises of a team who put in some extra work e.g. where the IT team worked over the weekend to achieve a data migration. Legal teams do this all the time but their effort is often not seen clearly and, therefore, not valued.

An effective legal strategy should articulate SMART objectives that are Specific, Measurable, Achievable, Relevant (i.e. to your organisational goals) and Time-bound.

This makes it easy to:

1. Translate legal effort into terms that are more easily understood by non-lawyers,
2. Link legal team effort to organisational objectives,
3. Develop objectives, both for the legal team as a whole and for individuals,
4. Ensure that the whole team understands the role they play in the achievement of legal team and organisational objectives,
5. Quantify performance, so that you can demonstrate success or understand why an initiative is not achieving the desired outcomes.

Dashboard reports

Developing objectives in this way makes it easy to identify the right metrics to capture and report. In a previous role leading an in-house legal function, I was conspicuously the only GM who wouldn't regularly present at periodic 'town hall' company meetings. I think I justified this absence at the time on the basis that the subject matter was either too sensitive or complex to be a good fit for this environment.

But once you have access to the metrics that link to organisational objectives, you can use dashboard reports to share information and demonstrate the role legal is playing to achieve those organisational objectives. If you've had to spend money, you can also use the data to prove the ROI by quantifying the benefits you've obtained.

Keep on trackin'

Once the right types of metrics have been identified and are being tracked, this should become a regular data flow that enables real-time assessment of how the team, and the individuals working in it, are progressing towards the achievement of identified goals.

This shouldn't be an unnecessarily complex exercise. You can use Excel to track data and generate reports, or you can use other tools like PowerBi if you have that capability within the team. Rather than wait for periodic reviews on something like an annual or quarterly basis, this data should be reviewed regularly to assess what's going well and what should change.

Ideally, data collection can be built into your team's processes and systems (Microsoft's suite has many tools available to capture and report data in real time). Rather than spend team meetings going around the room to **collect data** (e.g. asking everyone what they're doing), simple dashboard reports can be circulated before the meeting to enable valuable group time to be used to decide how best to **respond to** the data. A good standing agenda will support this discussion e.g. something like:

1. What's working well?
2. What should we do more/less of?
3. What needs to happen to plan for that?
4. Who will do that?
5. By when?

Adopting a practice of collecting and regularly reviewing the right metrics will enable you to assess how you're tracking against the achievement of your identified objectives. Where you achieve wins, it will help allow you to share information about success in terms non-lawyers can easily understand.

If objectives aren't being achieved, you have access to enough data to interrogate why. For complex issues, you may need to keep asking 'why?' as many times as you need to until you get to the root cause of the issues. This practice will also enable you to adjust goals as you go, so that performance management becomes a regular, fruitful discussion rather than a static, intermittent exercise.

Quick wins

Most Legal teams spend too much time performing tasks that are not a good use of their time, including:

- Answering repeat questions on the same topic,
- Attending unnecessary meetings/emails/calls (etc),
- Looking for information.

Here are three simple things you can implement today that will deliver an immediate ROI:



- Give your internal clients guidance on common issues that take up excessive legal time e.g. how to brief legal (this can be a Word doc) or 'how to execute an agreement'.
- Instead of spending time explaining the same issues over and over, direct them to the self-help tool, and allow them to escalate to legal once they've followed those steps.



- We've all dealt with requests that should never have come to legal, are poor quality or prioritised inappropriately.
- One solution to this is to get internal client general managers (or their delegate) to approve requests coming to legal.
- When I did this, it produced immediate significant benefits for my team:
 - o A lot less 'time wasters' – e.g. requests to join meetings where it's unclear whether legal has any role to play.
 - o A lot less 'low-value requests' – e.g. stuff that should never have come to legal.
 - o Higher quality instructions – with enough detail to action.
 - o Clarified priority of each request – compared to that team's overall work requests.



- Lawyers have a unique perspective across many facets of the business.
- Usually this information is not captured and not utilised.
- Capture lessons learnt and use this to aid the early detection of brewing issues and inform future strategic planning.

David Curtain



Boasting over 20 years' experience in leading in-house legal teams and in private practice, David is a Melbourne-based director of LOD's Innovation & Design team. He works with clients around the globe to implement legal operations and technology change projects.

With assistance from Ethan Doan, Manager, Legal Operations & Tech, LOD



ACC GLOBAL UPDATE

Over 2,500 Attend ACC's Virtual Annual Meeting

Over 2,500 attendees from around the world and 40 legal solutions vendors took part in the Association of Corporate Counsel (ACC)'s **first virtual Annual Meeting**, peaking at 2,046 unique visits in a single day. The meeting exceeded 2019 attendance numbers, underscoring both the meeting's critical importance to the international in-house community and the willingness of lawyers to continue meeting virtually in large numbers. All on-demand programs remain available to attendees through to the end of January 2021 for viewing. Registration also remains open for those who would like access to on-demand educational programming, but could not attend live.

"ACC's 2020 virtual Annual Meeting was an unqualified success," said Veta T. Richardson, President and CEO of ACC. "From all the engaged attendees, wonderful speakers and panelists, and incredible sponsors, everyone came together to make this conference an informative and enjoyable experience. The COVID-19 crisis has shown just how crucial a well-prepared general counsel is to a company. This year's Annual Meeting showed just how much in-house lawyers still need the community of their peers to share, learn and grow together. I am proud of our ACC team, and thankful to our attendees and sponsors, for making this event happen."

The meeting lasted the week of October 12–16 and spanned international time zones. Attendees had access to daily keynote addresses, interactive workshops, roundtables, special sessions for the ACC CLO Club, CLE/CPD courses, a virtual exhibit hall of legal service vendors and a networking lounge.

ACC, Edelman Report Highlights CLO and Institutional Investor Perspectives on Trust in Business

ACC and **Edelman**, the global communications firm, released the first joint Trust in Business Report, a survey of chief legal officers (CLOs)

and institutional investors on their perceptions of how to increase public trust in businesses. This is the first collaboration of its kind and measured the factors impacting corporate trust from the perspective of CLOs and institutional investors.

"While there's no debate that establishing and maintaining the public's trust in a company is critical, how to get there may differ based upon one's perspective," said Veta T. Richardson. "In-house lawyers both understand that trust is critical and they are increasingly asked to play key roles to build trust from the inside and contribute to cultivating the company's relationships with investors, shareholders, employees, and clients alike. This paper is a useful tool that we anticipate will spark thought and spur important discussions with the goal of increasing trust in business. ACC is grateful to partner with Edelman to provide these insights and we look forward to future opportunities to work with Edelman to advance these critical conversations."

The report highlights the need for a holistic approach to trust. The data suggest that CLOs tend to approach building trust more from a demographic standpoint, whereas institutional investors tend to focus on top-level business strategy. Nevertheless, the survey results indicate that the two groups agree on several key factors in earning public trust, including a well-enforced, regularly surveyed, ethical company culture and a proactive board of directors. Both groups also valued diversity in company leadership, stressed the need for continued ESG efforts and expressed doubts that most companies are adequately prepared for employee activism.

The paper is available on the ACC website.

ACC Endorses General Counsel Oath

ACC is endorsing the General Counsel Oath. Drafted and spearheaded by Simon Zinger, Group General Counsel at Dentsu and an ACC member, the Oath is an opportunity for general counsel and other in-house leaders to recommit to ethical conduct in their practice

and pursue other actions to benefit their teams and organisations. Following the unanimous vote by the board of directors, ACC chapters and networks will now begin sharing and highlighting the Oath to their individual members as well.

Modelled on the Hippocratic Oath, the General Counsel Oath initiative urges general counsel to "go beyond stated rules, codes and guidance to act with integrity, honesty, and ... the highest ethical and professional values." Additional signers to the Oath include leaders from throughout the in-house community and support has been provided by several law firms and legal recruiters.

"The General Counsel Oath is a timely, critical reminder of our responsibilities as corporate counsel to our clients, our colleagues, and our communities," said Veta T. Richardson. "The role of the general counsel is fundamental to modern businesses and has an outsized impact on the world economy as well as the cultural climate across businesses. I thank Simon for dedicating the time and effort to draft and promote this fundamental statement of values and behaviours for the entire in-house community to embrace. I am so proud that an ACC member is taking on this initiative and ACC looks forward to helping continue to expand the reach of the Oath however we can."

"As lawyers and compliance professionals, we appreciate that our work is underpinned by ideals of fairness, justice and professional responsibility. But with so much volatility in business and around the world currently, I felt we needed something to refocus our attention and expand our efforts," said Simon Zinger. "ACC and other organisations have joined us in supporting this commitment by GCs, anywhere in the world, to use our collective influence to promote positive social change, including efforts aimed to promote diversity, equity and inclusion within our teams and organisations. I sincerely appreciate the support shown to this initiative and look forward to continue working across the legal industry to help spread the word."

The text of the Oath is available [here](#). 



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