



Review of AFP Legal

Prepared by Beaton Research and Consulting

STRICTLY CONFIDENTIAL

Final Report: 23 December 2010

A. Background and objectives of the review

The role of the Australian Federal Police (AFP) is to enforce criminal law and to protect both Commonwealth and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the Government's chief source of advice on policing issues.

AFP Legal is an in-house legal service that provides independent legal advice and services to AFP management and staff. Legal comprises approximately 32 lawyers, five administrative support staff and one paralegal. Most of the AFP Legal team is based in Canberra but there are small satellite offices in Melbourne, Sydney and the Solomon Islands.

The AFP engaged Beaton Research and Consulting (Beaton) in June 2010 to conduct a strategic review of Legal with the primary objectives of [1] identifying the key strengths and weaknesses of Legal in serving the organisation's needs, both now and into the future, and [2] recommending specific strategies and actions to address key weaknesses and to leverage strengths.

This review follows a period of significant growth in AFP Legal's size and breadth of service delivery to the AFP. It also comes at a time when in-house government legal services, and legal services to and within government more generally, are responding the key recommendations of the Blunn and Krieger report.

The review of AFP Legal specifically aimed to:

- Assess the effectiveness of Legal's practice management;
- Identify gaps, if any, between internal clients' needs and Legal's resources and services;
- Determine whether Legal's operating structure is aligned with organisational demands;
- Assess whether Legal has optimised its in-source/out-source mix; and
- Determine how Legal is performing on a range of 'corporate health indicators', including, but not limited to:

- Depth of understanding of AFP's core operations
- Quality and practicality of advice
- Innovation
- Forward planning
- Quality of staff
- Staff engagement and development
- Practice management systems
- Measurement and accountability
- Client focus and service
- Teamwork and collegiality.

The recommendations from the review are intended to ensure that AFP has an internal legal function that [1] delivers high quality, value-for money advice and service, [2] embodies the principles and mechanics of best practice, [3] manages its people in a way that encourages loyalty and engagement, [4] meets or exceeds the probity standards set down by the Commissioner and the Commonwealth, and [5] is respected and valued by all key stakeholders.

B. Process followed

The review encompassed the following seven stages:

| Stage | Activities |
|-------------------------------------|---|
| I. On-Boarding and desktop analysis | This stage included a review of available and relevant documentation eg. performance and cost data, previous review reports, business plans, staff feedback reports, etc. |
| II AFP Legal consultation | <p>This included interviews with key Legal Coordinators and focus groups for other staff, based on a discussion agreed with the Manager Legal.</p> <p>The AFP Legal interview respondents included:</p> <ul style="list-style-type: none"> • Michael Rendina • Vicky Kanellopoulos • Stefan Jerga • Mark Fitzpatrick • Belinda Hayward • Karen Schlage • Alison Macdonald • Brianna Emery • Amy Fulton |

| Stage | Activities |
|---|---|
| II. AFP Legal consultation (continued) | <p>The AFP Legal focus group participants included:</p> <ul style="list-style-type: none"> • Kellie Schluter • Tom McBride • Wendy Downing • Marissa Thomas • Brianna Emery • Alicia Wright • Joanna Guilfoyle |
| III. Internal 'client' consultation | <p>This stage encompass interviews with key internal clients based on a discussion guide agreed with the Manager Legal. The respondents included:</p> <ul style="list-style-type: none"> • Chief Operating Officer Andrew Wood • A/National Manager Policy & Governance Chris Black • Assistant Commissioner Ramzi Jabbour • Commander Scott Lee • National Manager Human Resources Steven Walker • Chief Financial Officer Jon Brocklehurst • Assistant Commissioner Frank Prendergast • Assistant Commissioner Shane Connelly • Commander David Mclean |
| IV. Informed outsider interviews | <p>Three interviews were held with representatives of external panel providers:</p> <ul style="list-style-type: none"> • Jenny Anderson, Australian Government Solicitor - Canberra • Caroline Bush, Clayton Utz Solicitors - Canberra • George Marques, DLA Phillips Fox – Canberra <p>Two interviews were conducted with other agencies that could be deemed to be comparable to the AFP:</p> <ul style="list-style-type: none"> • Richard, General Counsel, ASIO – Canberra • Fin McRae , Director Legal Services, Victorian Police – HQ Melbourne |
| V. Analysis and synthesis of findings | <p>This stage encompassed Beaton synthesising all the data collected to identify the key insights and findings. The analysis was based on stakeholder commentary as well as our expertise and experience we have gathered over the past 25 years working with legal organisations.</p> |
| VI. Stress testing initial findings and recommendations | <p>A provisional set of findings and recommendations were shared and reviewed by Andrew Wood and Rebecca Irwin (National Manager Policy & Governance). In addition a 3-hour workshop was convened with the Legal Manager and Coordinators to review the key conclusions reached in the review.</p> |
| VII. Report documentation | <p>The outcome of the entire review was documented and submitted in a final report.</p> |

C. Overview of AFP Legal's performance

AFP Legal provides advice both domestically and internationally on a wide range of legal issues that affect the management and operations of the AFP. The areas they focus on include:

- Legal counsel providing high level advice to the Commissioner and Senior Executive;
- Operational and counter terrorism issues;
- International policing issues;
- Commercial and governance issues, including MOU's and agency agreements;
- Employment related issues;
- Management of civil claims (including discretionary compensation claims) against the AFP;
- Disclosure of information, including privilege issues and subpoenas;
- Coordinating external legal service providers, namely AGS, Clayton Utz and DLA Phillips Fox; and
- Liaison with stakeholders and external partners, including CDPP, AGD, Defence, ASIO, Comcover, DOFAD and ACT DPP.

The table below details the actual type and volume of matters for the period 1 July 2009 to 30 June 2010.

| Worktype | Number of matters by worktype 2009/10 |
|--|--|
| Commonwealth Criminal Offences and Operational Issues; | 749 |
| Commercial & Intellectual Property Issues; | 692 |
| ACT Offences and Operational Issues; | 255 |
| Release and/or Access of Prescribed Information/Privacy/FOI; | 202 |
| Memorandum of Understanding (MOU) Issues; | 164 |
| General Employment and Industrial Relations Matters; | 158 |
| Operational International Deployment Group (IDG) matters; | 121 |
| Leasing and/or Building Issues; | 73 |
| Subpoenas and Privilege Issues; | 72 |
| COMCOVER Notification and Potential Claims/Civil Liability; | 59 |
| Legislation Issues; | 50 |
| COMCOVER Claims (Motor Vehicle, Travel & Personal Effects); | 41 |
| Professional Standards Issues (PROTECTED); | 36 |
| Terrorism Issues (HIGHLY PROTECTED); | 33 |
| Comcare & OH&S Issues/Discrimination; | 19 |
| Governance and Delegations; | 17 |

| Worktype | Number of matters by worktype 2009/10 |
|---|--|
| Administrative matters; | 17 |
| Cooperation with Overseas Authorities Issues; | 15 |
| Protective Services; | 10 |
| Witness Security & Protection Matters (HIGHLY PROTECTED); | 7 |
| Training Delivered by Legal; | 6 |
| COMCOVER Management Issues; | 4 |
| Finance & Delegations Issues; | 4 |

The table below details the number of matter by Functional Stream (or 'client') over period 2007/08 to 2009/10:

| Approved Functional Stream | 07-08 | 08-09 | 09-10 |
|-----------------------------------|--------------|--------------|--------------|
| ACT Policing | 193 | 366 | 381 |
| AHTCC | 10 | 108 | 165 |
| AIPM | 8 | 13 | 18 |
| Aviation | 134 | 120 | 158 |
| Border Operations | 157 | 198 | 282 |
| COO | 513 | 765 | 562 |
| Policy & Governance | | 24 | 84 |
| COS | 258 | 204 | 97 |
| Counter Terrorism | 123 | 95 | 88 |
| Economic and Special Ops | 163 | 181 | 150 |
| Executive | 94 | 99 | 100 |
| External | 56 | 36 | 18 |
| Forensic and Technical Services | 63 | 87 | 105 |
| IDG | 178 | 252 | 240 |
| Intelligence | 103 | 157 | 163 |
| Other | 253 | 84 | 0 |
| Protection | 59 | 46 | 37 |
| TOTAL MATTERS | 2365 | 2835 | 2648 |

AFP Legal's 2009/10 external legal spend was \$3,540,000 (GST exclusive). The reported 2009/10 internal legal spend was \$4,703,000 which includes \$39,300 on-costs for each FTE. The total spend of \$8.2m represents 0.61% of AFP's total expenditure budget.

The 2008/09 external spend was \$4,014,000 (GST exclusive). The 2008/09 internal spend was \$3,962,000, representing a 50:50 split in costs.

It should be noted that while total legal costs are split 50:50 to 60:40 internal versus external, the actual quantum of work insourced to outsourced (as measured by hours or production) is more like 70:30 to 80:20 internal versus external. There is usually a 40 to 60% cost differential of an internal lawyer doing the same piece of work at an equivalent level to an external lawyer.

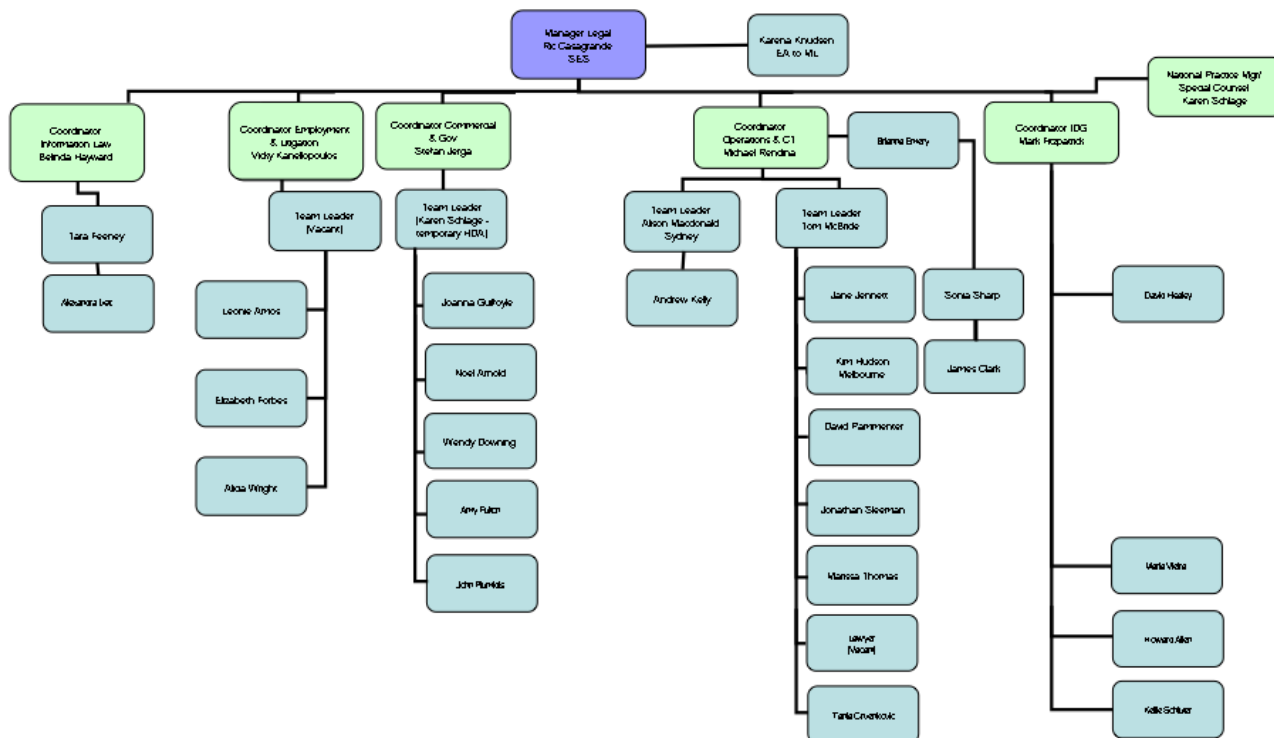
AFP Legal Team

AFP Legal is based in Canberra and has outposted legal officers in Sydney, Melbourne and Solomon Islands. All requests for legal advice in the AFP are centralised through a single “Legal-Advisor” email address and telephone number. New matters are assessed, prioritised and allocated to lawyers in accordance with a case prioritisation model. Legal may also refer clients to other providers (e.g. CDPP or AGD) or arrange external representation and advice in accordance with the Commonwealth Legal Services Directions.

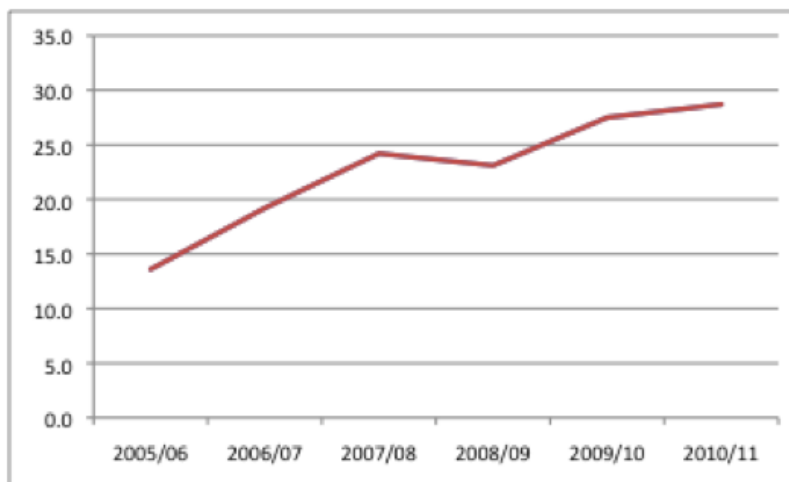
Legal sits under National Manager Policy and Governance who is responsible for Legal, Security, Policy and Internal Audit. AFP Legal is broken into five practice groups:

- Operations and Counter Terrorism
- Commercial and Governance
- Employment and Litigation
- International Deployment Group
- Information Law

The team structure is diagrammatically set out below (as at March 2010):



The chart below displays the average FTE staff number in AFP Legal for the five-year period ending June 2011.



Average FTE Growth within AFP Legal

AFP legal has a Charter of Independence issued by the Commissioner to provide independent and accurate legal advice and each lawyer in the team also has ethical responsibilities to the law society and justice system that ensures the professional independence of AFP Legal. Legal has a mix of sworn and unsworn legal officers and also partakes in the AFP Graduate Program. AFP Legal provides professional development opportunities for Legal officers through the AFP Legal Officer Advancement Arrangements.

D. The future legal environment

In reviewing AFP Legal it is important to consider the context within which it provides its services and to identify the trends and developments that will impact AFP Legal into the future. The two relevant environments include [1] the AFP organisation itself, and [2] the broader Commonwealth political-legal context.

AFP organisation

The AFP's mandate is to reduce crime and other security threats to Australia's collective economic and societal interests, in collaboration with domestic and regional law enforcement partners. The organisation's key accountabilities include:

- countering the threat of terrorism;
- preventing and investigating organised and serious crime;
- countering high tech crime;
- providing assistance to strengthen law enforcement offshore pursuant to Australia's national interest;
- providing community policing to the Territories and airports; and
- implementing the 'all-in model' at airports through Operation Macer.

The major themes of AFP's operational strategy include:

- One AFP One Corporate;
- Flexible deployment;
- Reinvigorate investigations;
- Intelligence-led risk-based;
- Strengthen stakeholder relationships;
- Reduce supplier costs; and
- Eliminate duplication.

Most of these strategies will impact AFP Legal in terms of the specific advice it will be asked to provide, the quantum of resources it will require and its *modus operandi*. It is likely that both the *volume* of demand for legal services will increase as well as the *complexity* of legal issues to be addressed. The volume of demand will be driven by increased operational activity, new strategic projects, new or enhanced international deployments, the reinvigoration of investigative skills, as well as law reform and new case law. The increased complexity of matters will result from the widening of stakeholder interests, the intricacies of international relations and security arrangements, the increased sophistication of crime-fighting technologies and the fact that parties contesting prosecutions are engaging well resourced and highly skilled defence teams.

Legal support for corporate services in the areas of employment law, administrative law, information law, governance and commercial activities is also expected to be on the rise as the AFP grows and the level of corporate support it requires also grows.

Commonwealth political-legal context

The 2010 Blunn-Krieger Report on Commonwealth Legal Services Procurement identified the following relevant trends that will continue to influence the demand for legal services within Commonwealth agencies:

- increase volume of legislation;
- changes to administrative services;
- growth in regulatory agencies;
- greater accountability on agencies, and particularly agency heads;
- increased development of rights orientation within Australian society generally; and
- the development of a well informed and well funded community and commercial bodies able to challenge government action.

E. Key findings and recommendations

We have synthesised the review into nine key recommendations. Each of these recommendations is described in greater detail below together with the findings and rationale to support the recommendation.

The recommendations are:

- E1. Retain the current AFP Legal team composition and structure
- E2. Clarify and empower the role of General Counsel
- E3. Bring greater alignment and sharing across all legal-related entities within AFP
- E4. Accelerate implementation of the new knowledge, workflow and practice management system
- E5. Undertake more detailed demand forecasting based on AFP's longer-term strategies, government policy and other legislative trends
- E6. Increase preventative lawyering and organisational capability building activities
- E7. Seek a moderate increase in support staff numbers
- E8. Improve the communication of AFP Legal's 'value-add' and its KPI performance
- E9. Adapt the new open plan office layout to reduce the risk of security exposures.

E1. Retain the current AFP Legal team composition and structure

E1. Explanation

The current composition and structure of the AFP Legal team should be retained. AFP Legal staff are generally regarded by their peers and their direct internal clients as excellent. They have deep institutional knowledge and are perceived to be experts in their field. AFP Legal can be and should be regarded as a high-performance team and, as such, every effort should be made to retain staff and keep the team intact.

The team structure within AFP Legal is broadly aligned to meet the organisation's needs and appears to work efficiently and effectively. While each lawyer has their own distinct area of expertise and some focus on specific AFP divisions, such as CT or International Deployment, there is strong evidence of teamwork, back-up, mutual support and a sense of collective responsibility.

E1. Rationale

AFP Legal performs exceptionally well on the AFP Corporate Satisfaction Survey with overall satisfaction levels around or over 90% - see Appendix A. The feedback from almost all the internal client respondents as part of this review was particularly complimentary. Most indicated that Legal was core to the AFP's success and they did not view Legal as just a corporate function or overhead. In asking internal clients interviewed in this review to score AFP Legal's performance out of 10, where 10 is excellent and 0 is poor, the average ratings were as follows:

| Criterion | Rating |
|--|--------|
| Depth of understanding of AFP's core operations | 8.6 |
| Depth and trust of the relationships with AFP managers | 8.4 |
| Quality and practicality of advice | 8.1 |
| Consistency of advice | 8.3 |
| Meeting deadlines | 7.4 |
| Responsiveness in meeting requests | 7.8 |
| Innovation | 7.3 |
| Forward planning | 6.8 |
| Quality of staff | 8.7 |
| User training in legal risk and compliance issues | 7.3 |

This is a particularly positive result given the many challenges and 'balancing acts' faced by in-house lawyers, in both the public and private sectors, in particular:

- Being dedicated to user's/organisation' success (saying 'yes' as often as possible) VS retaining independence and complying with the solicitors' duty to the Courts.
- Meeting all deadlines VS being accessible 24/7 with constrained resources
- Being responsible for managing and containing all legal risks VS enabling users to be more self-sufficient and be sufficiently informed and skilled to address low-risk issues.

In the case of AFP, Legal has the added challenge that many of its internal users have some, or in many cases considerable, legal training and regard themselves as experts in the areas of law that they are seeking AFP Legal to advise on.

In the review only one internal user indicated that he felt AFP Legal was 'overly conservative' on some matters. Further investigations revealed this was part of an on-going discussion about the appropriate level of risk AFP should bear in this particular area and was been actively addressed by AFP Legal management.

In terms of cost of legal services and productivity, it appears that the size of the team and its budget has grown roughly in proportion to AFP as a whole. There is no direct comparable in-house team to provide a valid benchmark. All the state policing services are structured in very different ways eg. Victoria Police has a large internal prosecutions team. ASIO's legal team supports a very different set of operational units to that supported by AFP Legal. No

regular detailed timesheets are kept across all practice areas and so it is difficult to compare AFP Legal's utilisation or staff productivity to the notional 'industry' benchmark of seven productive hours per day in an in-house team. Anecdotal evidence suggests most members of the AFP Legal are fully utilised all the time and have a set standard for themselves of high performance and productivity.

It appears that approximately 70 to 80% of AFP's legal work is performed in-house and the balance externally by the AFP's legal panel providers¹. This percentage has varied from year-to-year but is roughly in the 70:30 proportion. Work is typically outsourced when specialist technical legal skills are not available internally, when it makes sense to transfer risk to an external provider, when the in-house team is at full capacity and/or when local service is needed at a remote AFP location. The conclusion from this review is that current split and the type of outsourced work is appropriate and the relationships with external firms are managed well. There is not a strong case to either significantly increase or decrease the amount of work currently outsourced.

Section D above outlines some of the key external trends and future organisational strategies that may motivate for an increase in the size of the AFP Legal team and the addition of specialist skills in the years ahead. Our assessment in this review is that the *current* team is appropriately sized and skilled, subject to the addition of one or two administrative positions (see Recommendation E7). In recommendation E5 we argue that future requests for additional resources be based on detailed demand forecasting and needs analyses.

E2. Clarify and empower the role of General Counsel

E2. Explanation

The head of AFP Legal is commonly referred to within the organisation as 'Manager Legal'. In our view this title potentially limits the strategic impact and potential of the role. AFP as a large multi-jurisdictional law enforcement organisation needs a 'General Counsel' position that has overall responsibility for legal risk management and provides strategic advice from a legal perspective. The AFP needs its legal function well managed and led, but it also needs someone to provide the big-picture long-term perspective on legal issues. In our view the Commissioner and other key AFP executives need a sounding board to challenge their thinking and provide fresh ideas where legal risk management or legislative change can provide new opportunities. This role needs to be suitably empowered, if not in level or rank, but at a minimum in terms of participation in key meetings and access to information and personnel.

E2. Rationale

The Deloitte Corporate Counsel Survey of Australian Corporate Lawyers Association members conducted in January 2010 indicated that 63% of general counsel are now part of their organisation's executive team in Australia. This represents a 57% increase over a five-year period.

¹ See the explanation of measuring in the insource:outsource split on page 6

Similarly, the Blunn and Krieger review published in February 2010 into Commonwealth legal services noted a significant trend in elevating the role of general counsel in public sector organisations and including this position in senior executive teams.

In both the two reference organisations consulted as part of this review, the Victoria Police General Counsel reported directly to the Commissioner and the ASIO General Counsel (SES II) reported to the equivalent to the Deputy Commissioner.

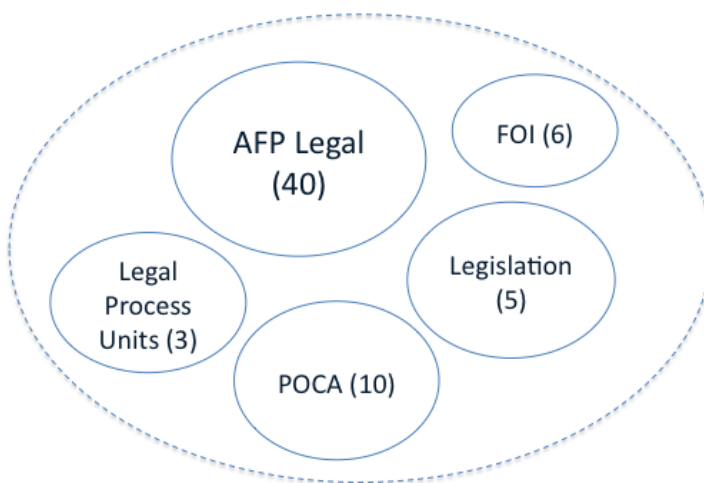
In our view there is important symbolism in the title of the chief legal officer of the organisation. The position needs to be suitably empowered to, when appropriate, counter-balance the views of line management. The 'Manager Legal' title connotes a manager of the legal team, more a functional position rather than a strategic advisory role. In many larger organisations the role is split and they have both a General Counsel as well as Manager Legal. With nearly 40 staff in the team, AFP Legal would be getting closer to the level where this might be considered but given the strength of the current team, particularly those in Co-ordinator roles, we don't believe this is warranted in the short-term.

E3. Bring greater alignment and sharing across all legal-related entities within AFP

E3. Explanation

From our analysis there appears to be a significant opportunity to align the interests and extract synergies from the various legal-related entities across AFP. The chart to the right details the entities concerned and the staff numbers in brackets.

The nature of 'alignment' can range from an informal arrangement where the respective managers meet periodically, through to a creation of a new group with a formalised reporting structure and its own budget. A third option might include a hybrid arrangement with co-location and shared KPIs (Key Performance Indicators). Further analysis and consultation is required as to which of these options is preferred.



E3. Rationale

From prior experience we believe it does not serve the organisation's interests to fragment its legal capability. Fragmentation increases in the risk of inconsistent advice and reduces opportunities for both scale and scope economies. Additional benefits from a larger legal group with aligned interests include:

- More strategic deployment of resources
- Improved back-up and succession planning, particularly for the smaller entities
- Common standards and policies
- Shared knowledge and resources eg. one legal library
- Greater budget certainty
- Improved learning loops and linking to the outcomes of current practices to preventative programs.

One good example of the latter point is ASIO, which has the equivalent of Legislation as part of its Legal division. This is done to ensure regulatory change is enacted to achieve strategic legal objectives eg. witness protection, and that loopholes identified by the lawyers are closed quickly by those driving changes to legislation.

E4. Accelerate implementation of the new knowledge, workflow and practice management system

E4. Explanation and Rationale

There is much scope for AFP Legal to improve its operational practices and systems in three key areas:

- Legal knowledge management
- Matter and project management and workflow
- Legal budget management.

Better practices in knowledge management include:

| Initiative | Goals and benefits | Example implementations |
|---|--|--|
| Maintaining a repository of precedent legal documents | <ul style="list-style-type: none"> – increase efficiency in document creation – reduce costs in document creation – avoid duplication of effort and expense in document creation – capture and share knowledge of legal document | <ul style="list-style-type: none"> ○ create a data base for precedent legal documents ○ develop a system for the capture and entry of precedent legal documents into the data base |
| Maintaining a repository of legal advices and legal knowledge documents | <ul style="list-style-type: none"> – improve efficiency in sourcing legal knowledge documents – reduce costs in sourcing legal knowledge documents – avoid duplication of effort and expense in | <ul style="list-style-type: none"> ○ create data base for legal advices and legal knowledge ○ develop a system for the capture and entry of legal advices and legal knowledge into the data base |

| | | |
|--|--|--|
| | <ul style="list-style-type: none"> accessing legal knowledge documents – capture and share legal knowledge | |
| Sharing legal reference and research materials, resources and repositories | <ul style="list-style-type: none"> – avoid duplication of effort and expense in accessing legal knowledge reference materials | <ul style="list-style-type: none"> ○ develop a system for broad access to legal knowledge resources ○ share subscriptions for legal knowledge and reference materials ○ promote and monitor access to legal knowledge resources ○ integrate legal knowledge resources with relevant legal workflow systems |

Better practices in matter and project management and workflow include:

| Initiative | Goals and benefits | Example implementations |
|--|---|--|
| Improving and systemising legal matter and file management processes | <ul style="list-style-type: none"> – more timely and efficient management of legal files and projects – more effective management of legal files and projects – less costly management of legal files and projects | <ul style="list-style-type: none"> ○ matter identification, monitoring and control systems ○ people and organization identification and tracking ○ docketing and calendaring for matters and key events ○ task, document and other work collaboration systems ○ insight reporting, connected to financial management systems ○ systemised large legal file portfolio management ○ utilise pre-configured third party matter management software solutions |
| Systemising legal tasks and related workflows | <ul style="list-style-type: none"> – capture efficiencies in how legal work is performed and monitored – systemise commoditised and/or lower level and/or low risk legal work | <ul style="list-style-type: none"> ○ use precedent documents ○ document and implement workflow guidelines ○ utilise pre-configured third party matter management software products ○ delegate low level or other appropriate tasks to suitable in-house operators |
| Adopting project management disciplines | <ul style="list-style-type: none"> – ensure that legal cases and projects are managed in the most efficient and cost effective manner | <ul style="list-style-type: none"> ○ introduce legal matter, case and project management establishment protocols ○ retain or seek guidance from those with suitable project management expertise ○ utilise suitable project management software |

Better practices in legal budget management include:

| Initiative | Goals and benefits | Example implementations |
|---|---|---|
| Disciplined management of legal expenses through the use of legal expenditure budgets and/or estimates and/or projections | <ul style="list-style-type: none"> - improve monitoring of legal expenditure - increase accountability of legal services provider for legal costs and charges - improve legal services expenditure management by manager of legal services provider - increase accountability of manager of legal services provider, for legal expenditure - capture and share acquired knowledge and experience in legal expenditure management across agencies | <ul style="list-style-type: none"> o standardise rules for the setting and/or formulation of legal expenditure budgets and/or estimates and/or projections on legal files o standardise rules for the monitoring of legal expenditure budgets and/or estimates and/or projections on legal files o standardise rules for the and adjustment of legal expenditure budgets and/or estimates and/or projections on legal files o standardise rules for reporting on legal expenditure budgets and/or estimates and/or projections on legal files o tie legal budget management to the approval of legal services provider invoices o tie legal budget management to the performance appraisal of legal services providers o tie legal budget management to the performance appraisal of managers of legal services providers o IT automation or enhancement of budget management administration process i.e. matter and/or billing management IT systems |
| Focused budget management of "large expenditure" legal files and projects | <ul style="list-style-type: none"> - target large expenditure matters for priority attention - allocate commensurate level of resources towards large expenditure matters - allocate specialist resources towards costs management of large expenditure matters | <ul style="list-style-type: none"> o adopt specialist rules for the setting and/or formulation, monitoring, adjustment to and reporting on large expenditure matters o adopt specialist bill review and approval protocols for large expenditure matters o specialist and/or independent auditing of legal services costs and charges on large expenditure matters o specialist and/or independent auditing of legal expenditure budgets and/or estimates and/or projections on large expenditure matters |

E5. Undertake more detailed demand forecasting based on AFP's longer-term strategies, government policy and other legislative trends

E5. Explanation

Section D above outlines some of the future longer-term developments within and external to the AFP that are likely to impact on the demand and cost for AFP Legal's services. We would recommend more detailed analysis be undertaken to assess the impact on Legal of

future strategies and initiatives. This analysis should include mapping out possible legal issues and needs and quantifying the number and level of legal resources required.

E5. Rationale

Undertaking detailed demand forecasting is a key input to capacity and resource planning, including the deciding the ideal insource-outsource mix and anticipating staff professional development needs. It provides the core of the business case in requesting additional resources and allows for recruitment process to commence in good time prior to a peak in demand. The *process* of demand mapping is useful in identifying user needs, both current and future, and in clarifying Legal's role and contribution. Demand forecasting also encourages users to consider and quantify additional legal resources that might be required to support new projects and initiatives.

Supporting this recommendation was the result from the short stakeholder interview survey presented in C1 above:

| Criterion | Rating |
|------------------|---------------|
| Forward planning | 6.8 |

E6. Increase preventative lawyering and organisational capability building activities

E6. Explanation

Just as some doctors practice preventative medicine to avoid future medical problems, there is a growing role for in-house lawyers to do more 'preventative lawyering' to avoid future legal problems. The practice of preventative law moves the lawyer from providing less reactive guidance after the fact to providing more proactive guidance before the fact. For example, many legal disputes can be traced back to misunderstood contracts and commercial transactions. Preventative law for business would assure that the client fully understands such contracts and transactions, their legal ramifications and methods to prevent or counteract problems before they escalate into legal action.

Preventative law from an in-house perspective usually involves things like:

- Legal risk analysis – to cover all aspects necessary to ensure that the organisation complies with the law and does not run unacceptable legal risks (including those stemming from commercial transactions), mainly on those aspects that are not dealt with by the other departments such as HR.
- Compliance programs – legal risk analysis may show that it is necessary to develop awareness with certain legal issues and to enforce compliance with the law or even internal policies and guidelines.
- User training and self-help – development is user's capabilities to be more self-sufficient without undue increase in legal risk for the organisation as a whole. Initiatives include user training in relevant legal issues, development of reference guides, creation of self-help tools, publication of FAQs and Q&As on the secure intranet site, and provision of legal updates and alerts. It also may include providing

simple standard legal documents for users to use with clear guidelines for completion.

It is noted that many compliance programs already exist within AFP and are the responsibility of dedicated teams in other parts of the organisation, such as Legislation Compliance, TID, L&D, IAG and various governance teams. It is recommended that AFP Legal undertake further analysis to identify *additional* high-impact preventative lawyering tasks that go beyond these existing programs and deal with specific legal risk issues.

E6. Rationale

AFP Legal already provides user training and a number of user tools and guides. The CT Pocketbook is an excellent example of this. Feedback from users suggests while these tools and the training is welcome, a more comprehensive program would be beneficial. This should include operational support as well commercial and dispute areas. This comprehensive program should include detailed legal risk analysis and compliance programs where deemed necessary.

The benefits from such programs would include:

- Reduced demand for AFP Legal to address more trivial matters creating more capacity to focus on more complex and significant issues;
- Better briefing by internal users as to their legal issues – both in terms of the timing of their brief and the comprehensiveness of their instructions;
- Better and earlier identification of significant legal risks; and
- More exposure and better relationships of AFP Legal staff with senior managers and staff.

Supporting this recommendation was the result from the short stakeholder interview survey presented in C1 above:

| Criterion | Rating |
|---|--------|
| User training in legal risk and compliance issues | 7.3 |

Preventative lawyering programs are often 'self-funding' but require some up-front investment to get them going. By 'self-funding' we mean the reduced demand for legal services through greater user self-sufficiency compensates for the costs of developing and implementing the program in the first place. Some organisations contract in specialist resources to develop such programs particularly if the current legal team is at, or near, full capacity.

E7. Seek a moderate increase in support staff numbers

E7. Explanation

AFP Legal should prepare a business case to hire up to two additional support staff to assist with:

- Document management and filing
- Administrative assistance to Co-ordinators
- Workflow improvements
- Implementation of new knowledge and practice management system.

E7. Rationale

Interviews with AFP Legal staff indicate that up to 20% of Co-ordinator level and other senior staff is taken up with low-level administrative and process tasks. While there is a growing trend in industry for senior in-house legal staff to be more self-sufficient in terms of document preparation and calendar management, it would appear there is somewhat of a 'false economy' in AFP Legal by having senior people doing lots of low level tasks. Our benchmarking data comparing to administrative support staff to professional staff suggests AFP Legal is on the low side - 1 to 6.4 compared a rough in-house legal benchmark of 1 to 5.

Further analysis is required to determine the exact areas where these support staff will be deployed to greatest effect. Our preliminary analysis suggests the litigation and commercial areas are in greatest need.

E8. Improve the communication of AFP Legal's 'value-add' and its KPI performance

E8. Explanation

We recommend that AFP Legal do more to communicate its 'value-add' and its overall performance levels. While current performance is very strong we feel there is still a broad lack of understanding of the scope of Legal's role and its contribution to organisational goals.

We'd suggest an adapted version of the 'Balanced Scorecard' be used as an internal management tool to track performance but also as a device to communicate to external stakeholders. This Scorecard should address these 15 key performance areas:

I. Clients

- a) Overall satisfaction –The extent to which internal clients are satisfied with services provided by the Legal team
- b) Business impact –The extent to which internal clients are satisfied with Legal's contribution to key strategic projects

- c) Accessibility –The extent to which internal clients can readily reach legal counsel when required
- d) Turnaround –The extent to which clients receive all forms of legal counsel in a timely fashion
- e) Practicality of advice –The extent to which internal clients perceive the advice they receive is relevant and practical
- f) Proactivity –The extent to which internal clients perceive that Legal takes the initiative and anticipates future issues and opportunities

II. Financial

- g) Cost of Legal Services - Total legal spend per primary corporate indicator (e.g. revenues, headcount, *etc.*) before charge backs and recoveries. Inside and outside counsel costs and disbursements are included. Measured on actual versus budgeted costs.
- h) Budget Performance - The extent to which approved budgets for total legal spend are met. Measured on actual versus budgeted spend.
- i) Litigation Outcomes - The extent to which planned results on litigated matters over value \$x are attained by legal counsel. Summary report on all matters using green (okay, delivered on plan), yellow (a few concerns, slightly above planned outcomes), red (significantly worse than planned outcomes)

III. Internal

- j) Process efficiency - Performance against agreed estimates on time and cost to resolve matters (internal and external counsel). Suggest random sample of 30 matters per location per annum.
- k) Teamwork and morale: The expression of overall job satisfaction or engagement by members of Legal team. Measured annually using metrics and benchmarks from corporation-wide culture/climate study.

IV. Learning and Growth

- l) CLE investment –Hours per EFT on approved CLE
- m) Strategic contribution –Number of corporate and business unit strategic planning meetings attended
- n) Preventative lawyering programs –Hours/dollars spent on programs to reduce demand for legal and make users more self-sufficient (without adding undue legal risk exposure).

In addition to the Balanced Scorecard we would recommend that AFP Legal implement three actions to address the perceptions of user and other stakeholders:

- Publish a newsletter with relevant legal cases, interesting legal issue and developments, drawing particularly on the material provided by external panel firms.
- Communicate succession plans for the AFP Legal unit servicing CT and operational support areas – a number of key users were concerned about exposure to one or

two key individuals unexpectedly leaving the organisation. It appears that in fact succession plans are well progressed but many users are not aware of these.

- Manage the ‘tangibles’ in and around Legal’s new offices to communicate the quality and professionalism of the AFP Legal team. There is much research to support the proposition people use ‘tangibles – what they can see and touch – in their perceptions of quality. Legal should therefore create more of a professional legal ‘image’ through their use of improved signage, legal libraries and office layout.

E8. Rationale

There is an old management adage: ‘what gets measured, gets done; what gets measured, gets attention’. Having a comprehensive scorecard will help communicates Legal’s value-add and provide evidence of its importance to the organisation. It will also enhance the sense that Legal is willing to be accountable for its performance and communicate both its strengths and weaknesses. The measures will also assist internally within Legal to drive continuous improvement.

E9. Adapt the new open plan office layout to reduce the risk of security exposures

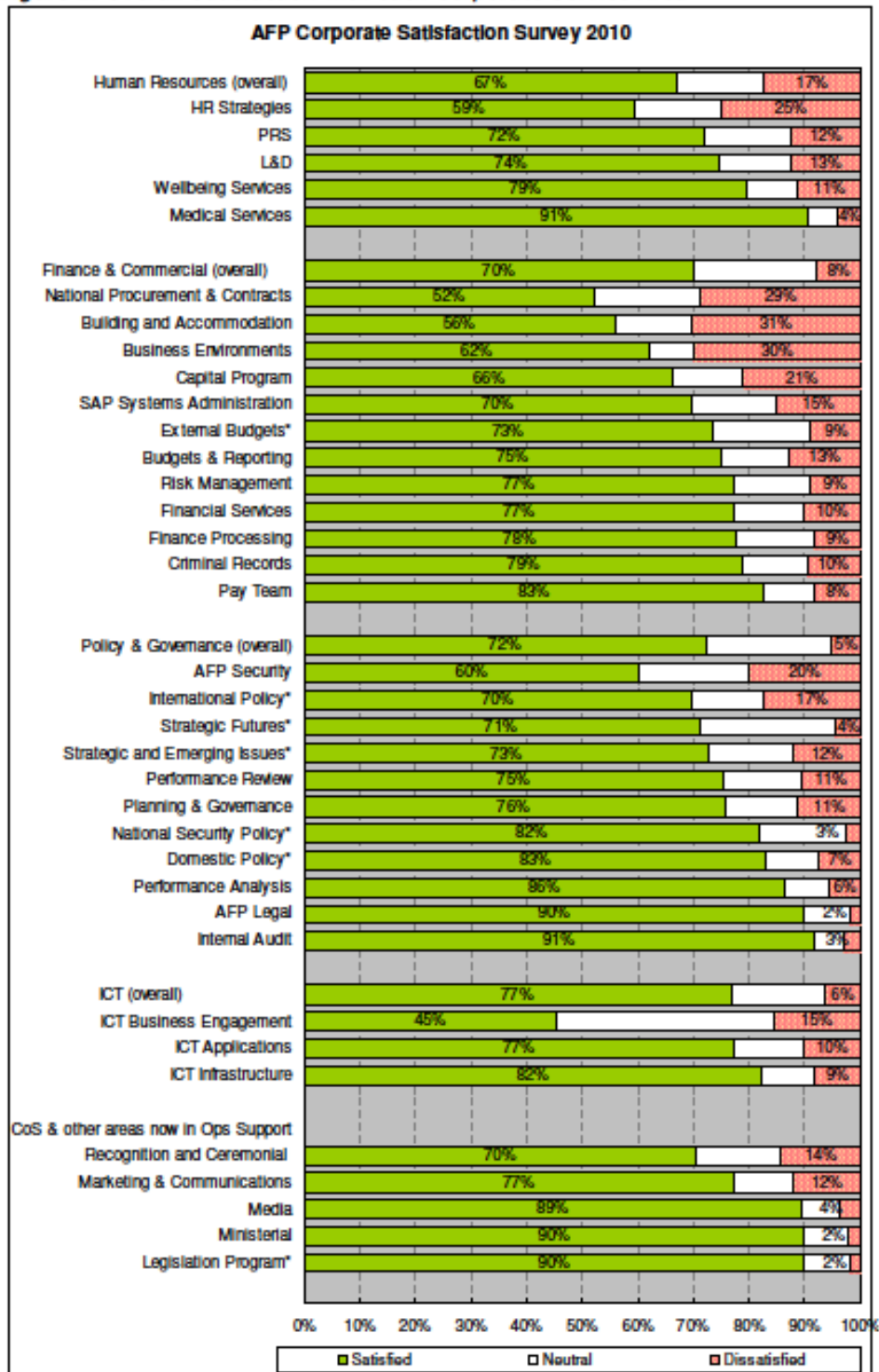
E9. Explanation and rationale

AFP Legal has recently moved into open plan offices. It appears that there are potential security exposures in that AFP Legal staff have limited access to private areas to answer mobile calls and discuss matters of a sensitive nature with police operations personnel. Secondly, the open access to desks and screens increases the risk of a security breach. We recommend that this issue be further investigate by security experts and appropriate actions taken to address the risks identified.

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Appendix A – Results from 2010 Corporate Survey

Figure 1. Overall Satisfaction with each Corporate Service Area



*Fewer than 50 responses

