



Guide to the ACC Value Challenge Australia

How to Get Better Value from
External and Internal Resources



WELCOME

*T*he Value Challenge is ACC's initiative to reconnect the cost and value of legal services. Through resources, workshops, and roundtables, ACC helps inside and external counsel understand the key management practices that can be employed to control costs and drive value: the "value levers." We also share what works, showcasing compelling examples of initiatives undertaken in legal departments and law firms that result in lower costs, greater predictability, and better outcomes for clients.

This booklet is designed to provide an overview of the ACC Value Challenge for legal executives in Australia and New Zealand. By weaving together excerpts from key ACC how-to resources and examples of how leaders of the value movement Down Under are driving value, we aim to provide not only ideas and inspiration, but also practical information to empower your own value initiatives. Every value leader starts somewhere. When you identify the area that you want to tackle first, we invite you to take a deeper dive into the relevant ACC management resource featured here, and then begin, or extend, your value journey.

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About ACC Australia

The Association of Corporate Counsel (ACC) Australia is part of a global network of more than 40,000 in-house counsel employed by over 10,000 organisations in more than 85 countries. ACC Australia is proud to represent the interests of lawyers working for corporations and government in Australia.

In-house lawyers constitute approximately 30 percent of the total Australian legal profession or about 14,000 practitioners, making our role as the 'voice of in-house lawyers' a vital one for the furthering and advancement of the profession.

Our Mission

ACC Australia's mission is to promote the interests of Australian in-house lawyers through the provision of education for the public and the in-house profession, and advocacy, networking and professional services to its members, including by:

- **developing** the knowledge base about and for the in-house profession;
- **fostering** member collaboration;
- **championing** the professional recognition of in-house lawyers publicly and recognising personal standing;
- **advocating** on matters of interest to the in-house profession to shape Australia's corporate legal environment and promote the understanding of the law within the business and legal communities and by the public;
- **providing** cutting-edge, in-house specific and tailored education; and,
- **Supporting** members with the tools and services they need to excel personally and professionally in their careers and to be able to give back to the community as a whole.

Vision

ACC Australia's vision is that:

- **ACC** Australia is recognised as the paramount organisation in Australia for in-house lawyers and the centre of knowledge, education, collaboration and recognition for the in-house profession; and,
- **membership** of ACC Australia is accepted throughout the in-house legal profession as an essential feature of professional development.

Value Statement

ACC Australia aims to achieve its vision by:

- **upholding** in-house lawyers' value of being ethical and independent;
- **facilitating** inclusive and collaborative relationships within and outside the legal profession;
- **promoting** the interests, advancement and professional recognition of in-house lawyers; and,
- **providing** in-house lawyers with the education and resources necessary to excel personally and professionally.

FOREWORD:

SURVEY OF THE VALUE LANDSCAPE IN AUSTRALIA

The value landscape for Australian in-house practices has never been more changeable. Multiple forces are at play. Economic conditions have an impact on organizational performance, which in turn influences legal team budgets. Increased competition in the legal services market (including from “global” firms and “NewLaw” disruptors) drives innovation in service models design. And a heightened level of collaboration and knowledge sharing among the in-house community on the topic of value generation enhances the community’s sophistication and multiplies its leverage in deriving value for its external spend.

To a new entrant into this highly dynamic environment, the question of where to start looking for opportunities that will deliver demonstrable value could be a perplexing one. The insights offered by this Guide will certainly help. But this Guide also demonstrates, through the diversity of measures profiled, that the quest for value in the landscape should be a stroll, not a sprint. While the opportunities to extract value may not be inexhaustible, they do arise in many different forms, and even deeply experienced teams can find inspiration and encouragement in the successes of their peers.

If there is a point of agreement among the discussions that are taking place among general counsel and senior in-house lawyers in Australia and New Zealand today, it is that the pursuit of value cannot occur at any cost. Metrics, data, systems, project management tools—all play an important role. What remains most important of all, however, is the human dimension of being an in-house lawyer. For leaders of teams in particular, the fundamentals of attracting and retaining the right people for the organizational culture; of managing poor performance and rewarding strong performance; of gaining engagement so that discretionary effort is willingly given: all are fundamental pre-requisites to delivering sustainable, compounding value for an organization.

Those organizations whose value initiatives form the case studies in this Guide have also recognized, and benefited from, this elemental feature of the value landscape.

— **Justin Moses**, *Head of Knowledge & Development Compliance, Legal & Secretariat*
Westpac Banking Corporation

POSTCARDS FROM THE VALUE JOURNEY: SELECTED FIRST-PERSON ACCOUNTS BY CHIEF LEGAL OFFICERS

Providers of legal services in Australia have fractured into multiple markets. Big Law has struck back, and now law firms are among the most innovative. Having gotten buy-in and devoted resources to developing new models and services, they are seeing new opportunities, such as lawyers on demand and technology-enabled service delivery. Although many firms are exploring new pricing models as well as new delivery methods, rates are still heavily weighted toward time, perhaps with a margin for success factors; they have not really moved to value.

As to in-house clients, I think they're more interested rather than doing. Many have a toe in the water, but few have leapt in. Conservatively, they are frustrated with the status quo but haven't got their heads around the way things could be. Further, clients are spoiled for choice and suspect they may actually pay more for a matter. They are nervous, because they don't know what metrics to use. Many general counsel formerly worked in private practice and are steeped in those traditions.

The bottom line is that corporate clients will pay substantially less across their entire portfolio if they move away from hourly rates.

— Maria Polczynski, General Counsel, AMP Bank

I think in-house has tried to take the lead on moving legal work away from private practice. Over the past 10 years, many lawyers have moved from private practice to in-house roles, bringing their knowledge with them. This gives them the ability to effect change; it feels like a freer environment.

The challenge for law firms is to move up the value stack. They can provide a lot of value on complex matters.

— Paul Lanzone, Vice President & Associate General Counsel, Asia-Pacific and Japan, HP Enterprise Services

Driving greater value is frequently discussed in the legal press and at conferences in Australia and New Zealand, but the firms have not totally embraced the concept. The market has matured over the past three years, reflecting a changing global landscape. Whereas law firms formerly drove the relationship, power is now in the hands of general counsel. Every firm we spoke to was open to working in a different way.

— Sarah Turner, General Counsel, REA Group

People who come from overseas are really quite surprised at our continued reliance on the billable hour. Lawyers are conservative and risk-averse. We may not like the billable-hour system, but at least we understand it.

— Mei Ramsay, General Counsel, Medibank

ALIGNMENT



Within the in-house practice of law, the past decade has brought a transformation: of the role of the legal department, of the quality of its partnerships, of its savvy use of technology and people, in a unified quest to bring greater value to internal clients and shareholders. There is a continued upward trend in moving high-risk, high-value work in-house.

Key to the success of the reinvented in-house legal department is alignment with the interests and goals of the client. To ensure alignment, savvy general counsel will review the enterprise strategic plan to identify priorities that may require or drive legal services. The next step is plotting legal services on a “[value matrix](#)” (considering risk and competitive advantage) and sitting down with business leaders to discuss their needs and how the legal department will meet them. Proactive agreement upon which legal services to invest in (or not), as well as service standards, yields alignment.

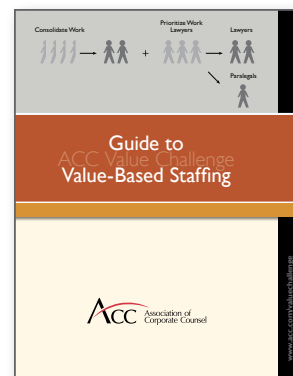
Business Client Interview Questions

- What is your role/scope at [Company]?
- What are your legal needs/challenges?
- With whom do you work in the law department?
- What is your decision-making process in determining when to get the law department involved?
- Are there any challenges in this process? If so, what are they?
- What is the law department doing right? What should the law department do differently?
- What, if any, interaction do you have with outside counsel? Do you hire outside counsel directly?
- How would you rate your satisfaction with the delivery of legal services? (Scale of 1-10, 1 is poor, 10 is exceptional)
- How would you recommend that the Law Department ensure quality and accountability with regard to lawyer work product?

[From the [ACC Guide to Value-Based Staffing](#)]

For strategic planning, here are some additional areas to explore:

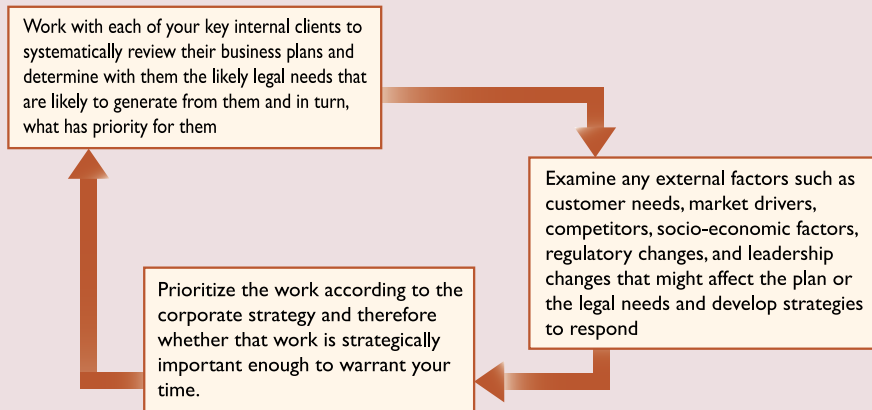
- Considering your strategic plan, are there unmet legal service needs, now or in the foreseeable future?
- What changes to legal service delivery standards would have the biggest impact in your business?
- Are there areas in which the legal department is over- or under-delivering?



Top 10 Tips for Assessing Your Legal Department's Alignment to Corporate Strategy

Adapted from an [article](#) by Joshua Box

1. Ask yourself whether you can summarize your company's strategy in 35 words or less. Would your colleagues say the same thing?
2. Ask yourself what it means to be in alignment.



3. Don't assume that the resources you've used in the past are right for delivering on legal needs determined by your new, strategy-aligned stance.
4. Match task complexity, not just matter type, when allocating work.
5. Equip your in-house team with the necessary skills, training, and rewards to deliver the services that align with the strategy.
6. Identify the behavioral competencies necessary to deliver successfully. Does your departmental culture support your efforts?
7. Ensure you have the right firms and external relationships to support the in-house team.
8. Establish clear metrics for measurement.
9. Devise and develop a legal department strategic plan; test it on others within the organization by making sure they understand what's in it for them.
10. Ensure that you and your colleagues can clearly articulate the legal department's strategy, objectives, budget, and value proposition, leaving no room for misinterpretation.

As an example of these tips in action, consider the steps Mei Ramsay took when she became general counsel at health insurance company Medibank several years ago. She found a legal department that was organized by functional areas. “As I was new in the role, I did ‘meet-and-greet’ sessions with other executives, asking them about their goals, challenges, KPIs, expectations, and needs. It became clear that the previous structure was not going to meet the current needs of the business.”

Ramsay reorganized the legal department staff of 20 along the lines of business, asking along the way, “What level of support does each area need?” She also met one-on-one with each of the lawyers in the department, to find out what they wanted. She built out skill sets, FTEs, and levels of seniority to design the new department, and along the way constructed a legal department that was not only better aligned to its internal clients’ needs, but greatly increased engagement and satisfaction for the lawyers.

CASE STUDY

Be the “Department of Yes”

STAPLES AUSTRALIA AND NEW ZEALAND || 2016 ACC VALUE CHAMPION

At [Staples Australia and New Zealand](#), the legal department created Project Reinvention to support the business’s drive to diversify in the face of declining market share in its core product lines.

“Although Staples sells one in every four pieces of paper purchased in Australia, the company has undergone a reinvention, as business in our core category of products is slowly declining,” says Troy Swan, Head of Legal and Company Secretary.

“We have been working to generate new revenue streams in new categories that support the needs of our existing clients. These new categories were like a number of smaller businesses within a larger one. Over the past year, we have focused on equipping our sales team with support, confidence, and an entrepreneurial spirit that will allow them to grow those businesses exponentially,” Swan says. Some examples include cleaning and facility supplies, kitchen and canteen food and supplies, safety products, technology, and office furniture.

Leading a cultural shift away from risk aversion and toward the enablement of entrepreneurialism and innovation, the four-person legal team educated the sales force on legal matters and simplified contracting. Changing the departmental stance from risk aversion to risk tolerance and management, the lawyers worked with the sales team to implement innovative commercial arrangements with corporate customers, designed to increase revenue and promote the Staples brand, especially in non-traditional categories.

Quoting the words of Staples, Inc., General Counsel and Company Secretary Michael Williams, Swan says, ***“We don’t want to be the ‘Department of No.’ We wanted to encourage and enable the new lines of business with systems, processes, and plain-language practical advice and contracts.”***

As part of the digitization effort, the legal department created an electronic “front door,” a single process anyone can use to request legal assistance. They also helped the rest of the organization to develop skills and understanding to enable more discretion and self-service. Through group training sessions, train-the-trainer activities, online modules, and using every touch point as one-on-one coaching opportunities, the sales team was educated and empowered on a range of topics such as contract law, nondisclosure agreements, workplace rights and wrongs, ethics, and competition law.

Gaining alignment with the priorities of the business was key to the success of these efforts; while it’s critical, it need not be onerous or formal, Swan says. “I’m a big supporter of catching up with clients, finding informal opportunities to learn what they want and what they may not be happy about.” They are certainly happy about these results: The legal department cut its workload on low-risk transactional services by 40 percent, positioning the in-house team to take on more high-value projects and leading to a reduction in outside legal spend by more than 50 percent.

WORK ALLOCATION: UNBUNDLING, AUTOMATION, AND VALUE-BASED STAFFING

As part of its value journey, Westpac Banking Group Compliance, Legal & Secretariat (CLS) combined rigorous data capture and analysis with process simplification and redesign, implementing 27 initiatives to unbundle departmental work, enable client self-service, and bring higher-value work in-house. For example, intranet sites were redesigned to incorporate self-service information and reduce the volume of telephone inquiries. Legal department staff re-negotiated risk parameters with business partners to eliminate the need for legal review of certain low-risk documentation (also an excellent example of alignment).

Unbundling



Having completed the Value Matrix, you now have a clear picture of the work your department is handling and where it falls in terms of risk potential and impact on corporate advantage. Next, it’s important to pursue thoughtful work allocation to ensure that the right people are delivering the right services at the right time. This determination is based on decisions related to resourcing and staffing assignments, and identification of areas where the current level of effort is not aligned with the value ranking.

Factors to Consider in Work Allocation

Culture

- What is the role of in-house lawyers: “managers,” “doers,” or a combination?

Business needs

- Is the work essential to achieving the company’s business goals?
- Does the work involve high risks that could affect the company as a whole?

Work

- Is the work properly defined as legal services?
- Should the department perform the work?
- How has the work been valued and prioritized?

Complexity

- Is the work routine or commodity work?
- Does the work require a lawyer? At what level of experience?
- Is the work complex, requiring a specialist?
- Can the work be leveraged to paralegals or other non-lawyers?

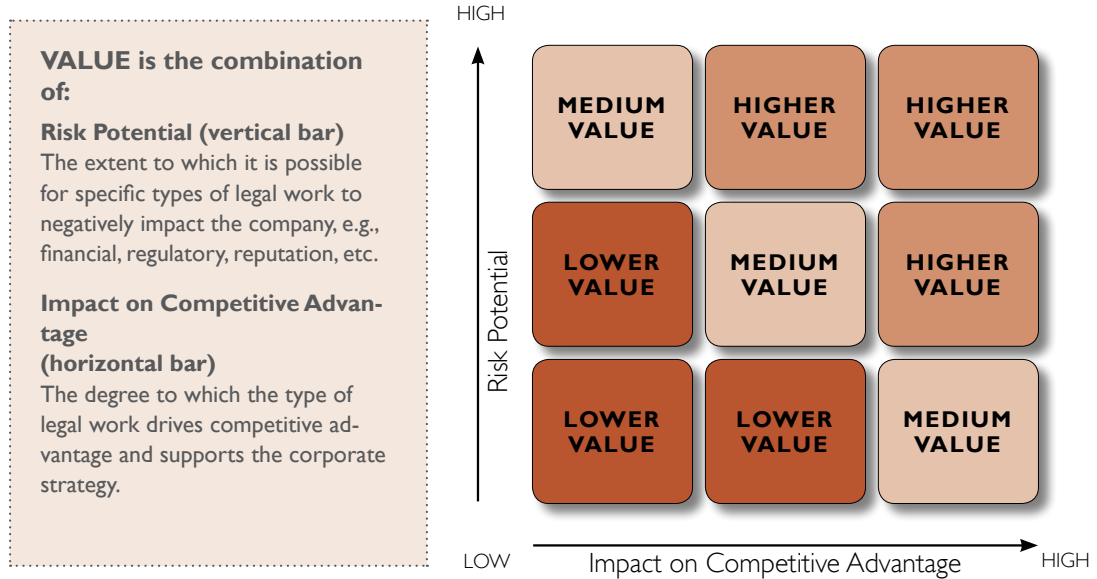
Process/Technology

- How can process and technology be used to streamline and leverage the work?

Resources

- Is the work recurring, or a one-off situation?
- Will it continue into the future or end soon?
- What is the expected go-forward volume?
- Is it best handled internally or externally? If externally, does it require a law firm or can a non-firm vendor perform all or part of the work? If it requires a law firm, what are the necessary attributes of the appropriate firm, e.g., size, reputation, geographical presence, specialization?

[From the [ACC Guide to Value-Based Staffing](#)]



Once you have answered the questions in the work allocation exercise, you will have a matrixed approach that puts all of the types of your department's work into one of the nine cells in pictured in the graphic above. This paints a clear picture of what work to outsource (high-risk, low impact on competitive advantage); what work to keep or move in-house (high-risk, high impact on competitive advantage); what work to eliminate, reduce, or automate (low-risk, low impact on competitive advantage); and what work to keep in-house but perhaps automate (low-risk, high competitive advantage). [For a fuller description of each of these quadrants, see page 12 of the [ACC Guide to Value-Based Staffing](#).]

For work that has medium value due to its competitive advantage or risk profile, but which is out of balance in terms of the time and resources it consumes, turn to the Process Improvement section. For work that has low value and can be automated, technology can be the answer.

Automating Legal Work through Technology

Work suitable for automation includes work of a repetitive nature for which processes are in place. Commercial systems are frequently available. Some types of work suitable for automation include contracts that can be completed on a self-service basis using pre-approved forms and guidelines; discovery management; and compliance training.

To best leverage technology, consider these questions:

- What systems are in use?
- What is their purpose?
- How are they used?
- Who uses them?
- What are the limitations?
- How much IT support is needed?

[From the [ACC Guide to Value-Based Staffing](#)]

Review the technology platforms and applications your law department is using. This can help you to expand strategically into new areas to leverage efficiency and effectiveness. A useful tool is the [Law Department Technology Deployment Self-Assessment Survey](#).

HP Enterprise Services in Australia pursued a process improvement strategy to simplify their contract negotiations with customers, resulting in a new methodology called Fast Track (more about this in the Process Improvement section). Then, in a further unbundling step, they began to work on creating an online environment that would serve as a delivery mechanism for the high volume of low-value contracts that must be completed. A successful proof of concept stage in Australia involved 74 users at eight customer organizations building their own modular contracts in a shopping cart format. For the past year, 28 people have been working to build out a global site.

Value-Based Resourcing and Staffing

The cost of legal services can be reduced by outsourcing or leveraging non-lawyers or more junior/lower-cost lawyers. Examples of work that some are assigning to lower cost internal resources include legal research, basic patent drafting, and contract and advertising review. And in today's market a number of services traditionally performed by law firms can now be outsourced to other providers, typically with significant cost savings. Work that is often outsourced to non-firm providers, on or off-shore, includes document review, contract lifecycle management, e-discovery, immigration, IP services, and due diligence. The [Informal Outsourcing Checklist for In-House Counsel](#) can help you determine the best resource for each task.

Whether or not it is appropriate to send a given company's work offshore will depend on a variety of factors, including the viability of the offshore contractor, its physical and electronic security, the type of data that will be involved, and any applicable laws and regulations.

Work that is not truly legal advice can be shifted back to the appropriate business unit, such as human resources work informed by legal training. In addition, providing contract templates with defined escalation criteria, enables trained internal clients, such as sales or procurement units, to work more autonomously.

Implementing value-based staffing involves these steps:

1. Define roles and responsibilities;
2. Conduct a review of organizational structure;
3. Create a Work Distribution Plan and a Work Transition Plan; and
4. Draft a Communication Plan.

Since 2012, each practice group within Westpac CLS has been applying a set of McKinsey & Co. process improvement principles to address “pain points” like inefficiency, duplication, undertaking non-legal tasks, and the utilization of scarce resources on low value-adding activities. Through a combination of rigorous data capture and analysis and process simplification and redesign, each practice group has been able to free up lawyer capacity for re-investment in more productive activities. In many cases, this is coupled with direct and/or indirect cost savings.

Examples of self-service tactics include the redesign of intranet sites to incorporate self-service information, thereby reducing the volume of telephone inquiries; re-negotiating risk parameters with business partners to obviate the need for legal review of certain low-risk documentation; and streamlining the reporting of major litigation by the group’s panel firms to minimize data re-work and improve the quality of insights for relevant board committees.

CLS implemented 27 initiatives that released the equivalent of 11.1 FTE of lawyer capacity, for reinvestment in higher value, more engaging and business-critical work.

Setting Up for Success

Depending on the degree of change sought and the existing departmental mindset, a successful change may require some overall adjustments in how the department is managed and operates. These can include the following:

- Willingness by the entire law department to limit involvement in lower-value work;
- Willingness to delegate work;
- Creation of agreed-upon criteria with business-side clients to define when and how the law department should be involved in business matters;
- Investment in additional training to position internal clients to work more autonomously;
- Increased reliance on technology and standard processes to streamline lawyer and other personnel involvement and increase consistency;
- Change in both leadership approach and direct report responsibility acceptance;
- Clarification of roles, allowing leadership to operate as experienced mentors and focus on knowledge transfer, risk judgment, and practice development; and direct reports to assume more decision-making authority and appropriately delegate upward; and,
- Use of metrics to monitor on-going allocation of time to high-, medium-, and low-value work.

A Word about Measurement

After implementing the plan, it is important to measure performance to make sure the desired results are being achieved. “What gets measured gets managed” is a tried and true axiom. With any new initiative, both the effort expended to implement the change and the impact of the change itself need to be measured.

Measuring performance will:

- Communicate the department’s specific objectives and direction;
- Demonstrate the value of the effort;
- Promote the desired behaviour and drive continuous improvement; and,
- Justify current or future spending and staffing levels.

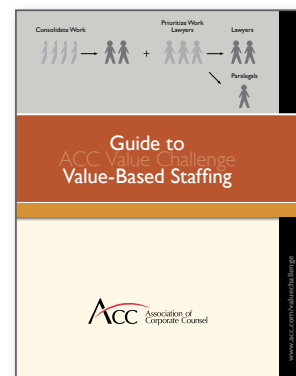
Measurement against established metrics will allow the law department to test whether the targeted changes are being made and their effectiveness, and to tweak the plan if necessary to achieve the desired results. The specific metrics will depend on the individual program, but the goal is to measure both the effort and the impact of the program.

Effort. Measuring effort demonstrates progress in implementing the defined strategy and will keep team members focused on the key tasks. Effort measurements can also be used to communicate to leadership that change cannot happen overnight but requires a series of steps to achieve the desired impact.

Impact. While it can be more difficult to measure impact, impact measurements tend to be more substantive in nature and therefore more meaningful to the organization. The focus is on the value of the change in work allocation, e.g., lower cost, increased quality, or more time spent on higher value work. Impact measurements can be considered in terms of the results related to:

- The satisfaction and career development of the individuals involved;
- The practice group efficiency and cost effectiveness;
- The law department’s contribution to the company; and,
- The company’s ability to achieve its strategic goals.

[From the [ACC Guide to Value-Based Staffing](#)]



CASE STUDY

Simple, Efficient, and Stress-Free: Yes, That's an In-house Legal Department

REA GROUP

In a fast-paced digital business that is expanding internationally and into highly regulated markets, the legal workload is intense. REA Group is an ASX-listed multinational, digital advertising business specializing in property. REA operates leading real estate websites in Australia, Italy, France, Luxembourg, Germany, and China; and has recently completed the takeover of a digital advertising property group in Southeast Asia. The business is heavily dependent on the legal team which, until recently, was heavily dependent on external counsel—at least until late 2015.

In a comprehensive initiative designed to unbundle legal work, consolidate the number of external providers, and digitize workflows, the REA Group legal team took a multipronged approach. As a first step, General Counsel Sarah Turner issued a Request for Proposal to 14 firms that had been working with the company. Turner, who had been at REA for less than a year, was well-versed in alternative fee arrangements and value-based pricing, and had reduced external legal fees by up to 60 percent at her previous employer.

“I looked at the performance of REA’s external providers when I started here,” she says. “They had not been reviewed in a long time, and complacency had crept in. *Time and materials does not reflect value.*”

After an extensive vetting process, one principal law firm was appointed. The firm agreed to a discount on fees as well as alternative resourcing arrangements that would result in cost reductions across the board. Turner negotiated a spectrum of alternative fee arrangements, including fixed fees, a target-price model for a defined scope of work, partial success fees or risk-sharing arrangements, unit-based pricing, value pricing, and retainers.

The second part of the initiative involved digitizing workflows to reduce the administrative load of the in-house legal team. Working with an internal developer, they mapped manual workflows and digitized them, such as with contracting processes. This has had results far beyond the financial:

“Now that we are managing the lower-value work differently, the legal team can focus on things more deeply, ask better questions, and focus on higher-value work. It was an excellent cultural fit internally. We can now practice on agile grounds,” Turner says.

What advice does Turner have for fellow general counsel contemplating similar initiatives? *“Define what works for your company, then just ask for it. Every outside firm we spoke to was open to working in a different way,”* she says.

PROCESS IMPROVEMENT



There are several disciplines borrowed or adapted from the manufacturing context to improve legal work processes – Six Sigma, Lean, etc. They can be useful, but the point is simply to eliminate waste, such as extra steps; streamline processes to be more efficient; and, most important, to relentlessly address root causes – not just of mistakes or inefficiencies, but also of legal work itself. Prevention of disputes is the most potent way to control legal expenses.

To best leverage process and technology, the law department can ask itself the following questions:

- Do defined processes exist?
- Are they clearly understood?
- Are they used consistently?
- How could they be more efficient?
- Are there any redundancies?
- What is the current workflow?

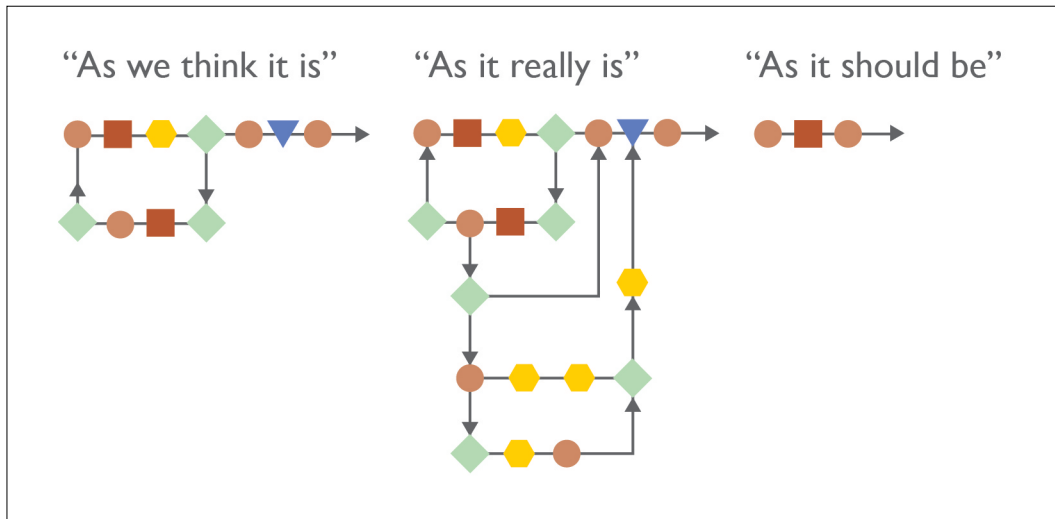
[From the [ACC Guide to Value-Based Staffing](#)]

When most successful, process improvement initiatives can help organizations better articulate and focus on what matters to their clients. By assessing processes through the lens of client-defined value, organizations are able to achieve meaningful gains in efficiency and quality by eliminating activities that do not add value to the quality of the client's product or service experience.

The business case for process improvement is simple and straightforward. Process improvement techniques provide a varied, robust repertoire of tools to help law departments and firms enhance the overall value delivered to clients by:

- Streamlining workflow;
- Managing and reducing cycle time;
- Capturing and managing years of knowledge;
- Eliminating hidden costs and barriers to quality;
- Improving internal and external team communications; and,
- Implementing process controls to ensure improvements are adopted.

When done right, process improvement can result in best practices that help legal teams optimize staffing, sequence of work, duration of matters, efficiency, cost predictability, and ultimately, value to their internal clients. Further, law departments with robust process improvement capabilities are better positioned to set expectations and manage service delivery to elicit process excellence from their outside counsel.



A Note on Data

By relying on data-driven insights rather than intuition or “gut feelings,” process improvement enables businesses to provide a high-quality product or service, produced at peak efficiency, with a high level of consistency and predictability.

Because data and statistical analysis are newer to legal practice, legal teams generally lack maturity in their management and consumption of data relative to their peers in industrial manufacturing, retail sales, management consulting, or other fields.

While legal matters provide significant potential for data analysis, most law departments and law firms are not necessarily set up to effectively capture and manage this data. Often, the integrity of the data collected is not necessarily very strong, because sample sizes are simply not large enough from which to draw valid, statistically supported conclusions. That said, process improvement underscores the critical need to begin and continue building data competencies and infrastructure. Any serious process improvement effort should include mid- to long-term goals to move toward data-driven decision-making.

In the interim, legal teams should rely heavily on qualitative fact-finding methods and client-facing dialogue to help validate their findings, and put forth a concerted effort to inject quantitative approaches wherever possible.

Critical Keys to Process Improvement Success

- Client-defined value: Articulate a definition of value from the viewpoint of the client.
- Reliance on data: Use quantitative methods in process analysis to measure current state effectiveness as well as the performance impact of any improvements.
- Structural improvements: Analyse client problems to identify and address root causes.
- Waste elimination: Identify and eliminate systemic sources of waste, such as extraneous tasks, activities, and roadblocks in communication or knowledge sharing protocols.
- Quality through consistency: Establish standardized best practices that can be operationalized through default workflows.
- Change management through controls: Ensure adoption of the new process by all relevant teams and stakeholders through active engagement and control mechanisms.

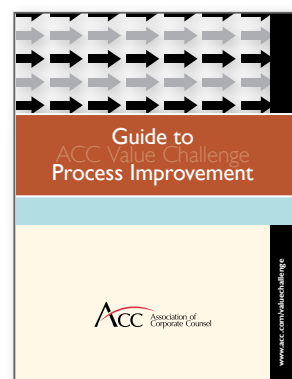
Process improvement methodologies can be trickier to impose on legal issues than those in other disciplines. This is in part because of the difficulty in defining the actual problem lawyers are trying to solve — unless it's simply the generic problem of delivering legal work that meets the needs of the client with greater predictability and transparency. As a result, process improvement teams might need to look at problems holistically with a sense of flexibility.

[From the [AVC Guide to Process Improvement](#)]

Contracting can provide fertile ground for unbundling, process improvement, and the introduction of technology solutions. Telstra is Australia's leading telecommunication and information services company. Under "Project Everest," former legal counsel Grant Pritchard led a team that completely rewrote and renegotiated the sourcing contracts underpinning Telstra's multibillion-dollar mobile device business.

For many years, Telstra had endured a patchwork quilt of contracts—many of which were complex, inconsistent, and out-of-date. The team saw an opportunity to dramatically improve Telstra's sourcing arrangements, and acted on it—embarking on an ambitious program of work to redesign the contract and then roll it out across the supplier base.

The product of this work is a plain-English contract that drives customer advocacy, reflects Telstra's business requirements, and provides unprecedented consistency between suppliers. The team was able to achieve this outcome with external legal spend significantly below original law firm estimates. They also pursue continuous improvement via an online post-negotiation survey to capture feedback from each supplier, allowing "course corrections" to improve the process for subsequent suppliers. The initiative has resulted in significantly



greater efficiencies, including decreasing vendor negotiation time to just three to five business days and one to three short follow-up conference calls. This halves\ the number of contract management personnel required to manage the mobility sourcing contracts.

CASE STUDY

A Fair Contract, Fast

HP ENTERPRISE SERVICES, ASIA-PACIFIC AND JAPAN

For the past three decades, the IT legal industry has pursued the same contracting methodology, characterized by extended wrangling driven by the desire to “win” every clause. Although protracted negotiations on terms rarely reduce risk or increase competitive advantage, the process and the mindset behind it were entrenched.

“We kept doing the same dance to get to the same middle position,” says Paul Lanzone, Vice President and Associate General Counsel, Asia-Pacific and Japan, for HP Enterprise Services. “We felt like it was time to get there faster.”

Recognizing that deals require a partnership and that the old way misaligned the interests of HPE and its customers, Lanzone and his team turned their focus to contract terms that really distinguish their offering: services and price. Other changes were happening in the IT contracting world simultaneously: monolithic master services agreements of yore no longer suit the high-utility, open, flexible solutions of today.

The HPE legal team decided to change the way it worked. Lanzone had had a previous experience that convinced him it was possible:

“I had worked through a deal in the UK worth A\$1.4 billion that took over seven months to complete,” he says. “But an additional contracting mechanism developed over a weekend pitching for an additional A\$800,000, using a modular approach showed me that IT contracting can be done quickly and flexibly.”

But Lanzone wanted something more than speed and flexibility: fairness.

“We had to be fairer. We had to give up our supplier-centric positions and convince our customers to do the same. This was a big change in methodology, from our previous old-school lawyering.

In 2013-2014, the legal team marshalled resources, pulling its existing global templates apart and putting them back together with a different lens. The new methodology features a seven-step process that places a significant focus on face-to-face meetings. It flips standard contract negotiation procedure on its head by obliging each party to tackle the hard legal issues early, and facilitates the quick finding of middle ground.

FastTrack Steps

Steps	What happens
1. Meet with HPE Legal	HPE Legal will meet you face-to-face to discuss expectations and the nature and scope of the services.
2. Decide on a contract form	You will decide to proceed with either a Standard Contract, your own contract or a contract created by your legal advisors.
3. Legal Principles Workshop	We will perform a gap analysis of the contract against the Legal Principles and discuss the findings.
4. Quick wins	We will meet F2F to agree as many items as possible from the Legal Principles workshop using our Principles worksheet
5. Close the big legal issues	Any outstanding items from the Legal Principles Workshop will be escalated to senior management so they can be closed.
6. Agree the balance of the contract	We will perform a clause by clause review of the balance of the contract, front to back.
7. Resolve any outstanding items	We will take a macro view of the contract and take sensible steps to reach an agreement.
Contract execution	

Standard modular contracts for outsourcing, hardware, software, and cloud services provide a starting point for the conversation, and HPE's stance is clearly laid out in the legal principles in the FastTrack brochure and "How It Works" guide.

The HPE legal department brought the business along, including sales, finance, solutioning, governance, and senior management, even convincing them to revise their marketing materials. It wasn't a tough sell, says Lanzone, within HPE's process-improvement-oriented culture. *"The business liked it—it became a competitive advantage,"* he says. For customers, the key was to convince them early that "their outside counsel's draft was not as fair first as ours," Lanzone says. The department subsequently implemented a worldwide training program to teach other HPE lawyers how to market the tool.

When the HPE technology group found out about FastTrack, they offered to help the legal department build an online delivery mechanism that would facilitate the high volume of low-value contracts. For the past year, 28 people have been working to evaluate the build-out of a global site after a successful proof-of-concept site within Australia; if built, it will offer customers the opportunity to create modular contracts in a shopping-cart format.

Results have been impressive:

- Better contracts and partnerships with lower contract risk;
- Shorter negotiating times, up to 55 percent faster (130 days reduced to 61 days);
- Reduced contracting costs;
- Easier pull-through of other HPE solutions; and,
- A reputation for innovation with customers.

In fact, Lanzone quotes one customer as saying that if they had just listened to HPE, they would have saved five months and A\$200,000.

“One thing HPE legal does well is encourage people to think, Is there a faster, better way of doing things? Many projects are sponsored by the bottom and taken up by the top,” he says.

LEGAL PROJECT MANAGEMENT



Put simply, [legal project management](#) is the deliberate planning, budgeting, communication, and review that yields the sound management of legal matters. In order to provide the necessary direction, continuity, and coordination to these matters, the legal department must embrace project management. While many legal departments may have in place some of the components of project management—matter budgeting, for example – typically they haven’t integrated these components into comprehensive project management, or are just beginning to do so in limited areas. The need for project management first became apparent to law departments with two developments: the desire for value-based fee (VBF) arrangements and the proliferation of e-discovery projects.

Project management has a number of benefits. By creating a disciplined approach to legal work, project management results in an improved use of resources and an improved performance against budgets. Because tasks are clearly assigned, it reduces the duplication of effort. The existence of a defined, detailed plan provides the context for team members to understand expectations and outcomes. Project management techniques can help law departments determine which matters are appropriate for VBFs. Ultimately, project management results in more effective planning, cost control, resource allocation, and appropriate risk management throughout the duration of a case/project, providing project team members with the structured tools to make deliberate, fact-based decisions.

Legal project management is most likely to be successful if implemented in this phased approach:

1. Scope: Determining the goals and deliverables for the project;
2. Schedule/People/Budget: Establishing the parameters within which the project will be accomplished;
3. Conduct of Legal Matter: Carrying out the project within the established parameters, making adjustments as required; and,
4. Review: Assessing the project results and lessons learned after its completion.

Start by “scoping” the matter – articulating the goals and being clear about what’s in and what’s out (i.e. what does not have to be done). Then, establish the parameters within which the work will be accomplished. This includes the schedule, people, and budget. Once launched, regular meetings and reports ensure the project stays on track, and improvement in future projects comes with conducting quick reviews upon the completion of each matter.

Good project management facilitates the negotiation and development of VBFs such as flat fees and retainers (whether or not combined with success fees or collars). Scoping a project carefully as part of the planning stage – including who will do what, how much effort they will put into it, and what they will deliver – will help both the legal department and outside counsel clarify the cost and the value of the work.

PRACTICE TIP

Tools/Applications for Project Management

Project management requires specific tools, but often existing law department tools can be utilized. The table below lists some of the necessary project management tools along with existing law department systems that can be used to develop them.

Component	PM Tools	Existing Law Department Systems
Scope	Project Charter	
Task and Activities	Work Plan	Excel MS Project
Resources	RACI	Excel MS Project
Time	Work Plan	Matter Mgmt/eBilling Law Firm Billing System
Cost	Work Plan	Matter Mgmt/eBilling Law Firm Billing System
Communications	Communication Plan	

Here are some suggested best practices to ensure that the law department's project management program is as effective as possible:

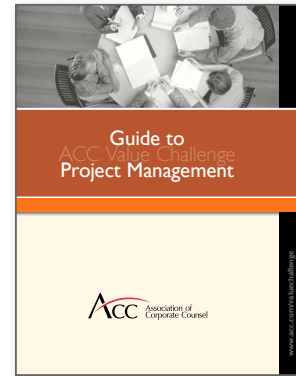
- Define criteria for when formal project management is expected to avoid just “big-ticket” items being formally project managed.
- Make project management an explicit process within the expected case management activities.
- Conduct project management reviews independent from case strategy reviews.
- Define the project management role instead of assuming someone will take it on.
- Define project management as job expectation and include it in performance evaluations.
- Tailor tools to specific practice/matter type needs, but make them flexible enough to be adapted and changed to meet the program's needs as requirements change or grow.

- Provide training that encompasses initial guidance, hands-on work, as well as specific project and ongoing support. Use testing and refresher training to keep skills sharp.

Engaging in these practices will help the law department make project management an inherent part of the department culture.

[From the [ACC Guide to Project Management](#)]

Health insurance provider Medibank has a well-developed internal legal project management function, which swings into action on large, complex projects for which the majority of work is legal. “We then feed external firms into our process,” General Counsel Mei Ramsay says. The internal project management office, headed by Sarah Durrell, was stood up in 2014 in order to handle the legal side of Medibank’s initial public offering. The word complex seems inadequate: The deal was Australia’s largest in over a decade, and involved the privatization of a government entity with all of the bureaucracy one would expect.



“Our offering had to be gold-plated. We had to outperform on every measure,” says Richard Holbeach, Medibank’s General Manager of Legal and project counsel for the IPO. “Our company was not very sophisticated in the area of raising capital, and the committee meetings and board meetings were all-consuming.”

The project management team defined seven discrete work streams, created timelines, handled scheduling, streamlined reporting, and “provided a huge amount of comfort and confidence to management and the board,” says Holbeach. In the end, the company was ready to list at the earliest possible moment the government wanted it to, with all of the necessary signoffs in place—real evidence of project management success.

CASE STUDY

Innovation and Collaboration in Matter Management

TELSTRA CORPORATION AND HERBERT SMITH FREEHILLS

Telstra Corporation worked with Herbert Smith Freehills (HSF), a global law firm, to develop a collaboration framework that drove significant cost savings, innovation, and productivity. The team members sought to fundamentally change the approach to legal project management on complex deals, generating material cost savings.

HSF supported the delivery of Telstra’s largest-ever customer contract, an A\$1.6 billion undertaking that involved parallel negotiations with more than 100 vendors over seven

months. Telstra and HSF developed bespoke, highly flexible processes covering the joint Telstra/HSF legal team, and a value-based pricing model that incentivized efficiency.

Key features were:

- Agreed contract templates and negotiating playbooks with a pre-approved “Departures Matrix” that outlined possible exceptions, constantly updated so all 100+ negotiations received real-time updates of approved deviations;
- Twice-weekly decision-making “war room” of all Telstra key stakeholders to provide regular checkpoints to obtain definitive instructions to swiftly resolve “blockages;”
- Dynamic re-allocation of work between Telstra Legal and HSF “on the fly” based on efficiency considerations (complexity, capacity, cost);
- Dedicated legal project manager from Telstra;
- HSF secondees acting as a liaison between HSF and Telstra (i.e., low-cost resource for labor-intensive administration);
- Real-time tracking with a customized dashboard report providing predictability of project progress and cost; and,
- 50 percent of time, effort, and fees incurred in up-front preparation before a single contract negotiation commenced, paying significant dividends by project end.

This innovative approach resulted in a fee proposal that was less than 50 percent of competitor firm proposals. Despite a 36 percent increase in the expected number of vendors and significant timetable delays, legal fees were 69 percent of the estimate when the project concluded (at which time 79 percent of vendor contracts had been signed, with the remainder signed under different arrangements). *Investing significant time up front to develop state-of-the-art legal project management processes was a key to success.* The extensive templates, tools, and learnings from this project have formed the basis of Telstra’s LPM intranet site, which is an invaluable tool used on all large cross-company transactions.

KNOWLEDGE MANAGEMENT



[Knowledge management](#) is an integrated approach to identifying, capturing, evaluating, retrieving, and sharing all of an enterprise's information assets. These assets may include databases, documents, policies, procedures, and “know-how” in individuals.

Knowledge management helps improve efficiency by offering the ability to leverage work, while increasing reliance on automation and knowledge sharing. A structured knowledge management program facilitates the transfer of information among key individuals; ensures the appropriate storage and easy retrieval of documents; and improves internal consistency. It captures and aggregates—in easily retrievable and reviewable form—actionable information to facilitate action or decision-making. It can help to eliminate re-work; increases team members' exposure to past work and positions; and fosters collaboration through shared information.

Steps to Governing the Knowledge Management Life Cycle

To create a knowledge management program, the law department must develop a system of governance over the knowledge management life cycle. Knowledge governance involves:

- Creating a knowledge management program to define what knowledge management means for the organization;
 - Searching for new ways to foster knowledge creation;
 - Identifying gaps in knowledge areas or subject matter;
 - Identifying people with critical skills and historic, institutional information;
 - Identifying opportunities for improving function and processes;
 - Having individuals in place to manage the knowledge management program; and,
 - Having a maintenance plan in place to continually monitor the program and make adjustments as necessary.
-
1. Clearly and specifically outline goals that the law department wants to achieve;
 2. Assess the department's current state of knowledge management, both in terms of strategy and its current systems for managing different types of information;
 3. Prioritize and implement the necessary processes and supporting technology to capture and manage information, including leveraging tacit knowledge and,
 4. Keep the program current and ongoing through regular, ongoing management, measurement and evaluation.

PRACTICE TIP

Change Management

A new knowledge management program may face resistance or pushback from the department. Consider using change management best practices as you roll out the new program to ensure it is accepted and integrated into your team's practices. A suggested change management framework and some tips for success follow.

CHANGE MANAGEMENT FRAMEWORK	TIPS FOR SUCCESS
<u>Setting the Stage</u> Establish a sense of urgency Form a powerful guiding coalition	<ol style="list-style-type: none"> 1. Clearly define why the change is needed 2. Establish clear success metrics for the project and incorporate them into individual's performance goals 3. Establish a project steering committee with leadership from affected areas 4. Identify an internal project leader 5. Supplement with an empowered core team 6. Raise awareness of who is part of the project team 7. Make the vision for change clear, desirable, and feasible -- have an "elevator speech"
<u>Deciding What to Do</u> Develop the change vision and strategy	<ol style="list-style-type: none"> 1. Identify an important business driver and keep that message consistent throughout the project 2. Evaluate your organization's readiness for change and organizational culture 3. Acknowledge that there will be change and there will be resistance
<u>Making it Happen</u> Communicate the vision for understanding and buy-in Empower others to act on the vision Plan for and create short-term wins Consolidate improvements and keep the momentum	<ol style="list-style-type: none"> 1. Communicate early and often using multiple methods 2. When working with consultants and vendors, make them enablers of your project, not the owners 3. Encourage consistency in senior leadership behaviors to support the vision 4. Provide a mechanism for feedback/suggestions and the freedom to challenge the status quo 5. Plan checkpoints to stop and recognize progress 6. Make the celebrations public and reward contributors 7. Don't declare victory too soon
<u>Making it Stick</u> Institutionalize the new approach	<ol style="list-style-type: none"> 1. Make sure that senior management continues to "walk the talk" 2. Conduct a structured "lessons learned" session and be willing to discuss the good, bad, and the ugly of the change effort 3. Recalibrate success metrics once improvements have been made

After the successful contracting redesign initiative described in the Process Improvement section, Grant Pritchard, formerly of Telstra, shared this valuable knowledge both within and outside Telstra's legal team via a presentation on the project—detailing the new contracting methodology, providing real-world examples and critically reflecting on the project's challenges. His presentation is widely regarded as one of the best presentations ever delivered to the Telstra legal team, and has spawned numerous discussions on opportunities for improving how Telstra manages and executes complex sourcing projects.

Pritchard used cutting-edge software, shapes, diagrams, imagery, multimedia content, and visual navigation to communicate key concepts and processes to the team. Following the presentation, he conducted multiple workshops with other Telstra legal teams to share knowledge, discuss lessons learned, and explore ways to leverage his methodology to enhance other legal projects across the company.

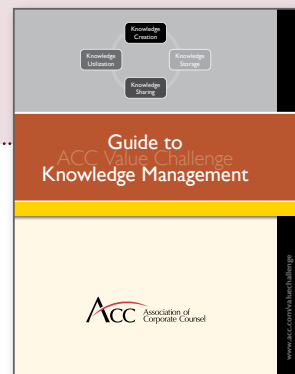
Tools to Support a Knowledge Management Initiative

A law department, or the company it serves, may already have in place a number of the technology tools that can support a knowledge management initiative, and may merely need to rethink their use and the connections among them.

The following are some of the types of tools that can be used:

- Authoritative source data repositories, such as matter management/e-billing systems and document management systems;
- Collaborative tools, such as deal rooms or workspaces;
- Workflow tools, such as contract management systems or business process management (bpm) systems;
- Search engines, such as those using universal or federated queries; and,
- Information delivery systems, such as intranets or portals.

[From the [ACC Guide to Knowledge Management](#).]



CASE STUDY

Bank Investment in Knowledge Management Yields Big Dividends

WESTPAC BANKING CORPORATION

In 2013, Westpac's legal department, known as Compliance, Legal & Secretariat (CLS), established a new role on its leadership team: head of knowledge & development. That person would be charged with responsibility for driving a best-practice approach to the creation, capture, and sharing of knowledge across the function; facilitating a cultural shift around the joint ownership of knowledge; and enabling robust professional development through the application of knowledge towards the needs of internal business partners.

Justin Moses, who assumed the role, possesses an enormous amount of institutional knowledge himself, having been with Westpac for 30 years. He notes that "it was a significant step to take a senior resource and devote it" to this kind of work. The step was a "response by General Counsel Rebecca Lim to the challenges of knowledge management when no one really had responsibility," resulting in an effort that was "incremental and irregular," according to Moses. His charge was a dedicated focus on knowledge management through marshalling resources and leveraging networks. It came after a two-year process of benchmarking against best practices in organizations in the United States and United Kingdom undertaken by CLS, and is part of a major initiative around building a knowledge-sharing culture.

Like many in-house legal departments, Westpac CLS needed to take a practical approach to implementing solutions that were not dependent on the purchase of an off-the-shelf product or the development of a bespoke system. Instead, it gained the agreement of the various practice leaders across the function to adopt a uniform design for their team-based intranet sites; and to apply a consistent approach to the capture, classification, and sharing of team-based knowledge. *Having established this universal knowledge infrastructure, CLS then designed the role of the CLS "Knowledge Champion" to give impetus to its use.*

Each of CLS' 15 practice groups has a designated Knowledge Champion, and together this cohort forms a community of practice that meets formally on a quarterly basis to share experiences and insights, as well as interacting in a more informal and timely way on one-off issues. Knowledge Champions are given a formal role description setting out their responsibilities; have a KPI included in their scorecards (in substitution for another team-related KPI to avoid enlarging their role overall); and have the benefit of a specific discretionary reward pool for those who perform the role at a high level. The role is designed to be performed on a rotational basis (at not less than six-month intervals), so that a number of team members can benefit from the opportunity.

Westpac CLS also unbundled much of its in-house legal work, brought high-value work inside, improved processes for greater efficiency, and leveraged technology to provide client self-service. Each practice group applied the McKinsey & Company “Accelerator” process improvement principles to address pain points such as inefficiencies and duplication through simplification and redesign, thus freeing up the equivalent of 11.1 FTE of lawyer capacity for reinvestment in higher-value, more business-critical work.

ADVANCED OUTSIDE COUNSEL MANAGEMENT AND VALUE-BASED FEES



Any fees that are not primarily based on hours worked are value-based fees. Value to clients is often a matter of achieving predictable spending. As a result, fixed fees are valuable. There are many variations, but the key is alignment of incentives – when outside counsel are specifically incented not to work as many hours “as it takes,” but rather to focus on efficient delivery of legal services, and on the clearly articulated outcome that the client wants, value is achieved.

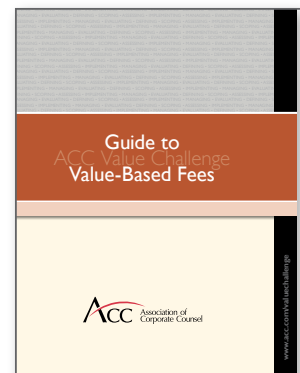
Value-based pricing creates incentives to:

- Reduce inefficiencies;
- Increase productivity;
- Improve the way legal services are purchased and delivered; and,
- Focus on results and outcomes that add value for the corporate client.

Six key steps offer a path to successfully executing value-based fee structures in the context of legal services, and suggest accomplishing them in a particular (logical) order. These are:

1. Defining . . . value;
2. Scoping . . . the work to be performed;
3. Assessing . . . who is best-suited to perform this work, on what terms;
4. Implementing . . . effective fee terms and management processes;
5. Managing . . . the legal work and the project coordination; and,
6. Evaluating . . . the quality of results and processes.

[From the [AVC Guide to Value-Based Fees](#)]



VALUE-BASED FEE MATRIX**			
Type	Description	Example	Ideally Suited For
Fixed Fee per Deliverable	Affixes an “all in” price for a distinct piece of work, encompassing all of the law firm’s ancillary preparation and effort.	<ul style="list-style-type: none"> • Pay X for a law firm to draft and argue a summary judgment motion; • Pay Y per deposition taken; • In the transactions context, pay Z to produce an initial draft of a license agreement. 	Situations in which certain component pieces of work are distinct and measurable such that client and law firm can agree upon a workable fee schedule, even if the number of “units” of work may vary going forward.
Fixed Fee per Matter	Sets a fixed price for all legal work relating to a particular matter.	<ul style="list-style-type: none"> • Pay X to handle a particular type of commercial real estate transaction; • Pay Y to handle the defense of a single-plaintiff employment litigation up to trial, with an additional fixed amount to try the case. 	Situations in which matter recurs in a defined and predictable way so that the client and firm can agree on a reasonable fixed fee to handle that matter, barring any unforeseen developments.
Capped Fee	Commonly used to set a ceiling on what the client will pay the law firm in a particular matter, or for a particular piece of work. Resembles a fixed fee, but with certain drawbacks (discussed in the “Assessing” section below).	<ul style="list-style-type: none"> • Legal fees for this matter, in this calendar year, not to exceed X; • Fees for drafting and arguing this appeal not to exceed Y; • Fees to handle this transaction not to exceed Z. 	Situations in which the client is most comfortable with the hourly rate billing model and favors greater predictability (by capping fees on the high end) as opposed to lowering fees (by sharing with the law firm a portion of savings generated under fixed fees).
Flat Fee per Period	Typically covers distinct categories of services during the course of a specified period.	<ul style="list-style-type: none"> • Monthly flat fee to cover advice and counsel requests on regulatory issues of a certain type; • All-in “per diem” fee for trial representation for whole trial team; • Monthly flat fee to handle administrative management during certain phases of litigation; • Quarterly flat fee for handling all intellectual property litigation of a certain type or in a certain area; • Quarterly flat fee for handling a certain volume of commercial agreements. 	Situations in which distinct pieces of work need to be performed on a recurring basis, and the client wants to create an economic incentive for the law firm to staff and perform the work more efficiently (i.e., reducing its own cost to increase its margin).

Type	Description	Example	Ideally Suited For
Portfolio Fixed Fee	Represents a broader application of the fixed fee approach by assigning a large portfolio of work to a single firm for a fixed fee, usually after a competitive bidding process. Duration can vary, but generally a multi-year term (2 or 3-years) is common; payment schedule may be monthly, quarterly or on another set period.	<ul style="list-style-type: none"> All employment litigation for a fee of X; All product liability litigation of a certain type for a fee of Y; All transactions of a certain type for a fee of Z; All securities portfolio filings for a fee of XX. 	Situations in which a group of matters is sufficiently similar, recurring and predictable so as to lend itself to relatively consistent year-over-year patterns in terms of activity and fees.
Per Capita Fee/ "Ad Agency" Model	Fixes a set price to "purchase" on a discounted basis the full-time or half-time services of a certain person or team, who then produces the work required.	For the coming year, pay X to purchase 50 percent of the billable hours for lawyers 1, 2 and 3 to work exclusively on this client's identified matters.	Situations in which a client wants particular outside lawyer(s) to be available and the law firm is willing to provide a discount in exchange for the certainty of revenue in advance and the volume of work is sufficiently predictable so as to keep these folks busy.
Incentives/ Performance-based Hold Back/Success Fees	Aligns interests by tying a portion of law firm compensation to outcomes achieved. (Can be used in conjunction with any of the value-based fee options described above.)	<ul style="list-style-type: none"> Percentage (e.g., 20 percent or some other number) of fees billed will be set aside by client and paid to the law firm subject to a multiplier (e.g., 0, 1, 2) depending upon the extent of success achieved (e.g., win a motion to dismiss, win a jury verdict, resolve a matter below a specified amount, close a deal by X date, etc.); Without a holdback, opportunity for bonus based on results achieved and value delivered (e.g., resolve a matter below a specified amount, close a deal by X date, reduce number of new cases in litigation portfolio by certain percentage, etc.). Bonus could be calculated based on some portion of the costs avoided or value delivered. 	Situations in which the client is able to define success (entirely or in part) according to objectively measurable markers that the law firm can help attain via strong performance.

Here are some examples of various alternative fees arrangements and value-based fee structures in use in our case-study companies.

Westpac Banking Corporation. Westpac Compliance, Legal & Secretariat manages an external panel of 20 outside law firms, from top-tier global firms to small boutique providers of specialized expertise. CLS engages in rigorous discussion with its panel firms about their pricing models and value-adds, and imposes comprehensive reporting requirements that also are designed to minimize re-work. Systematic identification of nine specific legal work types were directed to firms on an exclusive portfolio basis at a fixed fee, resulting in significant cost savings.

REA Group. At REA Group, the legal department works with its selected principal law firm under a variety of alternative fee arrangements, including:

- Fixed-fee arrangements for all or components of a project, e.g. transactions;
- Target-price model: a budget for legal services agreed with REA against a defined scope of work where the firm may be entitled to an uplift based on the savings or will discount the price if the budget is exceeded;
- Partial success fee or risk-sharing arrangements: utilized where the measure of success is related to the achievement, quality, or speed of an outcome;
- Partial discretionary fee arrangements: based on achievement of key performance indicators agreed in advance;
- Unit-based pricing: appropriate for high-volume, repeat work where a junior resource can be leveraged;
- Value pricing: fees based on the value determined by the client; and,
- Retainer: REA Group is considering an “all-you-can-eat” annual fee due to the benefit of budget certainty.

The legal spend may be further reduced by the following “value-adds”:

- Free access to precedents and research centre;
- Tailored platform to manage legal requirements of marketing competitions;
- Help desk service for 20 minute one-off queries that do not require written advice;
- Free workshop with REA’s legal team to gain a deep understanding of the business; and,
- Tailored CPD sessions.

Medibank. Health insurance provider Medibank collaborated with NewLaw firm Hive Legal to design and implement a value-based, output-driven “Fixed Fee Menu System.” Formerly, Medibank used a mix of external law firms (at varying hourly rates) and in-house resources to cover the work stream. The company did not have a robust system for managing its budget for contracting advice. Reliance on hourly rates gave little predictability both on a matter-by-matter basis and work stream basis.

Medibank and Hive Legal worked together to put in place an outcomes-based Fixed Fee Menu for specific pieces of work, with a budget amount equivalent to the approximate cost of a full-time lawyer. Jacinda de Witts, Principal, Hive Legal, used her in-depth understanding of the work stream and its value to apply a structured approach to costing. She says that a true desire to bring value to her work inspired her move to Hive Legal:

“I had a great career in large law firms, but what clients wanted from me and what I could deliver were not well-matched. In addition to expert input and a sounding board, they wanted access to partners and cost certainty. The new model at Hive Legal resonated with me,” she says.

The key points of the Fixed Fee Menu System are:

- A collaboratively agreed menu of common pieces of work and fixed prices for those regardless of time spent or level of seniority;
- Instructions based on the menu, with work completed and reported by menu item, specific instructions, and against a budget; and,
- A systematized approach to provide efficiencies of time and resources.

“This arrangement is innovative because the fees truly are fixed,” says deWitts. *“In many firms, capped and fixed fees are on offer, but they come with a lot of assumptions and limitations. These fees are truly based on the value of the item of work itself.”*

Since its implementation, the Fixed Fee Menu System has provided Medibank with complete transparency of the external costs for advising on hospital contracts by matter and by work stream. This has allowed for much better budgetary predictability and control. It has also provided relevant and concise information (via the reporting system) that was not previously available. Medibank is using this valuable information to further improve its budgetary process and insight into work processes, which provides true predictability of costs and improves outcomes by streamlining the process of advising the business on high-volume contracts, in the context of ongoing relationships with hospitals and other medical services providers.

“I think this collaboration is really quite unique, says General Counsel Mei Ramsay. “You must have a great deal of trust to embark on a project like this. Getting to the right fee was facilitated by our history together.”

A change in mindset is required, says deWitts, to move to true value-based billing. “Experienced practitioners know what things cost, so think about the value of the output rather than how long it takes.”

CASE STUDY

Paying for Value, Rather than Time

BENDIGO & ADELAIDE BANK || 2015 ACC VALUE CHAMPION

At Australia’s **Bendigo & Adelaide Bank**, value-based pricing, disaggregation, insourcing, and experimentation—combined with a prohibition on hourly-based fees for institutional panel work—positioned the legal department as a thought leader within the legal profession and the banking industry. Beginning several years ago under the direction of former Head of Group Legal Maria Polczynski, work was disaggregated and insourced creatively, such as having the bank lawyers as “solicitors on the court record” to avoid double-handling of routine trial correspondence. Insourcing practices include sometimes calling upon other bank staff for appropriate paralegal work. The legal team created self-service tools and conducted internal training sessions to empower the appropriate staff to take a commercial approach to low-risk work.

However, it is in the area of value-based pricing with outside law firms that Bendigo was most progressive. After two years of engaging firms only on the basis of fixed, value-based pricing, but seeing variations and scope creep default back to hourly rates, Polczynski took a radical line in 2014 by writing hourly charges out of the terms of engagement for all institutional panel work. The bank’s institutional law firms agreed that, absent pre-agreed fixed prices, after-event discussions on pricing would start from the bank’s honest but subjective assessment of the value delivered, without reference to hours or rates. This forced the clearer scoping of work and desired outcomes and prompted specific discussions about work allocation in order to price at the start. The resulting collaboration with panel firms has led to better alignment between firm and client objectives.

Fixed pricing greatly enhanced budget predictability. Polczynski instituted some innovative variations including pricing for “mini matters” and “mini retainers.” For litigation work, introducing a rolling retainer with quarterly setting of the prospective monthly fee against required deliverables resulted in costs that were reduced and smoothed, and rolling forecasts that were more accurate.

Now general counsel for AMP Bank and head of compliance & regulatory risk for AMP Group, Polczynski has the benefit of hindsight as she reflects on the innovations at Bendigo.

“After our successes with the institutional panel, we tried to fast-track other firms into the way we were doing things, which was almost impossible to achieve effectively,” she says. “Rather, it needed to happen in stages, so that we could learn the lessons along with our firms and build the mutual trust that is key to success.” She notes that she also would have done more explanation and promotion of the value-based approach internally at Bendigo, within the legal department and the lines of business, to overcome early resistance to the change.

She describes a current cadre of external providers who have developed innovative offerings as competitive advantages within a shrinking marketplace due to the increased insourcing of corporate legal work. ***It’s a buyer’s market for in-house counsel ready to experiment with new ways of working.***

“Clients are spoiled for choice, but fear they may actually have to commit for longer or pay more for a given matter. They are nervous, because they don’t know what metrics to use. The bottom line is that they may make mistakes on individual matters, but even with those, will pay substantially less across their entire portfolio if they move away from hourly rates. That’s because value-based pricing forces the good planning and communication and disciplined execution which is what really renders the benefits. The resulting continuous improvement compounds those benefits over time,” Polczynski says.

Her best advice? “It can be difficult to get started, out of fear of making mistakes. Try a new arrangement with a firm or provider you trust, as a buffer for mistakes. If you just get started, you’ll learn, and even with some mistakes you can do much better overall,” she says.

CONCLUSION: THE IMPORTANCE OF MEASUREMENT

In an era when Big Data is getting a lot of buzz, legal executives should not overlook the power of “small data” to get started on value initiatives, and to gain momentum.

A way to establish value strategies is to survey the business side about the relative priority of legal services, unmet needs, and the satisfaction with service delivery. Targeted client interviews and surveys yield the combination of qualitative and quantitative data that inform legal department plans to innovate in the provision of legal services, as exemplified by the work at Staples Australia and New Zealand.

Is “doing more with less” what is needed most? Or is it more important to turn around contracts faster to drive value to the bottom line? Both imperatives can be met with a process improvement program to gain efficiency, such as those conducted at Telstra and HPE. In turn, that program starts with measuring how long things take under current processes, and mapping the process to find ways to eliminate time-consuming steps. Each practice group at Westpac undertook process improvement activities that resulted in more than 27 distinct

initiatives to release capacity and allow higher-value work. They used “small data” to identify pain points for themselves and their clients, ultimately freeing up the time equivalent of 11 full-time employees.

If runaway external legal expenses need reining in, moving to flat fees is one (potent) solution, as Medibank, REA Group, and Bendigo & Adelaide Bank have demonstrated. That often begins with capturing historic spending in key “buckets” of work to inform pricing of matters, phases of matters, or portfolios. Armed with information about historic costs, albeit on an inherently inflated basis of hourly rates, law department and law firm leaders can collaborate to set prices that capture the benefit of incenting efficiency and a focus on preventing legal disputes.

Preventing litigation is itself another area that benefits from rigorous measurement. Consistently conducting root cause analyses to understand where and why disputes occur, and accumulating the results in dashboards or heat maps, can yield insights about need for more training, better contractual terms, or hotlines to avoid legal matters. The legal department can capitalize on small data to proactively solve business and organizational problems.

A close cousin of root cause analysis, and an element of the process improvement discipline, is conducting After Action Reviews (AARs) as a last step in the Project Management cycle. While reporting progress against milestones and budgets is inherent in using project management to keep legal matters on track and under control, AARs are critical to continuous improvement. Effective leaders of value initiatives rigorously use AARs to refine legal strategies and matter pricing, as well as process and project management.

As many of the value leaders featured in this guide have pointed out, it is important to start with a few modest steps, measure results, and iterate to drive improvement. As the saying goes, “Start small and go big.” We wish you a successful value journey, and invite you to measure how you cut costs, improved predictability, or achieved better outcomes, then enter our annual, friendly [competition](#) to be named an ACC Value Champion.