

A Guide for Prospective Corporate Lawyers

Victorian Legal Services
BOARD + COMMISSIONER

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Key points

- A corporate lawyer is a lawyer with a corporate practising certificate. They engage in legal practice only in the capacity of an in-house lawyer for their employer or a related entity. The employer may be a company or a not-for-profit organisation but does not include government entities.
- Practising as a corporate lawyer can be challenging and satisfying, but lawyers considering taking an in-house role should first understand the nature of the role and undertake due diligence before accepting a position.
- Corporate lawyers are bound by the same professional conduct rules as all lawyers, including the paramount duty to the court and the administration of justice, and the need for professional independence and integrity.
- As an employee, a corporate lawyer needs to ensure that any pressure from their employer doesn't compromise their professional integrity. They need to be clear about what steps they can take to resolve potential conflicts and there should be a process to escalate and resolve any differences.
- Corporate culture can support ethical compliance, or it can make it harder. Prospective corporate lawyers should find out about an organisation's culture including what values and behaviours are prioritised.
- Due diligence prior to accepting an in-house role involves:
 - assessing your own skills, knowledge and experiences
 - understanding how well supported you would be in the role
 - making sure you have access to external sources of advice and support
 - ensuring that you understand the core expectations of corporate lawyers.

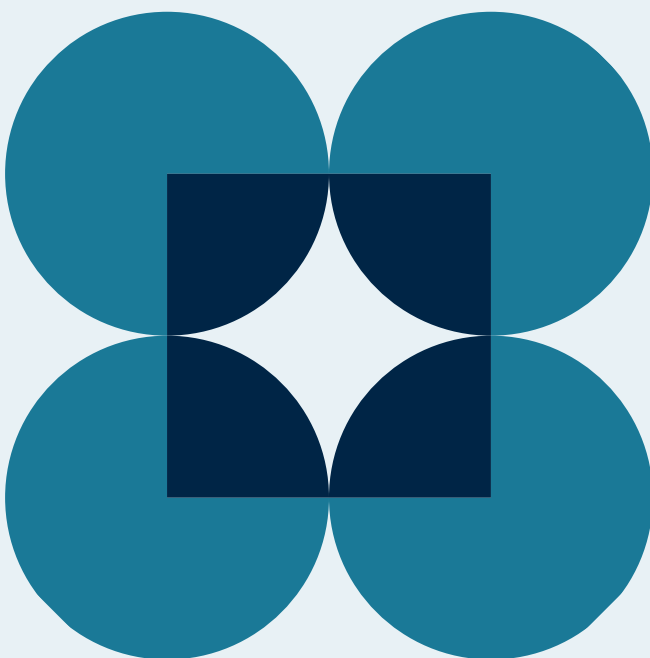
Introduction

The work of a corporate in-house lawyer (**corporate lawyer**) can be rewarding, interesting and challenging. It provides an opportunity to work closely with an organisation and take on different responsibilities. Corporate lawyers play a critical role in helping their employer operate within the law, contributing to public trust and confidence in the rule of law.

This resource has been prepared by the Victorian Legal Services Board and Commissioner (**VLSB+C**) as the regulator of Victorian lawyers. It aims to provide guidance to lawyers who are thinking about moving into a corporate role at a business or not-for-profit organisation.

As part of this resource's development, the VLSB+C consulted with the [Law Institute of Victoria \(LIV\)](#), the [Association of Corporate Counsel \(Australia\) \(ACCA\)](#), individual corporate lawyers, and academic experts. We also drew on materials for corporate lawyers in other jurisdictions, including resources published by the Solicitors Regulation Authority in England and Wales.

The VLSB+C also has a statement of core expectations for Victorian corporate lawyers and information for employers of corporate lawyers. These can be accessed at lsbc.vic.gov.au/corporate-lawyers.



Legal framework for in-house practice

The VLSB+C regulates Victorian lawyers in accordance with the [Legal Profession Uniform Law Application Act 2014](#). This includes lawyers practising in an in-house capacity for a business or a not-for-profit organisation (such as a charity).

Corporate lawyers have the same professional privileges as all lawyers, including the right to claim client legal privilege (also known as legal professional privilege). However, holders of corporate practising certificates cannot operate a trust account. They are also not required to hold approved professional indemnity insurance, although some employers may provide coverage under directors and officers insurance cover.

Although there are different categories of practising certificates, there are no special provisions in the [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#) (the **Conduct Rules**) for corporate lawyers – they are bound by the same ethical obligations as other lawyers. These include the fundamental duties of:

- acting in the best interests of their client
- courtesy and honesty
- competence and diligence
- avoiding any compromise to their integrity and professional independence.

All of these duties are subject to a lawyer's paramount duty to the court and the administration of justice.

Corporate lawyers may also have duties under other regulatory schemes, such as the [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#) (**AML/CTF Act**). General Counsel and other senior lawyers may have additional responsibilities under the [Corporations Act 2001](#) (**Corporations Act**) if their role qualifies them as an 'officer' of the corporation they work for. Some of the duties might overlap with their professional duties as a lawyer. A breach of other duties might be relevant to consideration of a lawyer's suitability to practise if the breach also amounts to a breach of a lawyer's Uniform Law obligations.

Becoming a corporate lawyer

Corporate practice is as demanding as private practice but has different pressures. Advice might be required more quickly or verbally; it may involve a deeper consideration of a company or organisation's commercial or strategic priorities and non-legal risks; and it might cover a wider spectrum of issues than the work undertaken by specialised lawyers in private practice. Many lawyers working in corporate roles find the work and the opportunities it provides very satisfying.

While much of the work of a corporate lawyer is undertaken in a collaborative way with organisational colleagues, they must always protect their role as an independent and professional adviser.

A corporate lawyer's paramount duty is to the court and the administration of justice. They must ensure that their professional integrity is not compromised by inappropriate employer pressure.

Lawyers working in private practice can sometimes be challenged by their duty to give a client, especially an important client, advice they do not want to hear, but this dilemma can be especially acute for corporate lawyers whose client is also their employer. Such dilemmas are an inevitable part of in-house practice; corporate lawyers should both expect such dilemmas to occur at some point in their employment and be capable of managing them effectively.

If you are considering moving into an in-house role, it is important for you to do your due diligence beforehand, as well as look for a role in which you have appropriate support and (if necessary) supervision.

Questions to ask yourself

Take the time before you start an in-house role to gain a clear understanding of the alignment between your skills and aspirations and your potential employer's expectations and approach.

Here are some questions to ask yourself before applying for or accepting a role as a corporate lawyer or obtaining a corporate practising certificate.

Your knowledge and experience

Many corporate lawyers operate with a high degree of autonomy and with less supervision than they might have experienced in private practice. Ask yourself:

- Do I have the knowledge and experience to perform the specific role? Is there a more senior lawyer on the team who I could turn to if I am relatively inexperienced (less than five years)? Can I access help from an external lawyer or law firm?
- Does the work require specialist knowledge of some areas of law, or require me to provide advice on a wide range of topics? Some topics corporate lawyers deal with are property and business sales and acquisitions, leases, banking, securities and other financial instruments, taxation, litigation, corporate governance, joint ventures, competition law, contracts for goods and services, employment issues, regulatory compliance, and intellectual property rights.
- Which areas of the law can I deal with competently, and which should I not advise on? Could other team members or external lawyers handle requests outside my areas of competence? Which new skills should I acquire and how will I go about this?
- Do I have the interpersonal skills and judgment to communicate well, work collaboratively and still maintain my independence?
- If I am going to be working solo or in a small team, how will I make sure that I don't become isolated or that my work doesn't negatively affect my wellbeing? What external networks can I reach out to?
- Am I skilled enough to find solutions to legal issues that work for my employer without compromising my professional integrity? How will I become a trusted legal adviser and not be perceived as impractical or unable to explain legal risks in a clear and relevant manner? How would I approach a situation where I might need to advise against a strongly desired course of action?
- Do I fully understand the boundaries around client legal privilege? What steps will I take to ensure that my colleagues understand the limits of the privilege?
- Do I have, or can I acquire, the skills and experience necessary for any other roles I might be asked to perform, such as company secretary or risk and compliance officer?



Your client

The more you can demonstrate an understanding of the business, the more your employer will trust your advice and judgement. Ask yourself:

- Who is my client?
- Are there related companies and entities that will also be my clients, and am I confident I will be able to identify any conflicts that might arise in advising them?
- Am I interested in the organisation's business?

Your prospective employer

An organisation that adopts an ethical approach is less likely to present challenges for compliance with your ethical and professional obligations. Ask:

- What is the organisational culture like?
- Are there valued behaviours, and if so, is there evidence that these are integrated into the corporate culture?
- Is there a 'speak-up' culture?
- Has the organisation been prosecuted for regulatory breaches or criminal offences and if so, has it put strengthened compliance processes in place to address the problems?
- Is pressure to win at all costs or loyalty to the CEO a dominant driver of culture?
- What is the organisation's risk appetite and how will that affect the advice I give?

Answers to some of these questions might be available from an internet search or by speaking to your networks. Others might need to be sought during discussions or interviews.

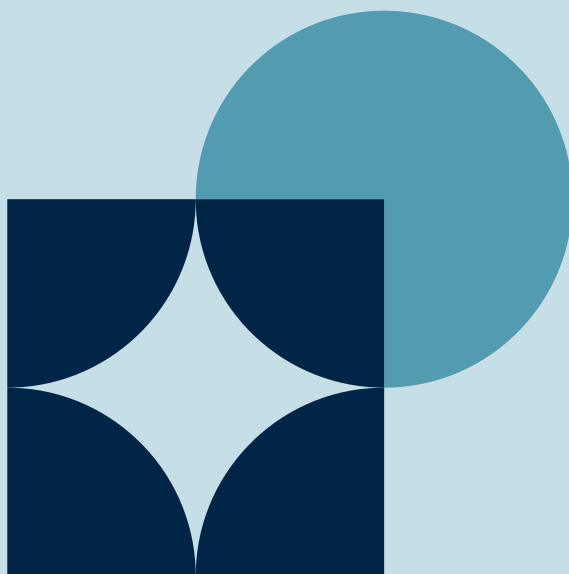
Questions to ask your prospective employer

If you are interviewing for an in-house role, or considering an offer, here are some questions to ask your prospective employer.

These will help you consider if their policies and procedures, culture and ways of working will meet your requirements and expectations.

Resources and support

- Do they understand and support my professional role and ethical obligations as a practising lawyer?
- Do they understand my obligation to give independent advice, and that my paramount obligation is to the court and the administration of justice? Will this be acknowledged and protected in my employment contract?
- Do they understand that I cannot be an expert in all areas of legal practice?
- What are the expectations about using external lawyers and is there a budget for seeking external advice?
- How well resourced is the in-house legal team, including IT and administrative support?
- Will I have access to subscriptions, memberships and precedents?
- Will I have my own office or if not, access to secure document management systems and a room for conducting confidential conversations about privileged matters?






Policies and processes

- Are there policies and procedures in place to support my professional independence?
- Are there policies and procedures for internal requests for advice?
- Who does the most senior lawyer report to, and does the most senior lawyer have direct access to the CEO and Board?
- If the role is a general counsel or senior lawyer role, does my employer understand the regulatory requirements under the Corporations Act that apply to 'officers' of the company? In particular, do they understand that, in addition to the CEO, I would also be responsible for ensuring that the board is properly advised of significant legal or regulatory risks of which I am aware?
- Is legal advice always signed off by a practising lawyer?
- Are all lawyers or people working on legal issues required to have a practising certificate?
- Are there processes for escalating a difference of opinion or for providing legal advice that might be perceived as cutting across organisational activities, plans or priorities?

Non-legal work

A corporate lawyer is often asked to bring their skills to projects outside their practice, such as non-legal services for a major procurement project. Ask:

- Will I be expected to undertake non-legal work?
 - Will I be expected to perform other roles and participate in non-legal projects?
 - Are there regulatory requirements for other roles that I might be asked to perform, such as under the AML/CTF Act?
 - Am I confident that I can keep my legal and non-legal activities separate? What steps will I take to delineate the boundaries between the two?
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Support and supervision

Learning from senior legal practitioners and peers is an essential part of professional life. It can occur on the job, through formal learning activities, and via informal networks. It's not just about legal knowledge, but also about learning how to:

- communicate better
- understand the broader business context of practice, and
- sharpen your ethical awareness.

The VLSB+C expects all corporate lawyers to actively maintain and develop their professional skills by regularly reflecting on their practice, tailoring their learning to address capability gaps, and supplementing their annual continuing professional development obligations with courses relevant to their in-house role.

Support networks

It's important that all corporate lawyers, especially those who work solo or in small in-house teams or who are early career corporate lawyers, have the necessary support to be able to learn and thrive in their careers. We strongly recommend that you seek out support networks and mentors when taking on a corporate role.

ACCA and LIV are the main professional bodies for corporate lawyers. They support a range of special interest committees and can provide advice and individual support on specific issues.

Beyond these groups, there are smaller, content-specific groups and associations that meet around particular interests and industries.

The VLSB+C also supports [LIV's ethics and practice support lines](#), which are available to all practising lawyers (whether or not they are LIV members).

Supervision arrangements

If the role you are contemplating is not a senior lawyer position, make sure that you understand your supervision arrangements. Find out how your prospective manager will approach issues. Do they understand the tensions between professional independence and organisational pressure and loyalty? Will they support and guide you if your professional judgement is challenged or if there is a difficult ethical issue?

If you will be the only in-house lawyer within an organisation, make sure that you have at least one experienced lawyer (preferably more) to turn to for guidance and support. The Conduct Rules allow you to disclose confidential client information provided that the disclosure occurs in a confidential setting for the sole purpose of obtaining advice about your legal or ethical obligations.



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