



In-house Law Report 2007

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Executive Summary

ACLA's *In-house Law Report 2007* – prepared with the assistance of Beaton Consulting – is based on one of the largest studies carried out amongst government and corporate lawyers in Australia. The 660 in-house lawyers who participated in the study in 2007 answered questions in relation to pressures in their role.

The study has been conducted every two years since 2003, and over that time the pressures on in-house lawyers have remained significant; however the good news is that they have eased slightly in some areas over the last two years. While in past years in-house lawyers were often looked at as the poor cousins of lawyers practicing in a law firm or at the bar, attitudes towards in-house lawyers have shifted significantly over recent years.

While overall in-house lawyers still feel the pressure to demonstrate their value to senior management, in 2007 this pressure had significantly reduced. In-house lawyers are less likely than in 2003 and 2005 to strongly agree that they need to demonstrate their value to senior management.

Whether due to a robust economy, or a shift in mindset towards the role of in-house counsel, the pressure to contain costs has eased slightly in 2007 compared to 2005. The pressure is still significant, however; in 2005 76% agreed that reducing legal expenditure was increasingly important, and in 2007 67% agreed. Many organisations appear to be rationalising their spend, with significantly fewer in-house lawyers agreeing that expenditure on legal services is increasing as a percentage of their organisation's revenue or budget.

A prominent finding in the 2005 study was that overall in-house lawyers felt a considerable burden in coordinating external law firms, and were seeking to reduce the number of external law firms they used. This emphasis appears to have paid off somewhat in 2007. Significantly fewer in-house lawyers in 2007 compared with 2005 agreed that their organisation is still trying to reduce the number of external law firms used. Just over half agreed that coordination of those firms is an increasing part of their role, compared with almost two thirds in 2005.

For the first time since the study began, fewer than half of in-house lawyers surveyed agreed that 1) their organisation is moving towards more formal tender and panel arrangements, and 2) that their organisation is seeking alternatives to hourly rates. The percentage of legal work corporate lawyers conduct in-house is still increasing, but to a lesser degree, with 72% agreeing with the statement in 2007, compared to 79% in 2005.

In-house lawyers are still expected to provide increasing assistance in improving corporate governance. While many have already increased their contribution in this area over the last couple of years, in 2007 the majority (67%) still agree that improving corporate governance is an increasing part of their role (compared with 76% in 2005).

One of the most prominent differences is in recruitment and retention – while in 2005, 36% of in-house lawyers indicated that it was becoming harder to recruit quality legal staff, this figure jumped to 42% in 2007. Similarly, while 43% agreed that retaining legal staff was becoming more difficult in 2005, in 2007 this had climbed to 48%.

There appears to be a shift from cost reduction to outcomes – perhaps due in part to the strong economy, but also as a result of in-house counsel gaining a higher profile in industry. The challenge now is finding enough quality candidates to fill demand.

1. Background

1.1 Objectives

In late 2006 the Australian Corporate Lawyers Association (ACLA) – jointly with Beaton Consulting – conducted a study amongst government and corporate lawyers in Australia. A large number of in-house lawyers (660) participated in the study, answering questions in relation to their role, the challenges they face and their approach to managing their role. The 2007 study represents a follow-up study to one undertaken in 2005 in which 469 in-house lawyers participated.

The research aimed to provide quantitative information in relation to:

- How in-house lawyers perceive their role
- The challenges faced by in-house lawyers
- How in-house lawyers are dealing with these challenges
- Key trends in relation to in-house legal services.

1.2 Approach

The in-house lawyers study was conducted as part of a larger study – the Annual Business and Professions Study (ABPS). Almost 200,000 people were personally invited to participate in the 2007 ABPS. Invitations were sent via email and the research was conducted using an on-line survey instrument. Over 25,000 responses were received – a response rate of around 15%.

The database of participants was assembled from a range of sources including Chartered Secretaries Australia and the respective law societies in Victoria, Western Australia, Queensland and New South Wales. ACLA wish to express their gratitude to these associations for their support.



For the in-house law report, only those individuals who stated they were in an in-house legal role (General Counsel, Head of legal department, Chief Legal Officer or other in-house lawyer) were included.

1.3 Terminology used in the report

Participants were asked to indicate their level of agreement with a range of questions, as follows:

Strongly disagree = 0-2 / 10

Disagree = 3-4 / 10

Neither agree nor disagree = 5 / 10

Agree = 6-7 / 10

Strongly agree = 8-10 / 10

In the commentary unless otherwise specified, references to 'agree' include responses from 6 / 10 to 10 / 10 – i.e. 'agree' and 'strongly agree' combined. Reference to 'disagree' include responses from 0 / 10 to 4 / 10 – i.e. 'disagree' and 'strongly disagree' are combined.

2. Findings

2.1 Corporate governance

Major organisations, both publicly listed companies and government entities, continue to invest in improving their governance processes, and in-house lawyers are often recruited to implement and manage corporate governance issues.

The *In-house Law Report 2007* found that 67% of in-house lawyers agreed with the statement that 'improving corporate governance is an increasing part of my role', whilst only 13% disagreed. It appears the efforts already made by in-house lawyers in this area have only slightly decreased the pressure, with results showing a mere half point decrease in the mean score from 2005 to 2007.

Table 2.1

"Improving corporate governance is an increasing part of my role"

	2003 (n=459)	2005 (n=451)	2007 (n=660) *
Strongly disagree (0-2) %	7.2	6.21	8.60
Disagree (3-4) %	5.7	2.44	4.30
Neutral (5) %	13.1	15.08	20.60
Agree (6-7) %	25.7	27.49	33.30
Strongly agree (8-10) %	48.4	48.78	33.20
Mean	6.9	7.06	6.40

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

2.2 Legal spend as proportion of revenue

Almost half of in-house lawyers (40%) believe that the total expenditure of their organisation on legal services is set to increase as a proportion of overall organisational revenue. This is a lower proportion to the 2005 finding, which indicates that organisations are rationalising their legal spend.

The largest single group is the 'neutral' category (39%), indicating that a likely scenario is that legal spend is stable as a proportion of revenue.

Those in-house lawyers who believe their organisation's legal spend is increasing as a proportion of revenue may be with organisations that are looking for non-organic sources of growth, be they acquisitions, joint ventures, etc. These efforts obviously require considerable legal support.

Table 2.2

“The total expenditure of our organisation on legal services is increasing as a percentage of organisational revenue / budget”

	2003 (n=428)	2005 (n=398)	2007 (n=660)
Strongly disagree (0-2) %	14.3	16.08	11.80
Disagree (3-4) %	13.1	9.55	9.90
Neutral (5) %	25.0	24.12	38.60
Agree (6-7) %	26.2	24.62	23.50
Strongly agree (8-10) %	21.5	25.63	16.30
Mean	5.5	5.55	5.38

2.3 Total legal spend

While 40% of respondents in the *In-house Law Report 2007* believed that the total expenditure of their organisation on legal services is increasing as a percentage of organisational revenue, 67% of respondents noted that reducing total legal expenditure is becoming increasingly important in their organisation. Over 40% strongly agreed with this statement.

While this represents a significantly lower proportion of in-house counsel than in 2005 (when over half (55%) strongly agreed with the statement), the pressure to contain costs that in-house lawyers experience is enormous. The efforts of in-house lawyers in recent years to rationalise and contain costs has clearly had some effect, however.

Table 2.3

“Reducing total legal expenditure is becoming increasingly important in our organisation”

	2003 (n=478)	2005 (n=448)	2007 (n=660) *
Strongly disagree (0-2) %	2.7	4.91	4.30
Disagree (3-4) %	6.3	4.02	5.10
Neutral (5) %	15.7	14.73	23.50
Agree (6-7) %	24.1	21.65	24.40
Strongly agree (8-10) %	51.3	54.69	42.70
Mean	7.3	7.36	6.88

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

2.4 The value of in-house lawyers

Only 16% of in-house lawyers disagreed with the statement, 'it is becoming increasingly important to demonstrate the value of in-house lawyers to senior management'. This remains a big issue for in-house counsel – though there are signs of it abating. While in 2005, over 50% of participants strongly agreed with this statement, in 2007 this figure has dropped to 38%.

Several high profile in-house legal appointments and the efforts of groups such as ACLA are likely to have improved the standing of in-house lawyers, and correspondingly decreased the pressure on them to justify their roles.

Table 2.4

"It is becoming increasingly important to demonstrate the value of in-house lawyers to senior management"

	2003 (n=481)	2005 (n=449)	2007 (n=660) *
Strongly disagree (0-2) %	11.2	8.24	10.40
Disagree (3-4) %	4.8	6.68	5.60
Neutral (5) %	11.9	15.37	20.60
Agree (6-7) %	25.6	18.93	25.40
Strongly agree (8-10) %	46.6	50.78	38.10
Mean	6.7	6.94	6.49

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

2.5 Formal tenders and panels

Perhaps in response to the challenge of reducing total legal expenditure and more clearly demonstrating the value of in-house lawyers to senior management, 45% of the respondents to the *In-house Law Report 2007* indicated that their organisation is moving toward more formal tender and panel arrangements. This represents a consistent trend towards increasing the visibility and transparency in the selection and appointment of external law firms.

Twenty two percent of respondents strongly disagreed with the statement. These respondents may already be well established users of formal tender and panel arrangements or are not changing their current practices. These results are consistent with the *In-house Law Report 2005*.

Table 2.5**“My organisation is moving toward more formal tender and panel arrangements”**

	2003 (n=456)	2005 (n=433)	2007 (n=660)
Strongly disagree (0-2) %	25.0	23.33	22.40
Disagree (3-4) %	7.7	6.00	6.70
Neutral (5) %	16.4	19.86	25.90
Agree (6-7) %	18.6	14.32	15.60
Strongly agree (8-10) %	32.2	36.49	29.60
Mean	5.5	5.62	5.52

2.6 Number of law firms used

Another approach taken by some in-house lawyers to managing their organisation’s legal spend is to reduce the number of external law firms used. Fifty two percent of respondents indicated that they either agreed (22%) or strongly agreed (30%) with the statement, ‘in our organisation there is a trend toward using a smaller number of external law firms’.

This is a significant decrease from the 2005 results and perhaps echoes the reduced pressure on in-house counsel to reduce their organisation’s legal expenditure. It may also be the result of the considerable effort made in this area by in-house counsel, picked up by the 2003 and 2005 studies. Nearly a third of in-house lawyers indicate their organisation is now happy with the number of external law firms used.

Table 2.6**“In our organisation there is a trend towards using a smaller number of external law firms”**

	2003 (n=475)	2005 (n=447)	2007 (n=660) *
Strongly disagree (0-2) %	7.6	10.96	10.70
Disagree (3-4) %	9.7	7.83	5.90
Neutral (5) %	18.3	22.15	31.40
Agree (6-7) %	22.1	17.67	21.70
Strongly agree (8-10) %	42.3	41.39	30.30
Mean	6.6	6.38	6.03

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

2.7 Alternative pricing structures

Almost half (47%) of respondents indicate that their organisation is seeking pricing structures that provide alternatives to hourly rates, such as fixed fee projects. This is a significantly lower proportion than in 2005 (58%).

This may indicate that in-house counsel has been successful in their efforts to obtain these alternative pricing structures. It may also reflect that a primary objective of seeking alternative pricing structures is to reduce legal expenditure, and with the pressure easing in this area, the pressure to seek alternatives has also eased.

However, with 47% of participants agreeing with the statement, many are still looking to mitigate the risks inherently involved in traditional hourly billing agreements.

Table 2.7

“Increasingly our organisation is seeking pricing structures that provide alternatives to hourly rates”

	2003 (n=455)	2005 (n=418)	2007 (n=660) *
Strongly disagree (0-2) %	14.1	12.44	11.20
Disagree (3-4) %	6.4	4.55	9.30
Neutral (5) %	20.9	25.12	32.30
Agree (6-7) %	24.0	25.12	19.70
Strongly agree (8-10) %	34.7	32.78	27.60
Mean	6.1	6.09	5.77

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

2.8 Coordinating external firms

The efforts of in-house counsel to reduce the number of external law firms used appears to be paying off – while over half (54%) of in-house lawyers surveyed still agree with the statement ‘the coordination of external providers is an increasing part of my role’, this proportion has reduced from 65% in 2005.

Many in-house lawyers indicate that the level of coordination of external providers in their role is currently stable (26% had a ‘neutral’ response to this statement).

Table 2.8**“The co-ordination of external providers is an increasing part of my role”**

	2003 (n=457)	2005 (n=454)	2007 (n=660) *
Strongly disagree (0-2) %	12.0	11.01	14.10
Disagree (3-4) %	4.4	4.41	5.90
Neutral (5) %	20.4	19.16	25.80
Agree (6-7) %	26.9	28.85	30.90
Strongly agree (8-10) %	36.3	36.56	23.30
Mean	6.3	6.31	5.71

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

2.9 In-source or outsource?

The *In-house Law Report 2007* findings reveal that there is still a trend towards conducting more legal work in-house, though the proportion of participants agreeing with the statement ‘the percentage of legal work we conduct in-house is increasing’ has diminished from 2005.

With 72% of all participants agreeing (47% strongly agree) the trend still appears to be toward greater volumes of work being conducted in house, despite the fact that 80% of participants in 2005 agreed with the statement.

It may be that again, the easing of the pressure to reduce legal expenditure has a knock-on impact on the decision to outsource or not.

Table 2.9**“The percentage of legal work we conduct in-house is increasing”**

	2003 (n=486)	2005 (n=452)	2007 (n=660) *
Strongly disagree (0-2) %	4.5	2.65	5.10
Disagree (3-4) %	4.7	4.20	4.20
Neutral (5) %	13.0	13.27	19.20
Agree (6-7) %	24.5	23.89	24.70
Strongly agree (8-10) %	53.3	55.97	46.80
Mean	7.3	7.51	7.01

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

2.10 Recruitment and retention of staff

Respondents to the *In-house Law Report 2007* study were also asked to indicate their views with regard to the recruitment and retention of quality legal staff. Interestingly, the talent shortage in the legal profession appears to be affecting in-house recruitment as well.

While 36% of participants disagreed with the statement 'it is becoming easier to recruit quality legal staff' in 2005, this figure is 42% in 2007. Similarly, while 43% agreed with the statement that 'it is becoming more difficult to retain quality legal staff' in 2005, almost half (48%) agree in 2007.

However the situation is not as dire as in law firms, with a considerable proportion of participants neutral to both statements (41% and 37%, in 2007).

Table 2.10 (a)

"It is becoming easier to recruit quality legal staff"

	2003 (n=399)	2005 (n=394)	2007 (n=660) *
Strongly disagree (0-2) %	20.8	24.37	27.90
Disagree (3-4) %	19.5	11.93	14.40
Neutral (5) %	38.8	36.55	40.90
Agree (6-7) %	13.5	13.96	10.50
Strongly agree (8-10) %	7.3	13.20	6.40
Mean	4.3	4.58	4.04

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level

Table 2.10 (B)

"It is becoming more difficult to retain quality legal staff"

	2003 (n=418)	2005 (n=412)	2007 (n=660) *
Strongly disagree (0-2) %	12.7	13.35	7.70
Disagree (3-4) %	8.9	10.44	7.10
Neutral (5) %	40.7	32.77	36.80
Agree (6-7) %	19.1	17.96	21.90
Strongly agree (8-10) %	18.7	25.49	26.30
Mean	5.4	5.64	5.96

* Indicates a significant difference between means scores for 2005 and 2007 at the 95% confidence level