



“...independent, objective benchmarking information to help legal departments define, develop and demonstrate the value of the legal function, and to develop new ways to work with their external legal services providers, for mutual benefit.”

Ronald Pol

This report is dedicated to **Peter Turner** and other legal services visionaries who recognised a need for independent, objective benchmarking information to help legal departments define, develop and demonstrate the value of the legal function, and to develop new ways to work with their external legal services providers, for mutual benefit.

These visionaries know:

- the legal function is different from other business units in important ways – such as the need for independence and the overriding duties of lawyers to the court and their professional obligations – yet this does not conflate into a simplistic ‘legal is different’ exemption from performance measures and effectiveness improvement objectives that apply to every other part of their organisations.
- law firm relationships are not about ‘us-them’ contestants in a zero sum game, where one gains at the expense of the other – it’s about developing sustainable relationships focused on delivering real value to the client, yet within a profitable environment for law firms too.
- a place at ‘the top table’ for ‘legal’ is neither assured nor an entitlement – it results from the value that the legal function can identify, deliver, and demonstrate.

These visionaries include:

- **Every participant**, some who gave up half an hour of their time, and others who chose to spend considerably more because, they said, the process and even the questions – involving ‘big picture’ elements of their roles beyond constant day-to-day urgent pressures – provided valuable insights; one general counsel remarked that the survey instrument itself provided new ideas for different ways of managing the external counsel relationship. With ACLA and CLANZ we thank and commend all participants for their passion to improve the value proposition for their own organisations, and for their valuable contribution to excellence in their profession.
- **Peter Turner**, ACLA’s first Chief Executive, **Helen Mackay**, former CLANZ President and now its first Chief Executive, and **Tony de Govrik**, ACLA’s CFO and

Company Secretary. Each recognised the need for the Australian and New Zealand in-house professions to gain the benefit of independent, objective benchmarking material long before it became obvious even to many general counsel, and with the efficient support of ACLA’s indomitable **Louise Trewarne** helped “make it happen”; never faltering through the many trials and tribulations along the way.

- Legal department leaders like **Will Irving** (Telstra), **Helen Conway** (Caltex), **Martin Hunter** (IAG NZ), **Chris Gilbert** (Christchurch City) and others for whom a wealth of data is not a barrier but a call to action. I have long respected their approach, which I visualise as “strategy, vision, implementation, results”, epitomised during a Chief Legal Officer Forum meeting over the 2008 edition in Australia in which Helen and Will each relayed handing copies to their senior managers with a request to “see how we measure up to these benchmarks, identify the key ones that relate to us; then develop goals, strategy and an implementation plan for achieving those goals. And while we’re at it, let’s also draw out from the commentary and checklists any other insights we can benefit from.”
- **David Maister**, for decades probably the world’s leading professional services consultant, and with a background in applied statistics David’s work always started with an evidential base and concluded with the effective implementation of strategy outlined in his latest book *Strategy and the Fat Smoker*. In the foreword to this report’s 2006 predecessor, David noted that it “provides a clear roadmap for success for corporate and government organisations to develop measurable strategies for delivering, and demonstrating, more value from the legal function. It will also help law firms add a strong client perspective to their activities – truly a win-win prospect.”
- Those who went before us, providing the shoulders on which we sought to stand, such as **Jonathan Bellis**, who first introduced the US standard bearer (then the *PricewaterhouseCoopers Law Department Spending Survey*) to Australia and New Zealand in the 1990s, well before its time in what was then a conservative legal services market perhaps unused to the value of evidence-based decision-making; **Rob Thomas**

(Serengeti Law) and **Fred Krebs** (President) and his superbly focused team at the Association of Corporate Counsel who spearheaded the comprehensive *ACC/Serengeti Managing Outside Counsel Survey* in the United States; **Tim Nightingale** (Nisus Consulting) who produces *Primus inter pares*, an extensive study of FTSE-100 companies' perceptions of the UK legal profession; and **Richard Stock** (Catalyst Consulting, Canada) who supported ACLA's early vision for this report in Australia and kindly provided many insightful and provocative comments and suggestions for the 2008 and 2010 editions.

- Others with whom I have been privileged to gain inspiration from their own vision of the importance of providing the tools enabling effective evidence-based decision-making, and the courage to stick with these convictions when easier routes constantly beckon, such as **Ashley Balls** (NZ), **Patrick McKenna** and **Karen MacKay** (Canada), **Gerry Riskin** (Anguilla & US), **Ed Wesemann** and **Rees Morrison** (US), **Robert Sawhney** (Hong Kong) and **Richard Susskind** and **Tony Williams** (UK).

Thank you all, for your thought leadership, your collegiality, your contributions to excellence in the in-house profession, and for your contagious and inspiring passion to help improve connections and insights between in-house counsel and external legal services providers; for the benefit of all legal services consumers and participants.

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ABOUT THIS REPORT

Who is this report for?

The purpose of the *ACLA/CLANZ Legal Department Benchmarking Report 2010* is to provide independent, objective, market-wide benchmarking information and market insights for:

- **Legal department leaders** – to assess their existing systems and processes with the benefit of industry benchmarks and insights from their peers, to develop and refine performance improvement opportunities, and to assess whether to adopt new or to refine existing practices as the legal services market evolves.
- **Law firm leaders** – to understand the structures, operations and pressures of their clients, gain insights into the changing needs and expectations of some of the most sophisticated clients, and proactively anticipate and more effectively, and profitably, meet these evolving and anticipated needs.
- **Other legal services market participants** – to gain a deeper understanding of the in-house market and the connections between in-house and external counsel.

What does this report deliver?

The *ACLA/CLANZ Legal Department Benchmarking Report 2010*:

- Highlights **key metrics, challenges and priorities** in the management of the legal function of Australian and New Zealand organisations.
- Provides **quantitative benchmark information** on a wide range of internal and external legal spend and management issues, including key performance indicators such as legal spend relative to organisation size, fully loaded hourly rates, staffing ratios, the inside-outside mix, and scores of other metrics.
- Contains **qualitative data on strategic intentions and key initiatives** of corporates and government agencies in response to the economic downturn which followed the inaugural edition, including new sections relating to alternative fees and innovative solutions for managing the external legal function.

What is the context of this report?

If this report has become “the reference document for Australasia’s legal leadership” suggested in the 2008 foreword, it is because more legal leaders have begun to adopt sound business practices, in much the same way as their finance and line management colleagues.

The days of blithely asserting that “legal is different” are fading. Modern general counsel recognise that whilst lawyers are unique in their professional function (retaining the requisite independence as officers of the court) ‘legal’ as a business function is not different, nor should it be. Being regarded as a resource-consuming cost centre unable effectively to measure or demonstrate its value in the same way as every other business unit is hardly conducive to having a seat at the top table. To truly be a part of influencing the strategic direction of an organisation, demonstrably aligning the business of the legal function with that strategic direction is vitally important.

The rise of the modern general counsel can also be charted by the growth of an interest by legal leaders in the art and science of managing the legal function; a growing professionalism measured by a range of factors:

- In 1998 the PricewaterhouseCoopers *Law Department Spending Survey* attracted 31 general counsel respondents from Australia and New Zealand, and three years later more than twice as many, then with a combined legal spend in excess of A\$240 million. Today, the *ACLA/CLANZ Legal Department Benchmarking Report 2010* was supported by at least 160 general counsel, with a total annual legal spend in excess of A\$1.6 Billion/NZ\$2 Billion; producing the most comprehensive report of its kind specifically for Australasian legal leaders.
- The growth of the in-house counsel profession over the past decade has outstripped the growth of other sections of the legal profession, and now represents more than 20% of the legal profession in both countries.
- The continued growth and influence of the representative associations – the Australian Corporate Lawyers Association (ACLA) and the Corporate Lawyers Association of New Zealand (CLANZ). Evolving from being run on a purely voluntary basis, both now have professional executives and continue to expand their member services.
- The first book of its type in Australasia published specifically for and about the in-house profession; *Leadership and Management Challenges of In-house Legal Counsel* (B Tabalujan, LexisNexis Butterworths, 2008).
- *The Business of Law*, described by publishers Thomson Reuters as “the latest, most comprehensive report on the state of the business of law in New Zealand” contains a series of chapters on the in-house profession and law firm relationships.
- In-house counsel are increasingly appearing in the legal and business press, and in-house roles continue to attract the highest calibre of applicants.

- A mature recruitment market is also increasingly evident from a range of factors. In-house salaries are often on a par with and can exceed private practice, even at the partner level of the biggest firms. General counsel roles are being filled by experienced in-house counsel as well as former law firm partners, and there's no longer 'one way traffic' – lawyers are increasingly migrating seamlessly back and forth between in-house, private practice and commercial roles.

Even from a record-breaking high base in 2008, participation has again increased, allowing us to achieve our goal of reducing the report's price *and* increasing its value, with more analysis, more material on topical issues such as alternative fees, a series of practical 'Action tips', together with exclusive CLO seminars to discuss practical steps that can be taken to put the data to good use. All the graphs and tables in this report are also available electronically for internal use in reports and planning documents.

Although this type of research capability has long been available overseas, the combination of a small market and almost prohibitive cost has precluded the earlier development of a sustainable model specifically for Australasian needs.

Although growing steadily, the financial viability of this research remains on a knife-edge. The continued support of legal leaders in Australia and New Zealand with a vision for the future of their profession will therefore help ensure the continued expansion of the dataset, the richness and depth of management insights and strategies to help realise the benefits that professionally run legal departments bring to their organisations, and improved connections between organisational clients and their external lawyers.

WHAT'S NEW?

The 2008 edition delivered a huge amount of data. The 2010 edition expands the dataset in many areas, and provides new ways to effectively use the data. The 2010 report:

- Retains the **core architecture** of the multi-award winning 2008 edition, settled after general counsel focus groups in Australia and New Zealand.
- Builds on the **extensive nature** of the earlier report. The 2008 report was based on the most extensive review of its kind ever undertaken across Australasia, and in 2010 the number of respondents increased by more than 25%, and their total legal spend increased by more than 45%, to an unprecedented **A\$1.6 Billion/NZ\$2 Billion**.
- Contains comparative data from the 2008 report, adding the benefit of **longitudinal comparators**.
- **Existing sections expanded**, including **main business drivers affecting legal department growth** (response summary supplemented by the full responses from general counsel, adding the richness of individual expression to group insights), the **use of law firms** (adding a further layer to data on law firm numbers with the concentration of legal spend with fewer firms), and **how law firms are selected** (supplementing panel use, we also identify methods used to select firms for panels).
- **Existing sections improved**, including the extent of analysis or its representation improved in relation to **legal department reporting structures and geographic structures** (more detailed analysis relating specifically to legal teams excludes single member legal departments); **relative legal department size** (in addition to the legal department size metrics produced overall and for 5 industry groupings, the 2010 report also isolates metrics for 8 individual industry categories); **legal department specialisation** (median data supplements range and averages data); **work outsourced and insourced by legal departments** (clearer graphical representation of the data improves ease of use); **degree of lawyers' alignment by business work-type/business unit** (additional data distinctions); **the reasons for terminating law firm relationships, service criteria and people/relationships criteria**; and **the most impressive things to see from law firms** (analysis more accurately ranks the relative importance of factors, plus standardised scores).
- **New sections**, including **additional relative legal spend metrics** (total legal costs per \$billion of revenue/turnover and per 1000 FTE employees); **employees per FTE lawyer metrics** (supplementing lawyers per 1000 FTE employee calculations); **alternative fee**

arrangements (what's being used, and what's been successful); **specialisation by area of law, by external legal fees** (a richer perspective of specialty areas, complementing the specialisation by legal department hours); **external legal providers** (wider range of information and tools for the mutual benefit of in-house teams and external legal providers); **improving law firm relationships** (general counsel share experiences of law firms exceeding expectations, great lawyers, and what corporate and government legal teams are doing, and planning to do, in response to economic events); **CLO management responsibilities** (the multitude of roles and functions undertaken by modern general counsel); **the value challenge** (building on international developments helping reconnect legal costs with value); **law firm transaction management** (the extent to which firms are managing matters effectively) and **litigation management challenges** (the extent to which legal departments face key challenges in the management of major disputes and litigation, often a significant part of legal budgets).

- **50% more pages** – more analysis and commentary than ever before.
- **35% more graphs and tables** – more data converted into graphical representations and tabular form for ease of use.
- **More than 100 Action tips** – practical suggestions for getting more value from research findings.
- **Word clouds** – complementing the analysis by using another technique to help illustrate key messages from open text responses. 'Word clouds' give greater prominence to words that appear more frequently, helping illustrate in a 'picture' of a few words the most common titles for members of the legal team, key business drivers affecting legal department growth, etc.
- **Case studies** – what have others done that's been successful, and how did they make it happen?

Overall, the *ACLA/CLANZ Legal Department Benchmarking Report 2010* contains a 'snapshot' of how some of the most sophisticated users of legal services structure their operations and select and use outside counsel, together with key elements of their vision for the next two years – the plans, aspirations and intentions of general counsel, often before the effect of their implementation is seen in the market; vital information for corporate and government organisations in developing their own plans for the future, and for law firms and other legal market participants considering how they can more effectively meet evolving client needs.

Important message about Action tips, examples, case studies and other commentary

The 'Action tips', case studies, and other commentaries are provided for general commentary purposes only, not organisation-specific advice. Each necessarily illustrates just one element of the complex interrelationships that organisations should manage simultaneously, and each organisation and its circumstances are different, so some tips, metrics, examples and other commentary will be relevant, and others not. Case studies also relate to individual circumstances, and examples are generic; some organisations may be able to achieve similar results, yet all results will vary.

This report is intended as a guide only; not to be relied on as necessarily definitive or to replace professional advice specific to individual circumstances. We have sought accurately to reflect survey results, and to suggest Action tips and other commentary of a generally helpful nature, but accept no liability for any loss or damage resulting from errors or omissions or reliance on any information contained in this report.