

STOP SERVING YOUR CLIENTS

Andrew Mellett tackles the productivity of the legal function and sets out how in-house counsel should define their core competency, and set and communicate their legal strategy.



Andrew Mellett

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Thinking of your business as ‘clients’ could be breeding detrimental behaviors and destroying your function’s value.

During a recent client lunch, with a GC of a multibillion-dollar global business, he confessed to me that someone in the business sent him a coffee machine contract to review. “I am not joking. I didn’t know whether to laugh or cry” he confessed. “I cost the business far too much to be wasting my time on this sort of s****”.

Many in-house lawyers can empathise with his dilemma. If you ignore the request to review the contract you feel like you are ‘damaging the relationship’. However, review the agreement and you feel like you need Xanax just to get through the day!

Research conclusively suggests ‘responsiveness’ is the greatest driver of internal client satisfaction but it is also likely to be the greatest inhibitor of legal function productivity.

The truth is that the way legal teams think about their value is at the heart of the problem. Their mindset about servicing ‘clients’ is not echoed by their colleagues. Functions like IT, Finance, Strategy & HR are more confident about articulating the value they create; more systematic about focusing on their ‘core’ value; and do not routinely call their counterparts ‘clients’.

I said to the GC “what response would someone get if they asked the CFO to evaluate the risk in the coffee machine? Or the CIO, Head of Procurement or Head of Risk?” Here are responses he gave (we have omitted any likely profanity for publication purposes):

- CFO: “If you have the money in your budget it is your decision – our CapEx approval threshold is \$1m.”
- Head of Procurement: “If we have a preferred supplier for this category go with them. If we don’t, we don’t care. Procurement only gets involved in indirect spend above \$400k.”
- Head of Risk: “The residual risk of this transaction is low probability and its consequence is less than 1000th of our board defined risk tolerances.”

And so it would go right around the executive table.

Not only would Legal be the only one reviewing the agreement late into the night. It gets worse. 99% of the risk in the deal is commercial.

In fact, we would go so far as to say that by supporting the wrong decisions Legal are damaging their relationships. Imagine if the CFO typed up your expense

report for you. Would your perspective of their value change?

Or ask yourself this:

Have you ever found yourself wondering if the ‘client’ would have still asked you to look at the document if you were charging them \$400 an hour? If so, it is time to make a change.

People exploit natural resources, and pollute the environment for the same reason: we all place limited value on things with no cost. By undertaking low value tasks, at no implied cost, you’re putting your value onto a snakes and ladders board and rolling the dice. By ‘serving your clients’ you are turning legal into an all you can eat buffet.

So what should we do about it?

The simple answer is that legal should be better at saying “no”. However, solutions are rarely as simple as the problems that create them. We believe every legal function should define their core competency, then set and communicate a legal strategy.

Although our research suggests that 77% of legal functions have a ‘legal strategy’, most are tactical extensions of their budgets which don’t address the key questions of what we will do, what we won’t do and why.

Here are the five things every legal function should do:

1. Define your mission

This can’t be some nebulous statement about ‘adding client value’, or ‘providing high quality legal advice’. It has to be tangible, link to the organisation’s strategic plan and be measurable.

2. Define what is core (and what is not)

Too few legal functions have a clear vision of how they add optimal value. They prioritise business support by urgency. The best functions have a clear definition of what they will do, and what they won’t. Plotting tasks on a simple risk/value matrix is a good starting point for this plan. For those in competitive industry the core should be defined by high-risk activities that generate competitive advantage.

3. Get the other stuff done

An increasing number of Australian companies are



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using alternate legal providers to perform routine legal tasks (such as: property leasing, procurement & sales agreements and marketing approvals) to ‘unclog the arteries’ of internal teams in a very cost effective way.

4. Define the ‘guardrails’ (and gain business support)

Lawyers find it incredibly difficult to say ‘no’ to a ‘client’ request. The best legal functions set clear guardrails or risk thresholds about what they will and wont do, and gain executive support for this mandate. These thresholds should balance the financial, operational and reputational risk, and the probability of occurrence, with the resource consumption required to reduce the risk to within acceptable tolerances.

5. Set department objectives

These are the key goals that clearly support organisational strategy. Critically it shouldn’t stop there, top legal functions list: individual initiatives, owners of these initiatives, and timeline and success measures.

Legal functions that get the right answers here, and are disciplined about implementing them, will unlock unprecedented value for their organisations. They will support the right decisions well – instead of supporting all decisions poorly. As the management guru Peter Drucker once said, *“There is nothing quite so useless, as doing with great efficiency, something that should not be done at all.”* 



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