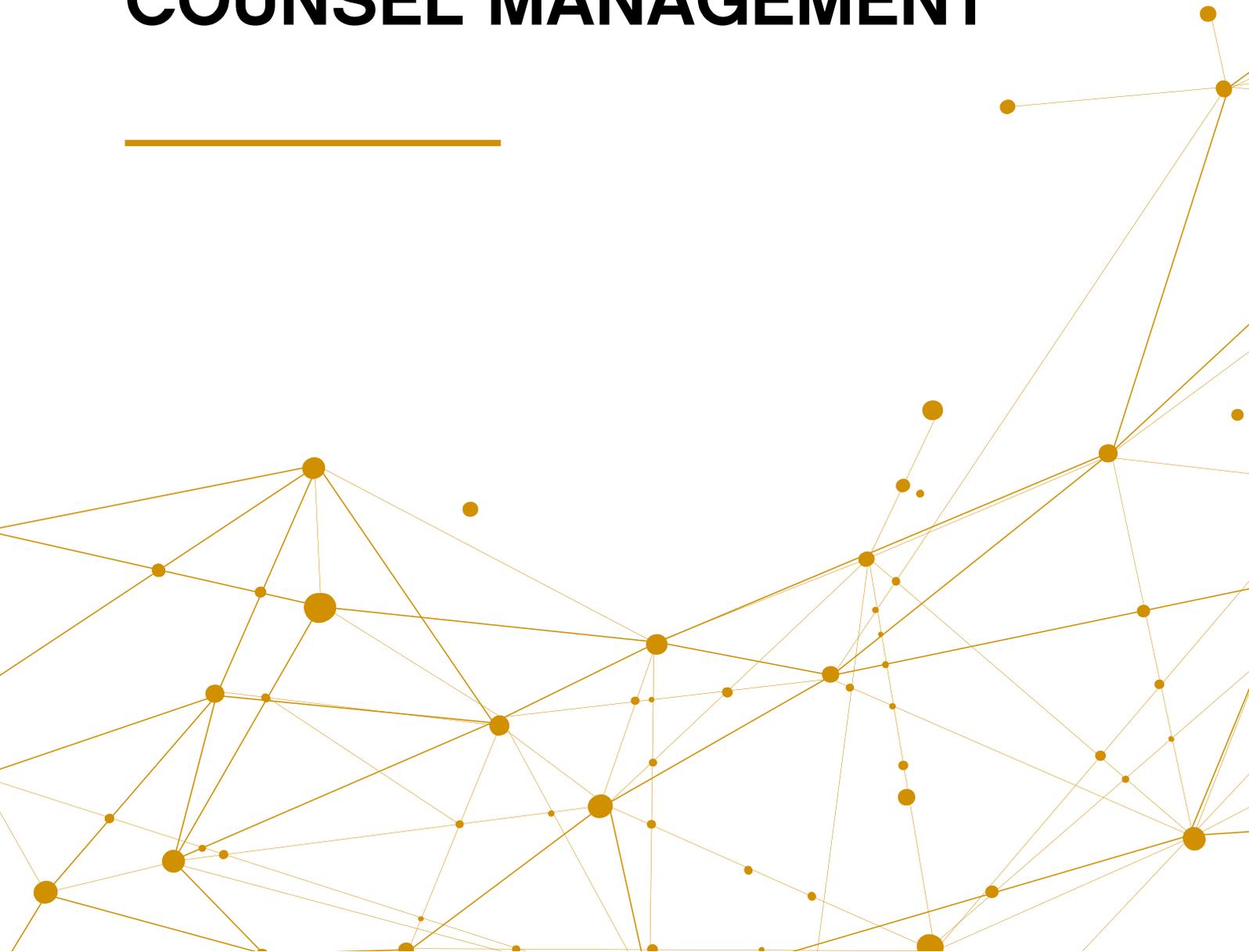




BEST PRACTICE GUIDE

**THE 8 PRINCIPLES OF
EFFECTIVE OUTSIDE
COUNSEL MANAGEMENT**



INTRODUCTION

Organisations across the globe are facing an increasingly complex, uncertain and demanding environment in which to operate and never more so than for their legal departments. Indeed, recent research reported that 85% of legal teams are prioritising the control of external legal spend to meet their organisations' financial and strategic goals. While there is a consensus on the importance of controlling spend, the same research highlighted that the methods currently used by legal departments lack sophistication. While discounted rates and general billing guidelines can be effective, there is an opportunity to develop a more comprehensive approach to the engagement and management of outside counsel that will have a measurable impact.

Adopting a best practice approach to outside counsel management will enable legal teams to manage costs and risks better, enhance service delivery, ensure strategic alignment, and demonstrate value. To help General Counsels future-proof their legal function and introduce proven strategies and tactics, we have distilled best practice outside counsel management to incorporate the 8 principles discussed in this Best Practice Guide.

Your legal department may already be mature in its operations across several of these principles. To assist with your evaluation, we have also provided a checklist to help you map where you are and identify the areas that need attention. For those legal departments that are less mature or only just now turning their minds to improving their outside counsel management, we have provided a helpful section on "getting started".

"Adopting a best practice approach to outside counsel management will enable legal teams to better manage costs, enhance service delivery, ensure strategic alignment, and demonstrate value."

THE 8 PRINCIPLES OF EFFECTIVE OUTSIDE COUNSEL MANAGEMENT



1 PANEL OF LAW FIRMS ALIGNED TO ORGANISATIONAL VALUES AND DRIVERS

Many organisations may have a formal panel of legal services providers, while others may have an informal panel of law firms that they utilise for their external legal engagements. Regardless of how you set-up your providers, your external law firms must be considered an extension of your internal legal function, and as such, strategic alignment on values and goals is crucial for success.

Getting this principle right will have a flow-on effect on how you engage, work with, and evaluate your law firms. Some organisational drivers and strategic goals may be highly oriented towards shareholder value, enabling diversity and inclusion, digital transformation, teamwork, or innovation. Each organisation is different, so start by understanding the unique goals and drivers of your organisation and translating how your legal function can reflect these in the way that you operate and measure success.

These are examples of how organisational goals, values, or drivers could influence your outside counsel management.

Expertise and experience:

- ✓ Ensure that the law firms that advise your organisation have a high level of expertise and experience across the main practice areas in which you brief out
- ✓ Have confidence that the law firms understand your industry through advising similar clients
- ✓ Ideally, law firms will have prior experience with your organisation and key decision-makers
- ✓ Remember that you don't need top-tier law firms for everything, as smaller firms and boutique firms can have excellent experience in specific practice areas

Diversity and inclusion:

- ✓ Law firms included on the panel are vetted for diversity and inclusion practices
- ✓ The legal team has processes in place to measure and evaluate law firms on diversity and inclusion metrics as it relates to the lawyers and barristers who are doing the work
- ✓ Regular reviews with their panel law firms to hold them accountable for taking further action on diversity and inclusion at their firm

Social goals:

- ✓ The law firm panel incorporates local firms, boutique firms, and firms that identify as indigenous or women-founded
- ✓ Implement processes to remove large law firm selection bias
- ✓ Monitor and measure equitable briefing across law firms

Shareholder or commercial value:

- ✓ Have a range of law firms on the panel with a cross-section of top-tier, mid-tier, boutique and alternative legal service providers
- ✓ Have commercial arrangements with firms to deliver value and efficiencies
- ✓ Use RFPs to leverage competition and demonstrate value
- ✓ Track and measure value-adds provided by law firms

Innovation goals:

- ✔ Use digital technology to streamline processes and capture data
- ✔ Implement innovation budgets with law firms to emphasise and reward innovation

Team goals:

- ✔ Choose law firms and external teams that are good to work with, accessible, and treat their people well

These are just a small selection of ways that legal teams can implement strategies with their outside counsel to align with their organisation's goals and drivers. Communicate transparently with your law firms, and there will be many ideas and initiatives that they can also bring to the table. You will soon be able to identify those relationships where the values and drivers are not aligned. You might need to make some tough decisions and discontinue commercial relationships with some firms, but remember that strategic and values alignment is the first principle for a reason - it is arguably the most important.

"Each organisation is different, so start by understanding your organisation's unique goals and drivers and translate how your legal function can reflect these in the way that you operate and measure success."

2 USE THE RIGHT LAW FIRMS FOR THE RIGHT WORK

Once you have identified a formal or informal panel of law firms strategically aligned with your organisation's goals, turn your focus to ensure that you use the right law firms for the right legal work. Remember that the law firm selection and engagement decisions that have been made in the past may not be the right fit for the future, so avoid getting caught in a cycle of doing what you've always done and expecting something different.

Matching the right work to the right firm can only be done when you clearly understand the legal work that goes through your department. High-performing General Counsels also have a strategy for determining the work that is outsourced, insourced or tech-sourced ([read more here](#)).

For work that is outsourced, consider the volume and complexity of the work, and develop sourcing strategies that will meet your requirements and align with your organisational drivers (refer to diagram). Some high volume work types will have one provider that combines technology and expertise with a negotiated commercial arrangement. Other work types should have multiple providers that have expertise in the area and deep knowledge of your industry and organisation.

If you still need to do so, take steps to articulate your resourcing and sourcing approach and processes, communicate this with your team and refer to it on a regular basis.



Incorporating technology should be considered to digitise these processes. This can ensure that a consistent approach is applied across matter types, jurisdictions, and business units. An example of this is to utilise workflow automation to replicate the briefing of legal work based on predetermined rules and established workflows. Additional benefits of integrating technology when aligning work to law firms include:

- ✓ Removing bias from the decision-making processes
- ✓ Digitising manual processes
- ✓ Capturing data for strategy evaluation and continuous improvement

Moreover, access to data provides insights that can be used to predict and make future decisions to optimise the resources available, contribute to the company's strategic operations and elevate the role of the legal team.

"Remember that the law firm selection and engagement decisions that have been made in the past may not be the right fit for the future, so avoid getting caught in a cycle of doing what you've always done and expecting something different."

3 MANDATE (COMPETITIVE) QUOTES

Negotiating fees with law firms is crucial to managing external legal spend. However, obtaining a discounted hourly rate in isolation is not enough. A 20% discount on an inflated scope of work and a poorly managed matter is not a good outcome. To achieve a better result, a best practice framework and structure should be in place across the lifecycle of each matter, including mandating quotes for all work and competitive quotes for sub-sets of matters.

In the context of the legal function, a quote is an estimated fee (or other alternative arrangement such as fixed fee) for an agreed scope of work and must be received and approved prior to work commencing. For high volume work, this can be pre-agreed as part of law firm negotiations to save time for both parties, with a process for agreeing on ad hoc variations. For all other work types, however, it can be more complex and must start with good instructions.

In-house lawyers must provide clear, specific, and detailed instructions that include strategic information, timeframes, and service levels, such as the preferred level of expertise for handling the matter. This information is valuable to law firms because it enables them to scope the matter correctly, identify potential risks and assumptions, and provide accurate fee proposals. Poor instructions can result in the following:

- ✓ Delays or missed deadlines
- ✓ Over-servicing
- ✓ Duplication of work
- ✓ Poor outcomes
- ✓ Frustration on both sides

By providing detailed instructions, lawyers can help their law firms to deliver better outcomes and improve working relationships.

With detailed instructions, an agreed scope of work and a fee estimate (as a minimum), the in-house lawyer and their law firm counterpart are now on the same page with transparency over expectations and deliverables. But how do you know that what you've agreed is market priced or represents value for money?

As discussed in the previous section, there are times when it is appropriate and indeed best practice for a pre-selected law firm to be engaged for certain types of work. More complex work, however, should require in-house lawyers to obtain multiples quote or proposals to understand market price. It is important to set consistent expectations about when matters should require a competitive matter RFP or RFQ (request for proposal/quote) - it may be based on matter type, spend, jurisdiction, or a combination of all of these. Even litigation matters can be broken down into phases with scopes of work, and estimates applied to each phase.

Read more here:
[The best legal spend management starts with good instructions](#)

The best practice approach for managing competitive matter RFPs involves the following steps:

1. Provision of a matter summary to at least two preferred law firms with sufficient information that they can clear conflicts
2. Once conflicts have been cleared, the law firms are sent detailed instructions that may also include budget guidance and preferred fee arrangement along with relevant attachments
3. The law firms respond with a fee proposal that includes a scope of work of what is determined to be in-scope, out-of-scope and any key assumptions.
4. Communication with firms may be necessary to get the scope of work right
5. With responses received from all firms, the in-house lawyer can compare like with like, make a recommendation and/or engage the preferred law firm
6. Communicate with the law firms regarding their success and with feedback on why they have or haven't been successful
7. Include an approval process so that a senior lawyer or the General Counsel reviews the final engagement decision
8. Capture data at the point of engagement for reporting purposes including the reasons for engagement, the quoted fee differential, fee structure, the selected law firm and the agreed initial estimate

Technology can also be a wonderful enabler for implementing RFPs and quotes for scopes of work. It can streamline and automate processes while securely transferring information and capturing data for reporting. It can also ensure that internal policies mandating competitive RFPs are adhered to. Further, some technology solutions can support collaborative processes and provision of reporting for the law firms, which can elevate transparent communication and ensure both sides are on the same page.

Using competitive RFPs for individual matters has many benefits, including maintaining competitive tension, demonstrating value for money to the organisation, and ensuring the best price is obtained while controlling for quality. Provision and formal approval of a fee estimate (or alternative fee arrangement) for an agreed scope of work, ideally with competitive proposals, is one of the best strategies for demonstrating value to the organisation and using valuable resources effectively.

Initially, there may be resistance from internal stakeholders and law firms. However, they will soon value the transparency and consistency an even playing field creates. Furthermore, this approach is objective and professional and will be welcomed by your procurement and finance colleagues.

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4 MANAGE BUDGET CHANGES PROACTIVELY WITH ESCALATIONS AND APPROVALS

Once a budget is agreed for a matter, it isn't a case of "set and forget". Legal matters evolve over time, and both internal lawyers and engaged law firms are accountable for monitoring changes to the budget and scope of work. The best practice approach to managing this is to set expectations and adopt consistent processes for managing budget and scope changes and align this with formal approval protocols.

These are examples of successful approaches to managing budget changes:

- ✓ The law firm has visibility over the approved scope of work and budget and can proactively request changes to scopes of work and request budget changes
- ✓ Any changes to the agreed scope of work and corresponding fees for each matter must be formally approved before the costs are incurred
- ✓ Law firms and the internal lawyer receive alerts when their matters are approaching budget
- ✓ Law firms are restricted from sending invoices that send a matter over the budget and will be directed to request a change of scope for approval
- ✓ The responsible in-house lawyer will challenge charges not justified or agreed upon in advance

Adopting approval workflows at crucial parts of the matter lifecycle can also ensure that the proper process has been followed and that the spend being incurred is appropriate. Some organisations have complex internal approval structures, so it is essential to reflect this in the approval matrix and include escalations.

Best practice approvals include:

- ✓ Prior to instructing a law firm/s
- ✓ Prior to engaging a law firm
- ✓ Change of scope and budget
- ✓ Invoice review
- ✓ Matter completion

"Adopting approval workflows at crucial parts of the matter lifecycle can also ensure that proper process has been followed and that the spend being incurred is appropriate."

Technology can be utilised to systematise and automate these approval processes and remove the manual burden from in-house lawyers. Some solutions offer numerous levels of approvals and automated escalations that are easy to set up, use and maintain.

Improving processes and streamlining ways of working can be a game-changer, but it's important to acknowledge that change management can present challenges. To effectively improve processes, it's important to define and adopt transparent and consistent working methods and explicitly set expectations.

Once you've defined your processes and agreed on working methods, it's critical to articulate and communicate them with your law firm. They will appreciate your transparency and value having insight into how you make decisions, particularly around selection and engagement processes for new matters and budget management for engaged matters.

5 PROCESSES TO REVIEW INVOICES AND CAPTURE DATA

Receiving, reviewing and approving invoices for payment is a common bottleneck for in-house legal departments and a key frustration for law firms. As such, it is a core component of best practices regarding outside counsel management.

When invoice management and e-billing is done poorly:

- ✓ Invoices get lost in an inbox and don't get paid
- ✓ Invoices are significantly higher than expected
- ✓ Invoices are not compliant with billing guidelines or agreed panel terms
- ✓ Invoices are rejected, and the law firm doesn't know why
- ✓ Internal personnel and law firms waste time tracking down invoices or chasing payments
- ✓ Data capture is incomplete, inaccurate or manual

Many of these challenges can be overcome by having structured processes and appropriate systems to automate invoice receipt, review and approval. Further, having the previous best practice principles in place for engaging and managing matters, scopes of work and budgets will ensure that invoice review and approval is streamlined and frictionless.

Best practice processes for invoice receipt, review and approval include:

- ✓ Tracking invoices against agreed budgets as matters progress
- ✓ Reviewing invoices against what was agreed as in-scope and out-of-scope
- ✓ Formal approval processes for the responsible lawyer to approve the invoices and then route them to appropriate approvers or delegated authority if required
- ✓ Submission to accounts payable of essential financial details only to avoid sharing sensitive information that may be contained in the invoice
- ✓ Capture of key data points for reporting

Good invoice management can be done manually. However, if you are working with a large scale of invoices, then technology solutions can help automate and streamline these processes.

"Having best practice principles in place for the engagement and management of matters, scopes of work and budgets will ensure that invoice review and approval is streamlined and frictionless."

6 TRACK ACTUAL AND FORECAST SPEND AGAINST A BUDGET

Monitoring and reporting external legal spend against a budget is vital for identifying potential issues early and providing a basis for analysis. Having this information at a matter level and aggregated to the law firm, business unit, and company level will enable you to quickly identify where costs are blowing out and flag possible issues with outside counsel relationships. Further, effective reporting and monitoring of outside counsel engagements and spend must occur across the life of the matter. Once the matter is completed and fees are invoiced, there is little opportunity to influence what has happened. The only recourse is negotiations and bill disputes with your law firm, which often lead to frustration and damage to the relationship.

Tracking actual and forecast spend at a matter level involves collating the invoiced spend and work in progress that still needs to be billed and comparing that to the approved fee estimates. It will provide an accurate representation of the financial commitment and exposure for the organisation. Further, this is a highly accurate basis for forecasting future spend at the individual matter level and, when aggregated, at the company level. High-performing legal departments can respond to this by providing a degree of granularity and accountability that CEOs and CFOs demand.

In addition to the best practice approach of tracking actual and forecast against a budget, monitoring and reporting of outside counsel engagements and spend should include the following metrics:

- ✓ A breakdown of matters that are at 80% or more of the approved budget
- ✓ Change of scope analysis, including reasons for scope change, split by law firm and practice area if appropriate
- ✓ A breakdown of the type of engagement (direct, RFP, secondment, off-panel) and fee structure of all matters split by law firm and business unit
- ✓ Average fees by matter type split by law firm and jurisdiction
- ✓ Invoiced spend split by law firm, matter type and business unit

This information will be key to effective outside counsel management as it will flag possible issues or non-compliance for further investigation. Moreover, subjective information and reporting is also very beneficial. This could include ratings by law firms on the quality of the instructions received and post-matter ratings by the internal responsible lawyer against relevant criteria, providing a 360° view of the extended legal function's performance.

Technology will be valuable in automatically capturing and collating real-time or close to real-time information. Look for ways to remove the burden of manual data entry and automate all or some aspects of the reporting. Some solutions can automate the rating surveys, issue alerts for both sides when matters are approaching budget, and provide detailed reporting on progress against budgets.

Monitoring and reporting on spend is one of the most critical aspects of managing a legal department, as it provides the data and metrics to inform decision-making. This is also the level of reporting needed for the Board and senior management, so consider how to make this visual, professional and readily accessible without it becoming a burden.

Read more here:
[Dashboards and metrics for the modern General Counsel](#)

"Having this information at a matter level and aggregated to law firm, business unit, and company level will enable you to quickly identify where costs are blowing out and flag possible issues with outside counsel relationships."

7 LAW FIRM RELATIONSHIP PROGRAM

Strengthening relationships with law firms can result in long-term cost savings and better outcomes because the law firm develops a deep understanding of the organisation and gains efficiencies from working collaboratively over time. This is why best practice outside counsel management includes having a program around strengthening, supporting and building relationships with your extended legal team – your law firms. These are some areas that should be considered when establishing or enhancing your law firm relationships.

Company knowledge: The best-performing law firm lawyers will be those that know your organisation well and are acquainted with the business’s culture, goals and drivers. Look for ways to promote this, such as having lawyers on secondment, inviting them to your team meetings, and meeting with relationship partners regularly.

Clear expectations: The best professional working relationships have well-defined roles and responsibilities, including your extended legal function. Ensure that your law firms know what is expected, as well as an understanding of your internal processes and ways of working. This will alleviate uncertainty and provide a structured environment.

Two-way feedback: While developing relationships is essential, avoiding and addressing factors that could potentially destroy the relationship is equally important. For example, an in-house lawyer may become excessively involved in the law firm’s work, leading to micromanagement and a lack of trust in the firm’s ability to perform its duties. A consequence of this can be increased costs and inefficiencies and harm to the relationship. This is why it is essential to formalise a regular feedback program and seek to understand ways that you and your team can improve.

Valuing value-adds: Many law firms provide or offer different types of value-adds to their clients. Options can include CPD sessions, horizon scanning, lunch and learn sessions, legal research, innovation workshops, access to meeting rooms, and many more. Best practice outside counsel management aligns legal department needs and goals with value-add offerings. This means you have a planned and strategic approach to asking for and using value-adds and, importantly, understand the value you are receiving from your law firms. Track, report and monitor the value-adds from your law firms and share this information at your relationship meetings.

Performance evaluation: Adopt a quarterly cadence for relationship meetings, and keep them. Whether in-person or virtually, actively engage with your law firm relationship partners and share reporting, feedback and company knowledge. Don’t focus only on problems and legal issues but also celebrate successes and thank them for their support and contribution.

Adopting a formal strategic approach to managing your law firm relationships will result in better relationships and outcomes for your legal department.

“Best practice outside counsel management includes having a program around strengthening, supporting and building relationships with your extended legal team – your law firms.”

8 REVIEW PROGRESS AND ITERATE

The most successful teams are those that practice self-reflection and strive for constant improvement, making it a principle that should not be overlooked. To make progress and pinpoint areas that need attention, practical measures can be implemented. Yet, fostering a supportive environment that encourages your team to seek, receive and provide feedback is also vital.

Conduct regular reviews that could include:

- ✓ Law firm relationships (as discussed in the previous section)
- ✓ Post-matter reviews to capture qualitative feedback on how the matter was run and identify areas of concern (these can be automated surveys)
- ✓ Panel reviews to review if your providers are meeting your needs
- ✓ Strategic alignment reviews, such as reviewing diversity and inclusion metrics
- ✓ Process reviews to identify opportunities to improve processes

Data that is captured through the process of managing outside counsel, as discussed in principles 3 through to 7 in this Guide, can feed into these reviews to inform future decision-making on legal panels, engagements and other aspects of legal procurement.

Ultimately, regularly reviewing processes alongside qualitative and quantitative data and metrics can help identify inefficiencies and improvement opportunities. Remember to get your team involved in the review programs and provide a safe and supportive environment for change to occur.

“Fostering a supportive environment that encourages your team to seek, receive and provide feedback is vital.”

GETTING STARTED

Your legal department may already be mature in its operations across a number of the 8 principles discussed in this Guide, and to assist with your evaluation, we have provided a checklist to help you map where you are right now and identify the areas that need attention - if this is you, go straight to the [checklist!](#)

For those legal departments that are less mature or you are only just now turning your minds to improving outside counsel management, this section on "getting started" is for you.

The best place to start when thinking about your organisation's outside counsel management is to get a really good understanding of your current state - where you are right now. These are a few tips:

- ✓ Ask your finance colleagues to gather as much information as possible from your enterprise finance systems on legal spend, matters and law firms
- ✓ Ask your law firms to provide you an export from their practice management systems on all past and current matters including invoiced spend and budgets
- ✓ Gather information from your internal legal team about their views on what is working and what is not
- ✓ Conduct a formal review of existing processes and ways of working
- ✓ Think about what success looks like and imagine your ideal future state
- ✓ Develop a strategy with goals and objectives about how you could get to that future state
- ✓ Consider the types of supportive technologies that you will need

The following checklist and this Guide will also be a helpful resource to refer to as your legal function matures and adopts a best practice approach to effective outside counsel management.

"The best place to start when thinking about your organisation's outside counsel management is to get a really good understanding of your current state - where you are right now."

OUTSIDE COUNSEL MANAGEMENT CHECKLIST

	Need to start	Making progress	On top of this	Not relevant
Principle 1: Panel of law firms aligned to organisational values and drivers				
Have a formal or informal panel set up				
Understand our organisational goals and values and how they translate to the legal department				
Have a process for engaging with our law firms on these values and drivers				
Have a process for measuring their performance on these values and drivers				
Principle 2: Use the right law firms for the right work				
Have a good understanding of the work that goes through the legal function				
Have a consistent and clear approach for insourcing and outsourcing legal work				
Use a range of different law firms to meet the needs of our legal team				
Have a strategy to guide which law firms to approach for different types of matters				
Principle 3: Mandate (competitive) quotes				
Have a policy for when and how to approach law firms for competitive quotes / RFPs				
Can demonstrate the frequency of using RFPs and the outcomes				
Track and report on fee estimates for all matters				
Have a focus on providing good instructions				
Formally agree fee estimates and scopes of work prior to work commencing				
Use internal approvals to ensure compliance with internal policies and delegation of authority				
Use technology to automate RFP processes and reduce manual emails, collation of responses and data entry				
Principle 4: Manage budget changes proactively with escalations and approvals				
Have a process for managing and tracking changes to scopes of work and budgets				
Have internal approval processes at key points of the matter lifecycle				

OUTSIDE COUNSEL MANAGEMENT CHECKLIST

	Need to start	Making progress	On top of this	Not relevant
Law firms understand and are familiar with our internal processes				
Use technology to automate processes and capture data				
Principle 5: Processes to approve invoices and capture data				
Consistent processes for reviewing and approving invoices				
Reviewing and approving invoices is streamlined and not time intensive				
Key invoice data is captured and tracked				
Use technology to automate the data capture and reporting				
Principle 6: Track actual and forecast spend against a budget				
Track actual spend against forecast on a matter by matter basis				
Have visibility over matter budgets and those that are approaching 100%				
Have access to reports that show the changes of scope and variations by law firms				
Have access to reports that show how matters are engaged (direct, RFP, secondment etc)				
Principle 7: Law firm relationship program				
Have a formal program for managing law firm relationships				
Have performance evaluations at least on a quarterly basis				
Have a process for managing and reporting on value-adds from law firms				
Principle 8: Review progress and iterate				
Have a culture of continuous improvement with the giving and receiving of feedback				
Conduct post-matter reviews				
Review processes and technology on a regular basis				

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Lawcadia provided us with the system we needed to ensure we could accurately track our matters, budget and spend across the legal function.”

Nigel Lowry, General Counsel & Company Secretary, Ausgrid

