

Episode 39: Summary

Episode name: The Ins & Outs of the In-House Lawyer

Guest(s): Marcus Suliman

What area(s) of law does this episode consider?

Marcus Suliman discusses the roles and responsibilities of generalist in-house lawyers in large companies and corporations. Also considered in this episode is the mutually beneficial relationship between in-house company lawyers and external private law firms.

Why is this topic relevant?

According to the Law Society of New South Wales' 'Practising Solicitor Statistics' for September 2020, almost a fifth (18.5%) of all NSW Lawyers work in an in-house role of some description. That's more than the number of lawyers working in law firms (17.6%). From the years 2011 to 2018, the corporate legal sector grew 61%, whereas the private sector only increased 23%. The undeniable upwards trend in the demand for in-house counsel is indicative of businesses being met by increasingly complicated legal challenges, especially given the rise of new legislation in recent years. It is also an indication of businesses recognising the value of having a legal perspective on commercial matters from an advisor who has a deep knowledge and understanding of their business.

Generalist in-house lawyers are interlocutors between their employers and the legal system. Understanding the dynamics of an in-house company legal team can help make private solicitors better prepared to instruct them when engaged to advise in-house lawyers and additionally to help maintain good standing with in-house lawyers and their businesses. Suliman shares his insights on the valuable lessons he has gained from his experience as an in-house lawyer, such as the importance of timeliness, plain-language and lateral thinking, and how they are transferable between in-house and private practice.

What cases or legislation are relevant to this episode?

Morley & Ors v Australian Securities and Investments Commission [2010] NSWCA 331 ('James Hardie Judgment')

- The NSW Court of Appeal found that a number of non-director executives of James Hardie Industries, including in-house counsel, were responsible for a misleading announcement published to the ASX.
- The decision has been interpreted as having the effect of rendering in-house lawyers gatekeepers of corporate ethics and lawfulness by imposing traditional directors' duties onto officers.
- While private practice lawyers are often pushed to specialise in a specific area, in-house lawyers benefit from a wide breadth and diversity of experience in legal expertise.

What are the main points?

- Companies and individual clients are increasingly looking for lawyers who are not only excellent legal counsel but also astute commercial and extra-legal advisors.
- In private practice, the work environment is made up almost exclusively of people with a legal background and knowledge and expertise in the law, meaning communication between team members is often technical and uses legalese. When working as in-house counsel, however, the most effective communications are the ones which can convey legal information as clearly and succinctly as possible. This is because in-house lawyers often deliver advice to other teams in the business, including HR, marketing, as well as executives and shareholders from a diversity of non-legal backgrounds.
- In-house lawyers are the intermediaries between organisations and external legal advice. Where legal issues and matters arise that are outside of an in-house lawyer's expertise, or are too complex, demanding or urgent to complete in-house, in-house lawyers will seek advice from external lawyers and firms.
- An in-house lawyer is valuable not only in their capacity as legal counsel for a business, but they are also able to give qualified advice on commercial decision-making processes through their lived experiences working in the corporate sector.
- Understanding the role of an in-house lawyer, as well as their business' industry, is vital to facilitating a productive, effective work relationship to meet both the needs of the in-house lawyer and their business. Pay attention to instructions given by an in-house lawyer as the level of research and legal technicality may differ between tasks/projects.
- Meet deadlines you set for yourself and always be clear and honest about expected timelines.

What are the practical takeaways?

Show notes

[Deloitte's Legal Risk Management Framework](#)

[NSW Law Society's 'Handy Hints for In-house Lawyers'](#)

[Looking Glass Report](#)