

BE A GREAT RISK MANAGER (AS WELL AS A GREAT LEGAL PRACTICE MANAGER)

The link between the legal landscape we operate in and risk management

We do not need anyone to remind us again that the Australian and the global legal landscape has changed and is still constantly evolving, but have we actively turned our minds to the fact that this means the risk a firm or an organisation faces is also changing? In many areas of law and areas of business, these risks are increasing with new or more complex regulation. There was a time when the role of lawyers was to advise on legal matters and nothing more. In those old days, lawyers, especially those who operated in-house, were viewed as a roadblock or a hurdle, preventing progress. As for legal practice managers, while they did have to manage various risks faced by running a legal practice, excellence in risk management often was not a key performance indicator. Nowadays, with the increase in risk faced by many firms and organisations, the natural progression has been for lawyers, together with legal practice managers, to take on a risk management role, as good risk management helps a business, including in the form of a legal practice, achieve key organisational objectives and reach financial targets.

The shift in the role of lawyers and legal practice managers in risk management is also in part due to the 2008 financial crisis. A number of legal commentators have highlighted that the key financial issue for businesses is “outside legal spend”. This financial issue has contributed to the rise of the in-house legal function. Having access to immediate, real-time risk management in-house indeed will save a business money in the long run, but more importantly, it increases the chances that advice relating to the management of risk will be sought frequently and regularly, thus mitigating the level of risk a business will ultimately face.

The nature of risk and how legal practice managers can help manage it

Legal risk is a natural outcome of doing business. It is separate from, but overlaps with, other forms of risk that exist in the corporate world, such as financial risk, fraud risk, reputational risk and occupational risk. For legal practice managers, two kinds of legal risks are particularly relevant. The first of these is the legal risk that relates to a particular legal practice (which can be a law firm, an in-house legal team, or a government department) and the objectives of that legal practice. The second type of legal risk is more of an environmental-based risk. It involves the impact of the law in general, rather than the law concerned with the operations of a specific firm or organisation. Both of these legal risks pose a very real business risk. This is because legal risks have legal consequences that will impact on how the firm or the organisation runs its business.

When it comes to the management of legal risk, there are a number of parties that are responsible for mitigating risk. This includes regulators (such as APRA, ASIC, ACCC, AFSA and AUSTRAC), corporate executives, and of course, those in legal practice. Regulators often have the job of ensuring laws are changed incrementally and progressively, allowing time for firms and organisations and the general public to adjust. These changes (should!) come with a focus on clarity and ensuring that those affected have a thorough understanding of what the changes are and how they impact on their operations.

On an organisational level, executive and senior management have a responsibility to work legal risk into the overall operational strategy. In other words, when a firm or an organisation is developing their operational strategy, legal risks should be taken into consideration at all times, and this is where the role

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of lawyers becomes very apparent. Steps a firm or an organisation can take to mitigate legal risk when creating their operational strategy include:

- Implementation of better training
- Improvement regarding disclosure
- Improvement of product design and service delivery
- Identification of customers for whom the product or service is not suitable
- Tracking of the value of the product or service in light of regulatory changes (such as those relating to taxation)
- Implementation of complaints and feedback handling procedures

Legal practice managers should be involved in every aspect of the implementation of these and similar matters to ensure that legal risks are recognised, quantified, and mitigated.

The valuable contribution of legal practice managers in risk management

All legal practice managers have management responsibility within a law firm or legal department, regardless of whether we operate as senior executives, specialist managers (such as in business development, knowledge management, HR, IT or finance), managing partners, senior lawyers with management responsibilities, sole practitioners or government legal counsel. This gives us the golden opportunity to play a significant role when it comes to risk management. Legal practice managers have intimate knowledge of the inner workings of our firm or organisation and can take the reins of risk management in areas such as product development, service deployment, customer protection, marketing, employment, and much much more. This allows us to track developments and anticipate any potential legal ramifications of those developments.

Practice tip

There are lots of reference material legal practice managers can tap into to learn more about risk management. There is this one tip that may not be front of mind but is well worth taking on board. It would be wise for legal practice managers to have a good relationship with any lawyers we work with. While some of us are also lawyers, lawyers we work with (and by this I mean those employed by our legal practice to advice clients and also those whom we seek legal advice from) play a key role when it comes to managing risks relevant to our firm or our organisation. Lawyers whose role has a legal advisory focus (as opposed to a practice management focus) are better placed to identify and therefore manage risks by providing advanced warning of imminent changes in legislation and regulations that could affect (positively or adversely) the firm or organisation. Lawyers also have better visibility regarding the impact of developments in case law. Indeed, a close working relationship between legal practice managers and lawyers will result in a more efficient operation of the legal side of business.

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Ideas for the new year

As contemporary legal practice managers, we have a lot to offer in the risk management space, and we should not detach ourselves from taking on the role of risk manager. Here's one way of thinking about this – legal practice managers are not necessarily tied to a formal risk management function, and this gives us the ability to take a widened view to consider *all* potential risks, legal as well as non-legal, that our firm or organisation may face. Isn't this a great value-add opportunity?

To ignite (or reignite) our passion of being great legal practice managers, here are some areas of our practice that could benefit from our contribution to risk management:

- Trust account rules and practice
- Protocols and guidelines relating to ethics and professional responsibility
- Risk and risk management from the perspective of the professional indemnity insurer
- Policies and procedures relating to entry and exit of senior members of staff, including (or especially) partners
- Management of difficult clients and whether/when and how to exit such clients
- Safe custody management such as security controls

As the legal landscape continues to evolve, legal practice managers need to contribute to risk management in an ever-increasing capacity. We are already in possession of the skills needed to make a valuable contribution – we are already familiar with legislation and regulation that can affect our firm or organisation, and we are also already familiar with the inner workings of our legal practice and its desired objectives and outcomes – so why not choose one of the items on this list or find something else to focus on and make improvements in the new year, and kick start the year with excellence in risk management?

Partner with a risk management specialist like SAI Global. Our services are able manage, monitor and inform you of your businesses performance. Call us on 1 300 730 000 to talk more about this.

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