



Deloitte Global  
Corporate Counsel  
Report 2011  
How the game  
is changing



# Introduction

## How the legal game is changing

In 2010, the sustained ramifications of the global financial crisis (GFC) accompanied by the impact of globalisation have presented new economic challenges for the legal industry worldwide.

Economic pressures from the global buyers of legal services and the effects of the GFC were driving the growing practice of outsourcing low-level legal work to foreign countries. To add to this, in an uncertain economic environment, many Australian corporations continue to be under financial pressure and have been forced to reassess their cost control and ability to improve business efficiency.

However, the volatile economic climate has contributed to a positive shift in the perception of the role played by Corporate Counsel both in Australia and globally.

Globally companies have become more reliant on in-house Corporate Counsel, particularly for advice in regulatory compliance, risk management and ethics. The growth of the in-house legal profession has also influenced delivery; how and where law firms are providing services.

Increasingly, Corporate Counsel are taking active measures to avoid lengthy and expensive litigation; with the survey confirming a trend towards resolving commercial and regulatory disputes by negotiated settlement.

The results of Deloitte's inaugural Corporate Counsel Survey indicate that in recent years the status of Corporate Counsel has increased significantly. Corporate Counsel now hold a broader, more complex range of responsibilities within their organisations.

877 corporate legal counsel (or equivalent) from ten different countries including Australia, the United States, the United Kingdom and Canada have been surveyed in this inaugural Deloitte report. Deloitte has sought to identify significant trends that have re-defined the in-house legal profession in the past five years, including whether the roles and responsibilities of Corporate Counsel have changed and whether these changes combined with largely unprecedented economic events have impacted the respective positions played by Corporate Counsel and external law firms alike.

The survey concludes that not only has the standing of Corporate Counsel improved significantly within the legal profession, but the roles and responsibilities of Corporate Counsel have evolved. This suggests that Corporate Counsel have emerged from the changing legal game as clear winners.

We hope that this report provides you with food for thought, and welcome your feedback.

Yours sincerely,

**David Lombe**  
Partner

**Victoria Sweetman**  
Principal/solicitor



# Executive summary

877 lawyers across ten different countries completed a Deloitte survey between January 2010 and July 2010.

An executive summary of the results are set out below:

## A) Role of Corporate Counsel

- Most respondents believed Corporate Counsel had greater stature today than five years ago
- Approximately two-thirds of respondents said Corporate Counsel are now a member of the senior management/executive team, compared to forty seven percent (47%) five years ago
- Corporate Counsel has a wider set of responsibilities today than five years ago, especially in regulatory compliance, risk management and ethics
- According to eighty two percent (82%) of respondents, Corporate Counsel is now the first source of advice for senior management when there is a serious legal or regulatory issue. This is a significant increase from five years ago, when only fifty nine percent (59%) of respondents believed senior management would turn first to their Corporate Counsel for legal advice
- Almost three-quarters of respondents said Corporate Counsel currently has greater influence in a business environment than the partner of a large law firm, compared to thirty five percent (35%) who said Corporate Counsel had more influence five years ago.

## B) Role of external law firms

- Respondents were evenly split on whether their company had increased or decreased its outsourcing of work to external law firms. Twenty six percent (26%) of respondents stated that they believed the amount of legal work outsourced to external law firms remained the same

- The key drivers cited for outsourcing legal work were the need for special expertise, the complexity of the work and the need for additional resources
- In managing the work of external law firms, more than eighty percent (80%) of respondents said that the Corporate Counsel has either considerable or some influence on how these firms provide their services. Approximately one third stated Corporate Counsel has considerable influence
- Respondents who were Corporate Counsel and those from large companies were more likely to believe that Corporate Counsel has considerable influence
- Companies are now more likely to rely on their Corporate Counsel for communications with regulators and less likely to place that responsibility primarily with an external law firm.

## C) Legal risks

- Maintaining regulatory compliance was cited as the greatest legal risk by roughly two thirds of respondents, both today and five years ago
- In sharp contrast, other risks were ranked as the greatest threat by no more than 10% of respondents.

## D) Regulatory compliance

- Eighty percent (80%) of respondents reported greater activity among regulators over the last five years. Conducting investigations was cited most often as a focus of regulators
- No one issue was considered to be a top issue for regulators. Five issues were each cited by roughly one-third of respondents:
  - Breaches of competition or antitrust laws
  - Insider trading
  - Fraud
  - Breaches of directors' and officers' duties
  - Stock market disclosure.

## **E) Disputes and litigation**

- Negotiated settlements were the most common method for resolving commercial and regulatory disputes
- When asked about large disputes and litigation, sixty nine percent (69%) of respondents said that the volume had remained the same or decreased over the last five years, while the remaining 31% reported an increase
- Among respondents from larger companies, forty percent (40%) said the number of large disputes and litigation had increased over the last five years.

## **F) Electronic records**

- Almost all respondents said their companies now had a policy on the management and retention of electronic records, up sharply from five years ago
- However, only about half of the respondents felt confident that their company could produce all relevant electronic records in response to a legal or regulatory request (roughly twice the percentage that said they were confident five years ago)
- The key challenges cited in managing information related to litigation were the volume of electronic documents, the timeliness of gathering information, and the cost involved.

Your feedback regarding this report is welcome.

# About this report

The content of this report is a result of a survey conducted in ten locations around the world on the changing roles of the Corporate Counsel. The survey was completed by 887 respondents between January 2010 and July 2010.

The respondents to this survey were Corporate Counsel (or equivalent) with varying degrees of experience. 62% of the respondents had at least six years experience in a Corporate Counsel role. Out of the ten countries surveyed, the largest portion of respondents came from Asia (35%). Twenty eight percent (28%) of the respondents were based in Australia.

Deloitte makes no representation or warranty about the accuracy of the information or how closely the information gathered in the survey will resemble actual practices by Corporate Counsel. Circumstances might have changed since the time this information was gathered, and this survey does not take such matters into account.

All responses and weighting methods are confidential and only aggregate responses have been reported. We have compiled the information into a series of graphs and have drawn certain conclusions about Corporate Counsel based on a weighting that we have allocated to these responses. The graphs and our conclusions are based on the answers we received in the survey and the weightings given to those responses.

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# Survey results

# A. The role of Corporate Counsel

## Reporting lines of Corporate Counsel

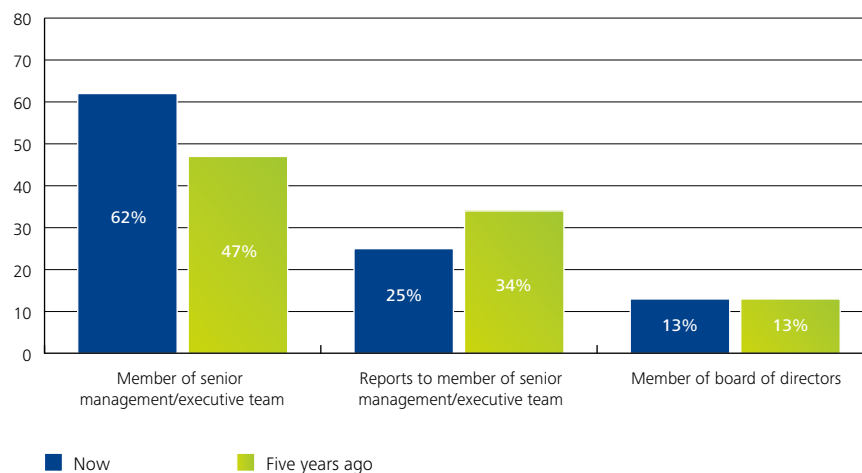
The global survey respondents indicated that five years ago, only forty seven percent (47%) of Corporate Counsel were a member of their organisation's senior management or executive team. As shown in Figure 1, this has increased to **sixty two percent (62%) now holding senior management or executive team roles.**

As a consequence of Corporate Counsel taking notes within senior management teams, Corporate Counsel are less likely to report to other senior management teams. Five years ago there were thirty four percent (34%) of general counsel reporting to these teams. This has now decreased to one quarter of respondents (25%). A decrease in reporting to members of senior management or executive teams was evident in both large and small companies.

In the last five years, the number of Corporate Counsel holding a position as a member of board of directors has stayed constant at thirteen percent (13%).

The survey conducted in Australia in March 2010 produced similar results. In Australia, the past five years have seen an increase of general counsel in senior management or executive roles from forty percent (40%) to sixty three percent (63%). The consequence of this is that the percentage of general counsel who reported to senior management has declined in the same time period from thirty eight percent (38%) to twenty eight percent (28%). The number of general counsel holding board positions has remained largely unchanged in the past five years, remaining constant at six percent (6%).

**Figure 1:**  
**Reporting lines for Corporate Counsel**



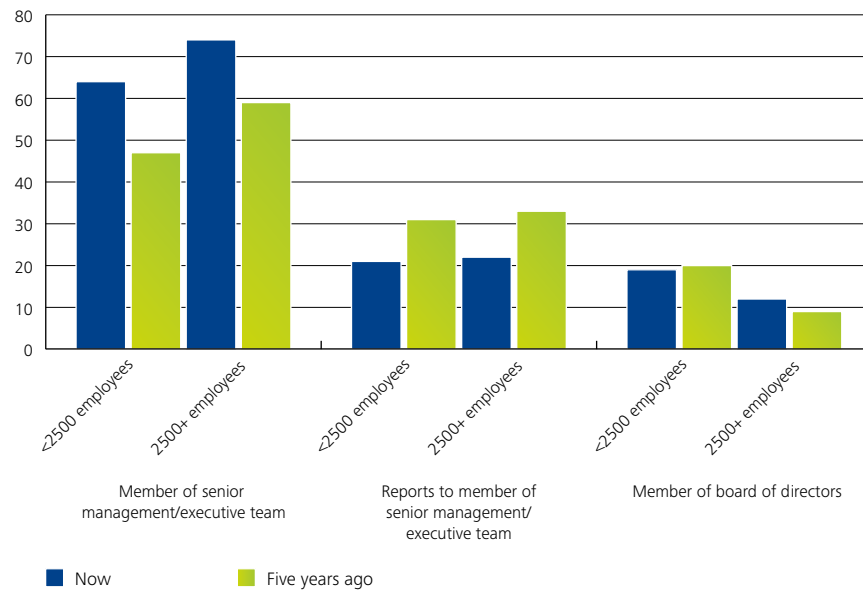
Note: Percentages do not total to 100% since respondents could make multiple selections  
Source: Deloitte Touche Tohmatsu

The rise in Corporate Counsel being members of the senior management or executive team has been consistent in both large and small companies. Similarly, in both small and large companies demonstrated a corresponding decrease in Corporate Counsel reporting to members of senior management or executive teams.

Compared to five years ago, small companies now employ more Corporate Counsel as board members whereas large companies have fewer.

**Figure 2:**

**Reporting lines for Corporate Counsel (by number of employees in country)**



### Seeking legal advice internally or externally

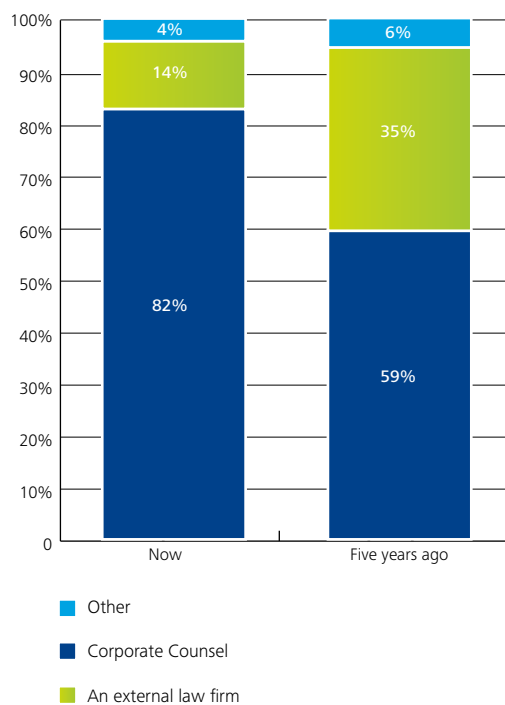
Globally, the last five years have seen a shift in preferences towards seeking legal advice internally before seeking external legal advice.

Eighty two percent (82%) of the respondents would first consult with Corporate Counsel if a serious legal or regulatory risk arose within the organisation. This can be compared to five years ago where only fifty nine percent (59%) of respondents would consult Corporate Counsel as a first option.

In the Australian survey, the involvement of Corporate Counsel in the production of legal advice also increased. Australian respondents in March 2010 indicated that five years ago they expected that only sixty four percent (64%) of senior management would first consult the organisation's in-house counsel for legal advice, whereas today the figure stands at ninety two percent (92%).

Figure 3:

**If a serious legal or regulatory issue were identified in your organisation, from whom would your senior management first seek legal advice?**



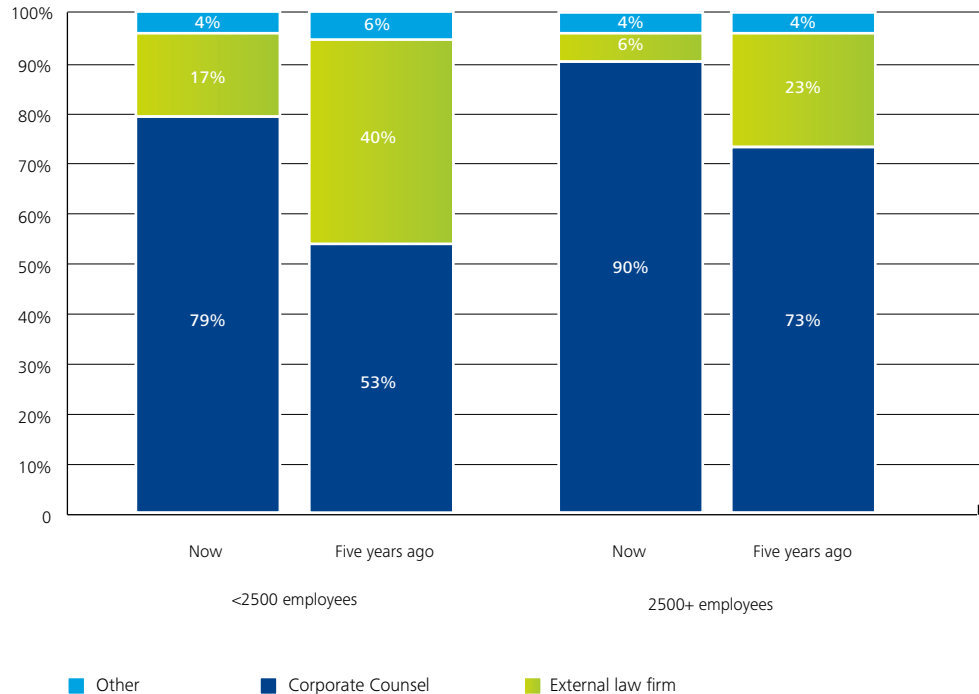
Source: Deloitte Touche Tohmatsu

The trend towards using internal legal advisors as a first option was observed in both small and large companies. In large companies, ninety percent (90%) of global respondents would contact general counsel first, with only six percent contacting an external law firm and the remaining four percent contacting other resources. This represents a drastic shift compared to five years ago when respondents indicated seventy three percent (73%) would use Corporate Counsel, twenty three percent (23%) would use external law firms and four percent would use 'others'.

This can be compared to small companies where seventy nine percent (79%) of global respondents would approach Corporate Counsel first, seventeen percent (17%) would seek external legal advice and four percent (4%) would contact other resources. Five years ago, these percentages were fifty three percent (53%) contacting Corporate Counsel, forty percent (40%) using external legal advisors and six percent sought other solutions.

**Figure 4:**

**If a serious legal or regulatory issue was identified in your organisation, from whom would your senior management first seek legal advice?**



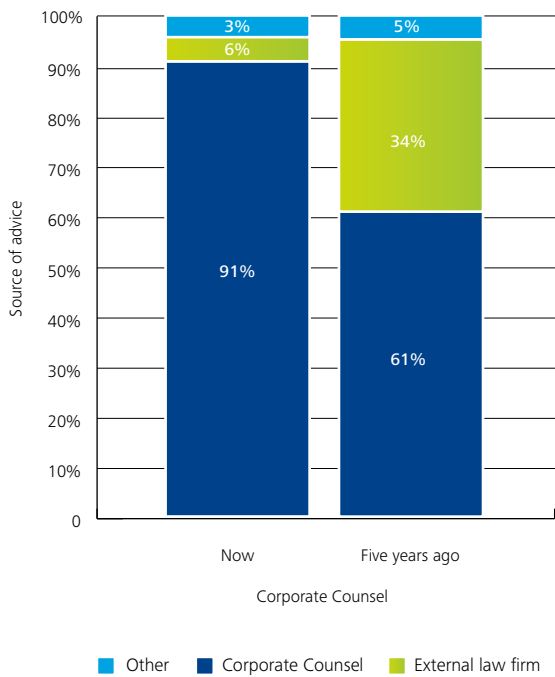
Source: Deloitte Touche Tohmatsu

Ninety one percent (91%) of Corporate Counsel believed their company would turn to them first for advice representing a thirty percent (30%) increase from five years ago.

This trend towards seeking internal advice from Corporate Counsel has also been seen in Australia. In the March 2010 Survey respondents indicated that five years ago they expected that only 64% of senior management would first seek legal advice from the organisation's Corporate Counsel. This figure has now increased to 92%.

**Figure 5:**

**If a serious legal or regulatory issue was identified in your organisation who would your senior management first seek legal advice from? (by role of respondent)**



Source: Deloitte Touche Tohmatsu

### Responsibilities of the Corporate Counsel

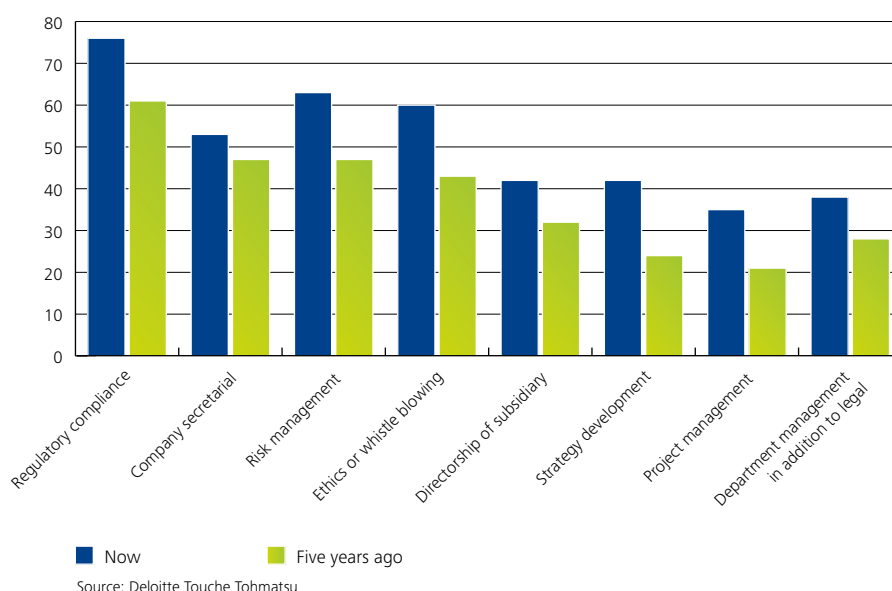
The survey demonstrated the role of Corporate Counsel is wider than it was five years ago.

The roles which have increased over the last five years have included:

- i. Regulatory compliance
- ii. Company secretarial
- iii. Risk management
- iv. Ethics or whistle blowing
- v. Directorship of subsidiary
- vi. Strategy development
- vii. Project management
- viii. Department management in addition to legal

The general role of Counsel has also extended beyond providing legal advice. More specifically, in Australia there has been a shift towards roles involving strategy development, which according to the March 2010 Survey was eighteen percent (18%) five years ago and is now forty two percent (42%). Another role which was becoming more prominent in Australia is overseeing whistle blowing programs, which was at twenty seven percent (27%) five years ago and was at forty eight percent (48%) in March 2010.

**Figure 6:**  
**Responsibilities of Corporate Counsel**



### Influence of Corporate Counsel

Respondents were asked whether General Counsel or a partner in a large law firm carries greater influence over the organisation.

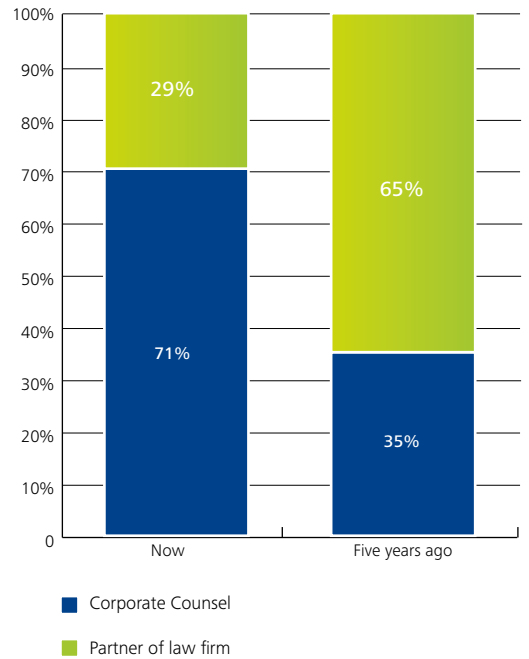
**Five years ago, only thirty five percent (35%) of respondents believed it was the General Counsel who had more influence and now this has more than doubled to seventy one percent (71%).** This represents a significant shift in the perception of general counsel over the past five years.

In the Australian March survey, seventy one percent (71%) of respondents held the view that the General Counsel carried greater influence in a business environment as compared to a partner of a large law firm.

This has been a significant shift from the attitude five years ago (24%) and is consistent with the global survey results.

Figure 7:

**Which role has greater influence in a business environment: General Counsel of a large organisation or partner of a large law firm?**



Source: Deloitte Touche Tohmatsu

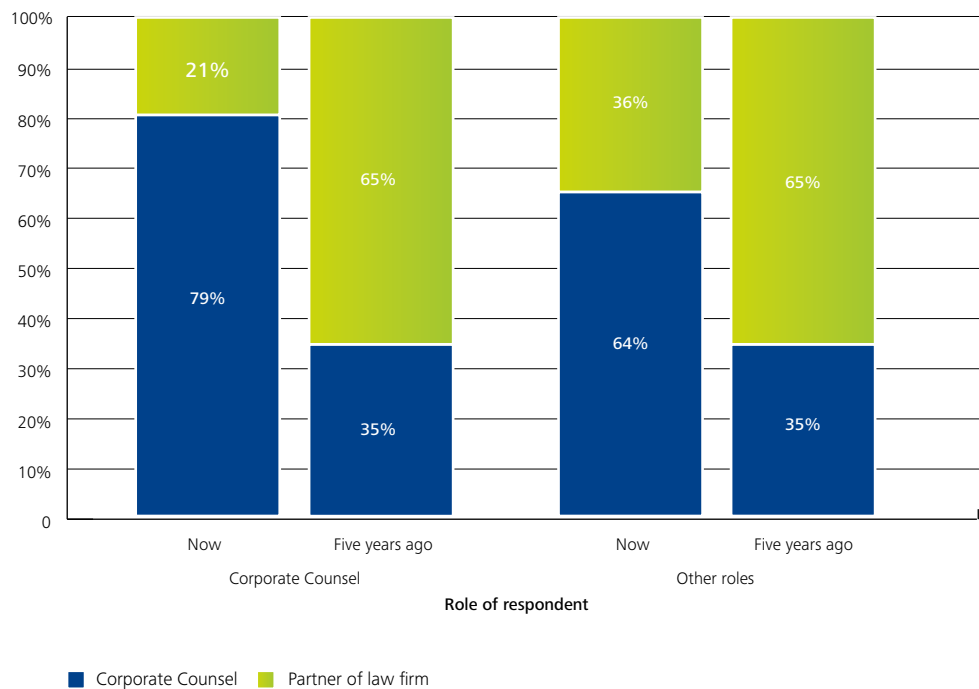
Both Corporate Counsel and employees in other roles agreed with this shift five years ago, only thirty five percent (35%) of Corporate Counsel thought that they held greater influence than a partner at a large law firm. Seventy nine (79%) of global respondents today believe they have the most influence.

Similarly, sixty four percent (64%) of employees in other roles believe that Corporate Counsel has more influence when only thirty five percent (35%) held this view five years ago.

In the Australian March 2010 Survey, seventy one percent (71%) of respondents held the view that the General Counsel carried greater influence in a business environment compared to a partner of a large law firm. This has been a significant shift from five years ago (24%) and echos the global trend in business practices.

**Figure 8:**

**Which role has greater influence in a business environment: the General Counsel of a large organisation or partner of a large law firm?**



Source: Deloitte Touche Tohmatsu

### Perception of Corporate Counsel

The survey results also show that according to global respondents, the perceived standing of Corporate Counsel has increased over the past five years.

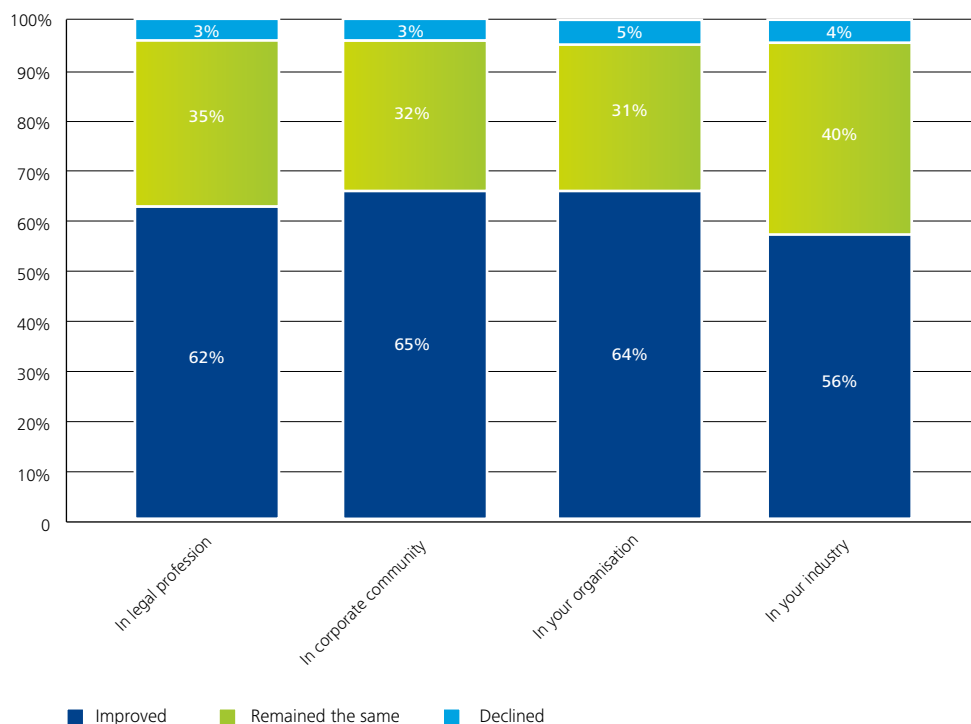
More than half of the respondents agreed that Corporate Counsel has improved. Respondents were asked whether the standing of Corporate Counsel had improved within specific groups, responses being:

- Sixty two percent (62%) of respondents believe that the standing of Corporate Counsel has improved in the legal profession
- Sixty five percent (65%) in the corporate community
- Sixty four percent (64%) in their organisation
- Fifty six percent (56%) in the industry in which they work.

The same changes have been prevalent in Australia in the past five years. A large number of Australian respondents in the Australian March 2010 Survey indicated that in the past five years the standing of Corporate Counsel has improved within their organisations (70%), in the industries in which they work (64%) and as well as in both the legal profession and the corporate community (77%).

**Figure 9:**

**Change over last five years in perceived standing of Corporate Counsel**



Source: Deloitte Touche Tohmatsu

### Adding value

Three quarters (71%) of global respondents said the Corporate Counsel legal team now demonstrates its value in more varied ways than previously.

The top three ways value is demonstrated are:

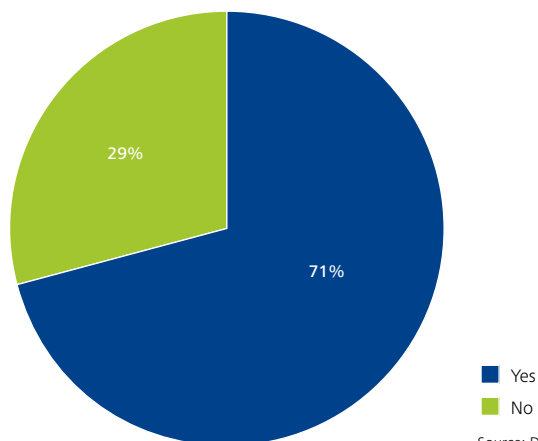
- Achieving timely resolution of legal problems (56%)
- Reducing legal risk (54%)
- Achieving cost effective resolution of legal problems (49%).

This is contrasted to the top three choices five years ago which were achieving timely resolution of legal problems (60%), achieving best legal outcome (55%) and reducing legal risk (54%).

A similar trend was revealed by the Australian Survey where 70% of respondents thought that the ways in which Corporate Counsel demonstrate value had changed in the past five years.

**Figure 10:**

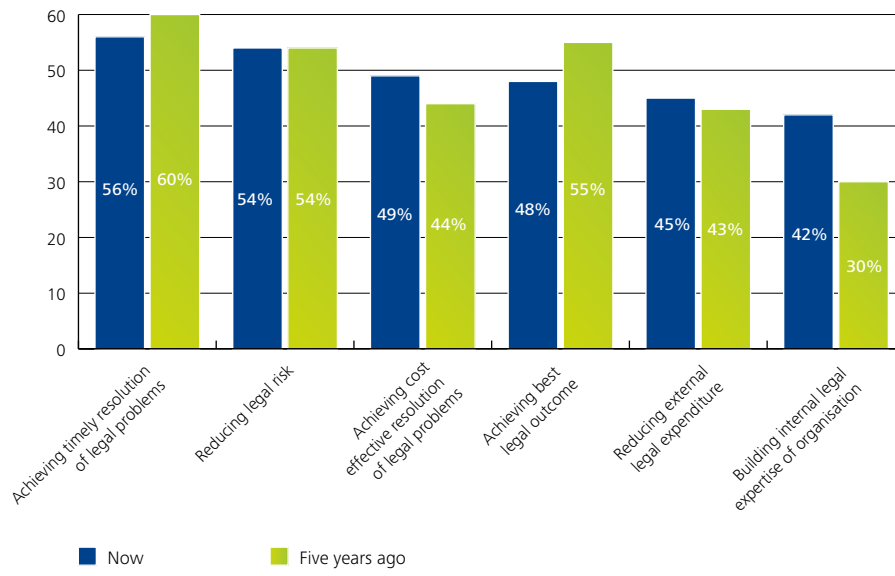
**Have the ways corporate legal teams demonstrate value changed over last five years?**



Source: Deloitte Touche Tohmatsu

**Figure 11:**

**Top three ways in which corporate legal teams demonstrate value**



Source: Deloitte Touche Tohmatsu

## B. Role of external law firms

### Outsourcing

Global respondents were roughly split on whether their company had increased or decreased the amount of outsourcing of work to external law firms. Forty percent (40%) of respondents indicated that the amount of outsourced legal work had decreased and thirty four percent (34%) of respondents indicated that percentage of legal work outsourced had increased.

The key drivers cited for outsourcing legal work are the:

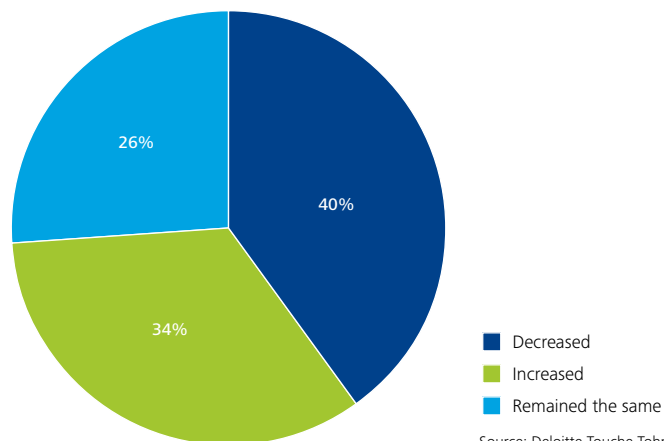
- Need for greater specialist expertise
- Need for additional legal resources
- Complexity of the legal work.

Interestingly, over the past five years the reasons for outsourcing legal work to external law firms has not changed significantly. A marginal increase of two percent (2%) towards the need for special expertise as a reason to outsource work to external law firms has been noted.

More than half of the respondents in the Australian Survey (59%) believed that they outsource less work to external legal firms now than they did five years ago. In Australia, the main reasons for outsourcing to external legal firms were the need for greater specialist expertise, the need for additional resources and the complexity of the legal work. This is consistent with the global trends.

**Figure 12:**

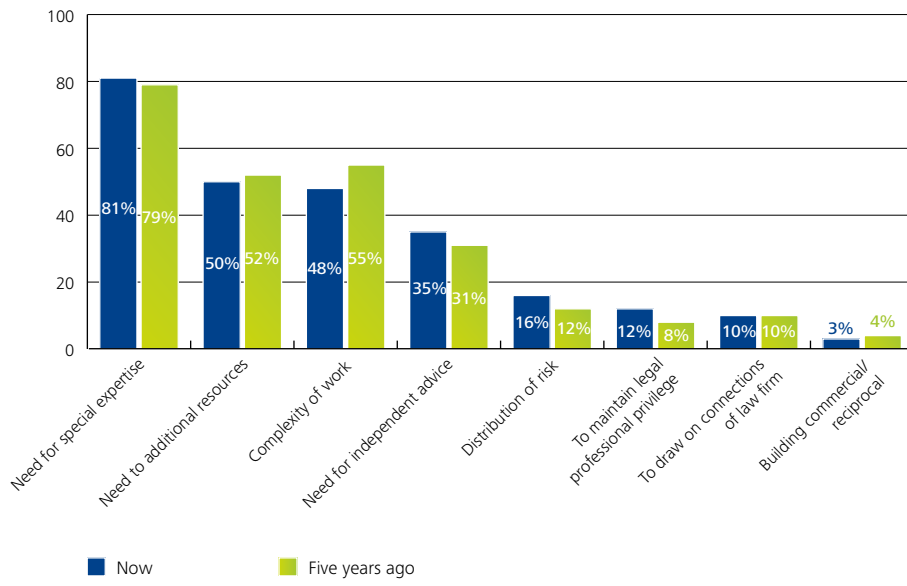
**Outsourcing of legal work to external law firms**



Source: Deloitte Touche Tohmatsu

**Figure 13:**

**Top reasons to outsource legal work to external law firms**



Source: Deloitte Touche Tohmatsu

## Influence

We have seen a clear pattern of increased financial resources and decision-making power provided to the Corporate Counsel. In turn this reveals an increase in the influence that Corporate Counsel has on the way external law firms provide services.

Roughly one-third of global respondents believed that Corporate Counsel has a considerable influence on how law firms provide services. Respondents who were Corporate Counsel or from larger companies were more likely to say the Corporate Counsel has considerable influence.

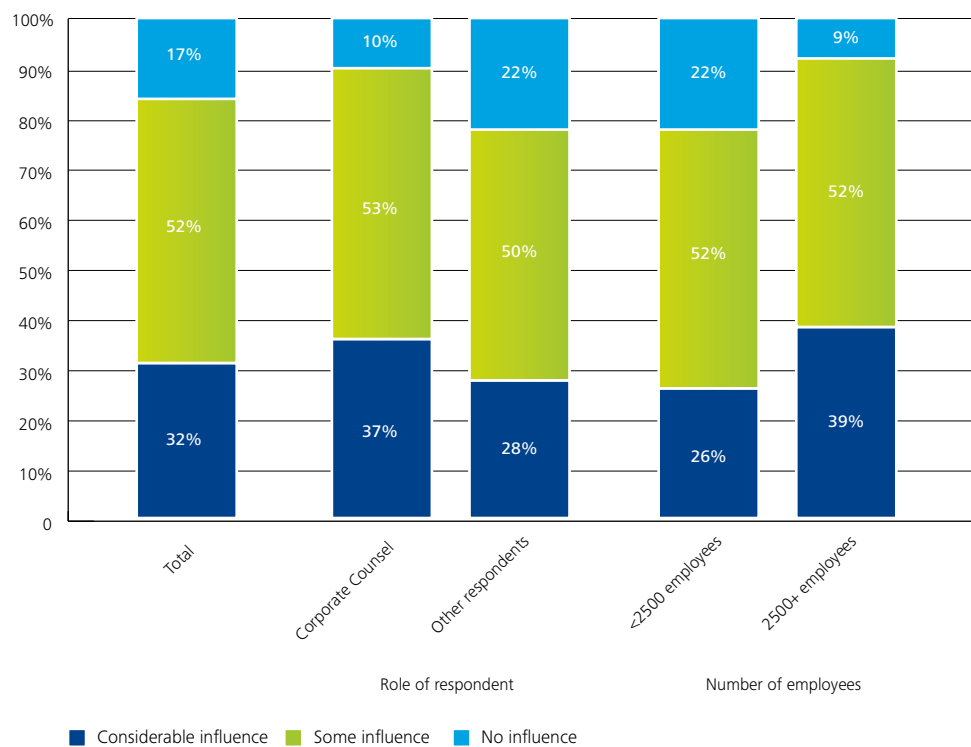
In managing the work of external law firms, more than eighty (80%) of global respondents said that Corporate Counsel has either considerable or some influence on how these firms provide their services.

Respondents from large companies who employed more than two thousand five hundred (2,500) employees were more likely to agree that the Corporate Counsel exerted considerable influence over the way in which law firms provide services.

The results in Australia are similar to those shown in the global survey. The responses revealed a shift in the perceived status of Corporate Counsel in the past five years.

**Figure 14:**

### Influence of Corporate Counsel over last five years on ways external law firms provide services



Source: Deloitte Touche Tohmatsu

### Communicating with regulators

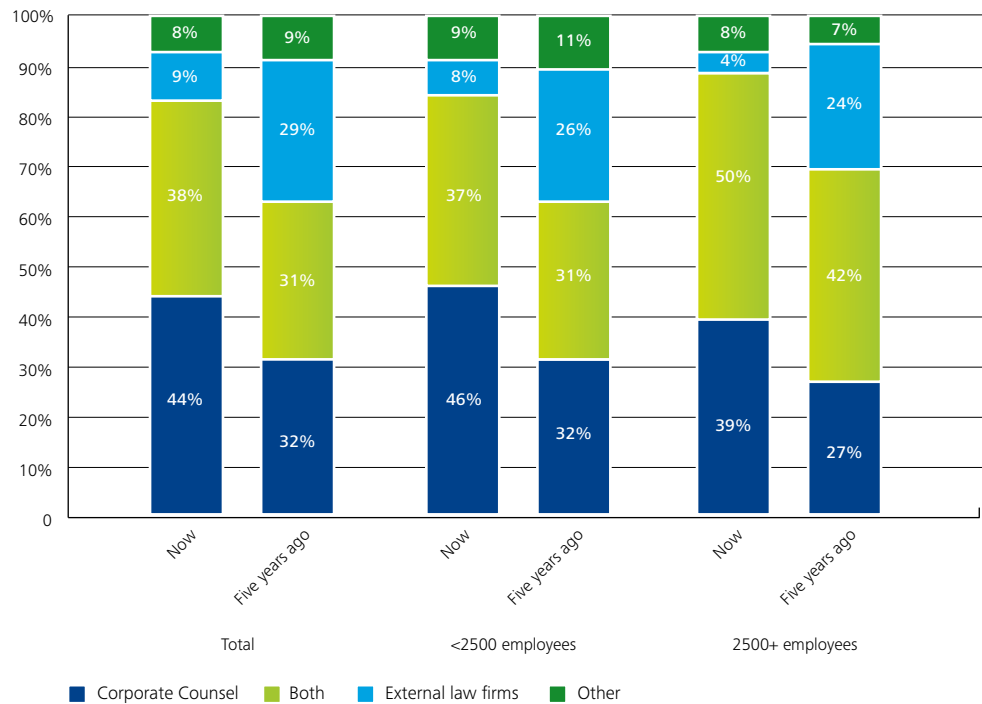
In response to the changing economic climate over the years, companies have become more reliant on Corporate Counsel for legal advice and communications with regulators, and less likely to place that responsibility primarily with an external law firm.

This trend may well be the result of the general shift of power from external law firms to Corporate Counsel as we see Corporate Counsel taking on a more influential and senior roles within organisations.

When asked whether Corporate Counsel, external law firms or a combination of both primarily handled communications with regulators, almost half of the global respondents indicated that they thought Corporate Counsel alone handled the communication with regulators. Only nine percent (9%) of survey respondents believed that external law firms dealt with communications with regulators, similar to Australia (10%).

**Figure 15:**

**Group handling communications with regulators**



Source: Deloitte Touche Tohmatsu

### Delivery of advice

**Eighty three percent (83%) of survey respondents believe that Corporate Counsel have influenced the way in which external law firms provide legal services.** Of these fifty two percent (52%) of respondents believe they have exercised some influence, and a further thirty two percent (32%) believe that they have exercised considerable influence.

This influence has affected the methods by which external advisors deliver advice and other services to Corporate Counsel. More than half (55%) of global respondents indicated that the methods by which external law and professional services firms use to deliver advice have changed.

Five years ago, legal and other advice was most often set out in formal written reports (66%) and oral advice given either in a conference (30%) or over the phone (48%).

Today, the prevalence of formal written reports has diminished dramatically to about twenty percent (20%).

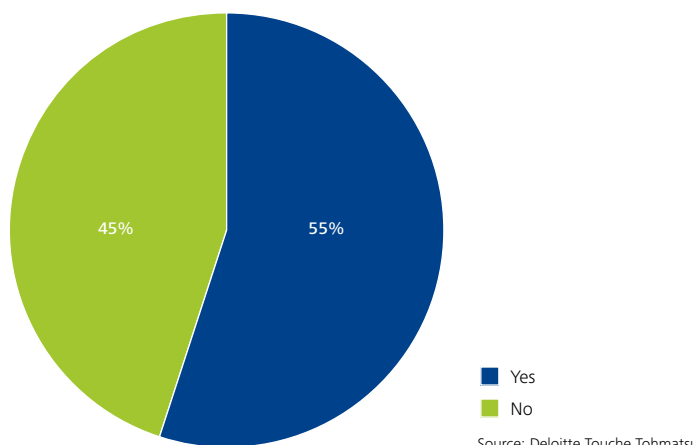
Not surprisingly, the predominant form of legal advice is now delivered by email (76%). The provision of oral advice over the phone has increased in popularity for almost fifty one per cent (51%) of respondents. Further, when asked what their preferred method of receiving advice from external law firms was, a substantial percentage of respondents (60%) indicated that email was the preferred method, a significant increase from five years ago, where only twenty five percent (25%) of respondents preferred email.

The preference for email and electronic communication can raise other challenges for Corporate Counsel in relation to the use, management and retention of electronic records (to be discussed later in this report).

The results from the global survey are consistent with the responses in Australia. In fact, in Australia the prevalence of formal written reports has diminished even further to six percent.

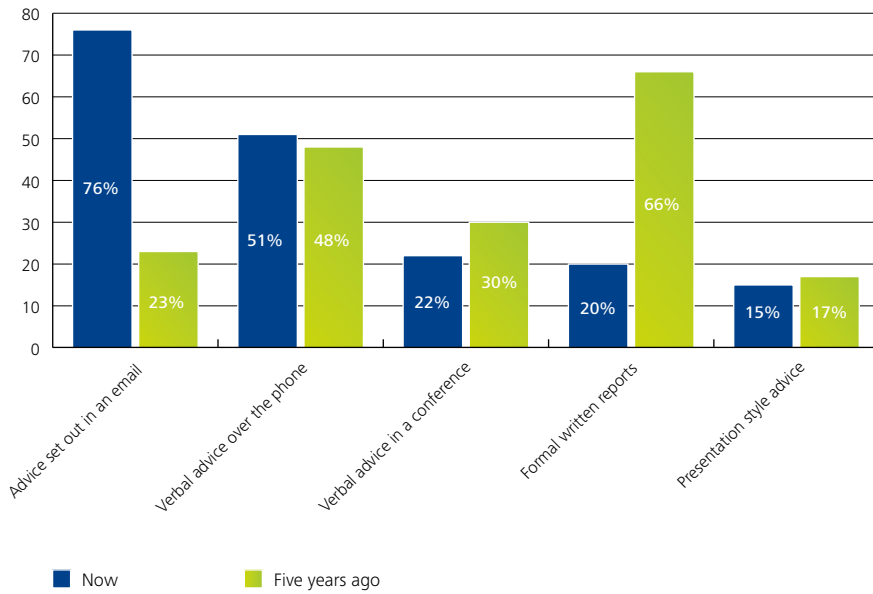
**Figure 16:**

**Have methods used by external legal and professional services firms to deliver advice changed over last five years?**



**Figure 17:**

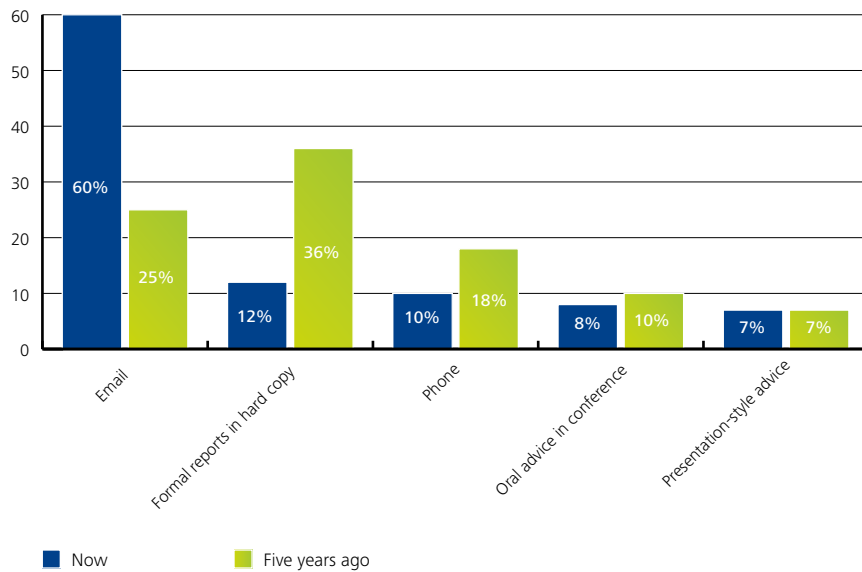
**Top two methods used by external legal and professional services firms to deliver advice**



Source: Deloitte Touche Tohmatsu

**Figure 18:**

**Preferred method of receiving advice from external law firms**



Source: Deloitte Touche Tohmatsu

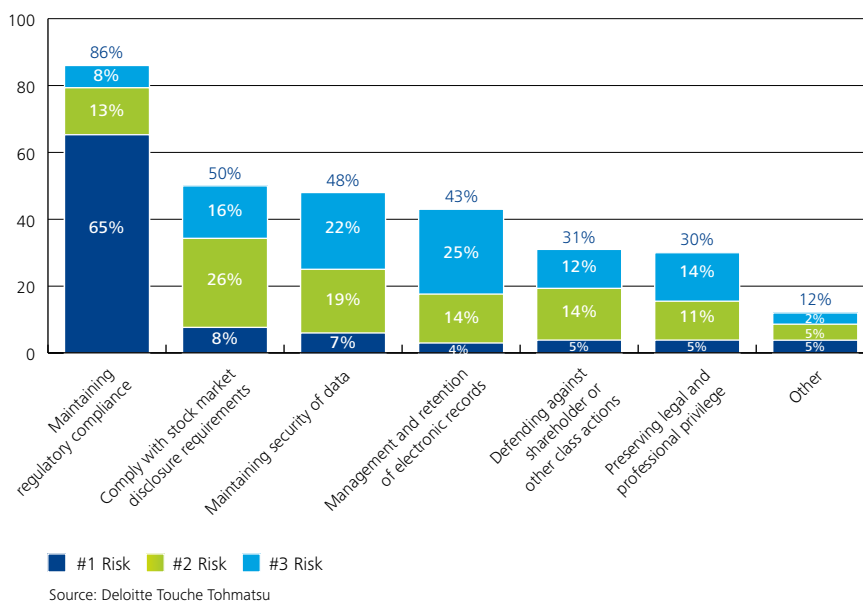
## Legal risks

Respondents rated maintaining regulatory compliance as the greatest legal risk facing their organisations today. After the GFC, regulatory bodies have tightened market regulations and increased investigatory activities resulting in the maintenance of regulatory compliance as the greatest legal risk to organisations. Maintaining regulatory compliance was also rated as the greatest legal risk that faced organisations five years ago.

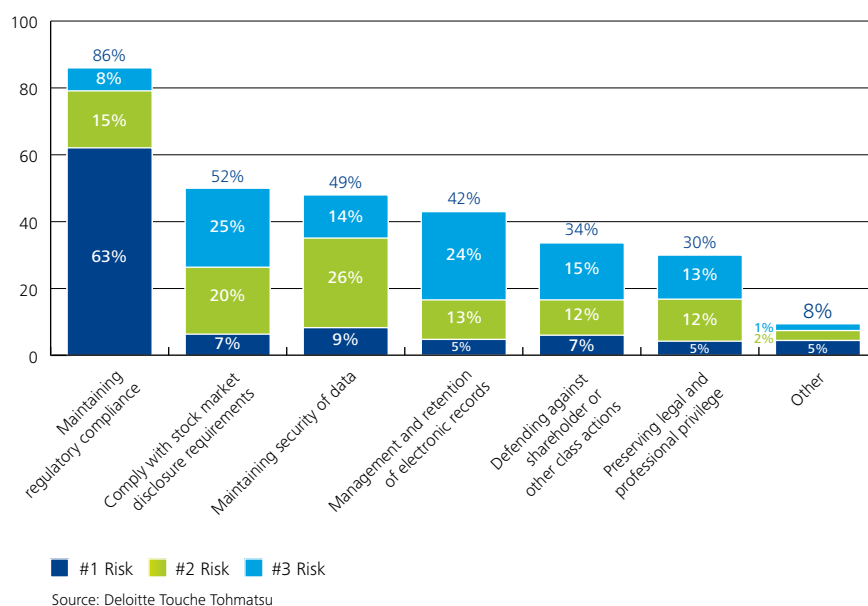
Maintaining regulatory compliance is considered the greatest legal risk by respondent's to the Australian survey.

**Figure 19:**

**Greatest legal risks to organisation: now**



**Figure 20:**  
**Greatest legal risks to organisation: five years ago**



### Litigation and disputes

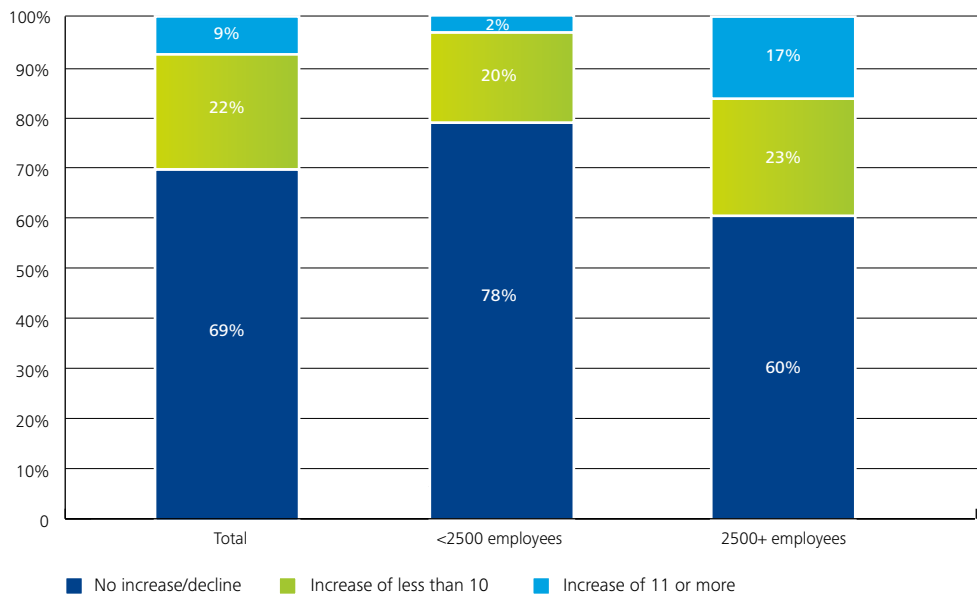
On a global scale, the survey showcased a trend towards resolving commercial and regulatory disputes by way of negotiated settlements. The majority of legal disputes remain largely resolved outside courtrooms (five years ago 68%; now 70%) as judicial determinations continue to serve as the last resort option (five years ago 19%; now 15%). As anticipated, Corporate Counsel have taken active measures to avoid the lengthy and expensive litigation process.

Unsurprisingly, the trend in the Australian legal industry in relation to litigation mirrors the global trend noted in this survey. Five years ago, seventy four percent (74%) of respondents resolved legal disputes by negotiation – now eighty two percent (82%) of disputes are resolved by this method in Australia.

Despite the increase of regulatory activities over the past five years, roughly two-thirds of the respondents have indicated that there has been little or no increase in the number or volume of large litigated disputes (involving more than \$US5M). **However upon re-categorising the respondent companies by size, forty percent (40%) of respondents at larger companies consisting over 2500 employees reported an increase in the volume of large litigation.**

**Figure 21:**

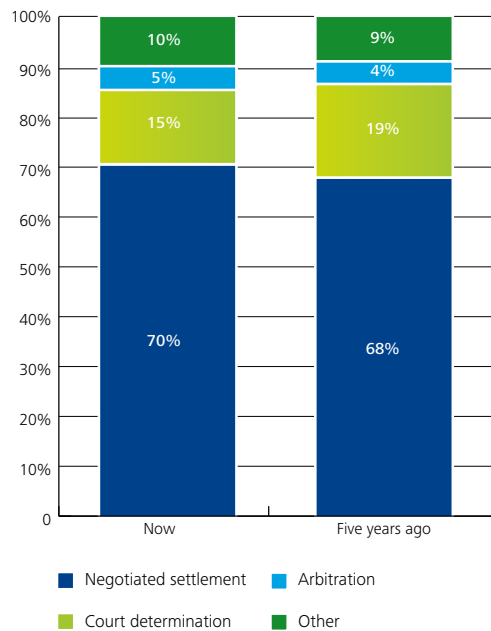
**Has the volume of your firm's large dispute and litigation (over \$USD5M) changed over the past five years?**



Source: Deloitte Touche Tohmatsu

**Figure 22:**

**What are the typical methods your organisation employ in resolving commercial or regulatory disputes?**



Source: Deloitte Touche Tohmatsu

## Electronic records

There has been a proliferation in the use of email and other electronic forms of communication in the past five years. This increase has posed particular challenges for Corporate Counsel and the organisations to which they belong.

Roughly 80% of companies, including both large and small companies, have a policy on the management and retention of electronic records, up from 43% five years ago. This is a significant improvement and addresses the need to produce electronic records to regulators.

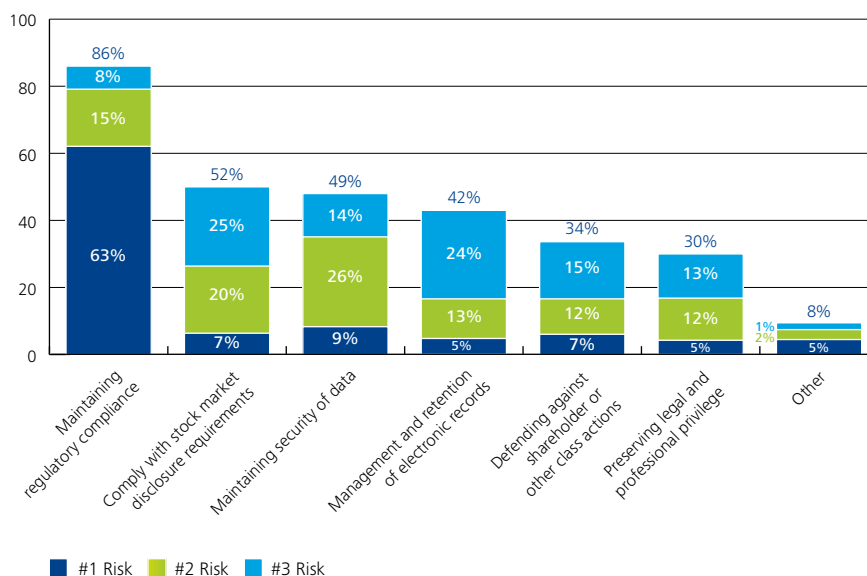
A similar trend of a rise in policies on the management and retention of electronic records can be seen in Australian organisations. The rates of retention for electronic records in Australia are quite similar up to eighty six percent (86%) from fifty three percent (53%) five years ago.

**Approximately half of the companies participating in the survey, and two-thirds of the larger companies, have been required to produce documents in electronic form over the last 12 months.** The importance of maintaining electronic records increases as the need to produce these documents to regulators or parties in litigation become more prominent.

A similar trend is reflected in Australian organisations in the March 2010 survey.

**Figure 23:**

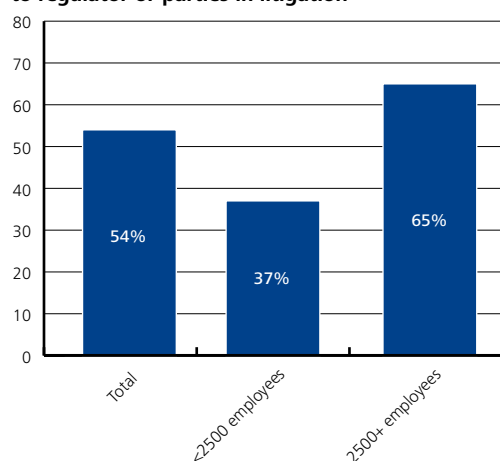
**Greatest legal risks to organisation: five years ago**



Source: Deloitte Touche Tohmatsu

**Figure 24:**

**Organisations required over last 12 months to produce documents in electronic form to regulator or parties in litigation**



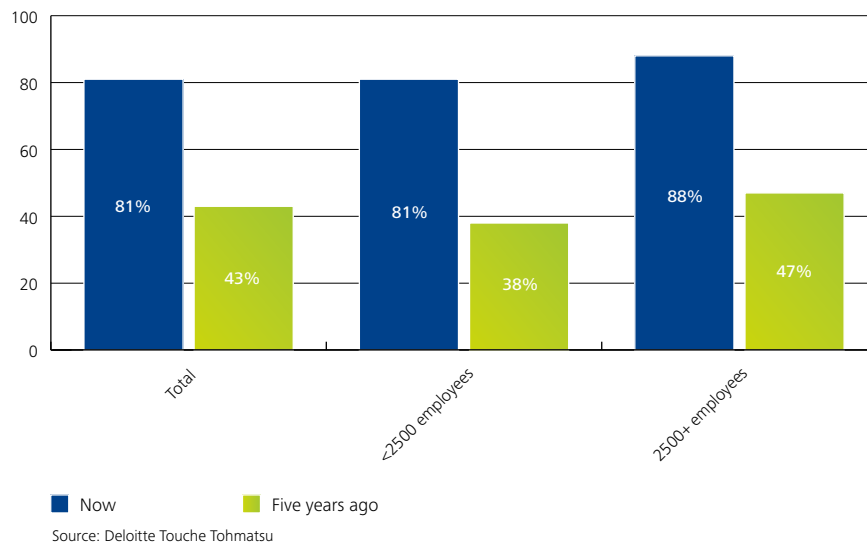
Source: Deloitte Touche Tohmatsu

Only about half of the global respondents were confident that their company could produce all relevant electronic documents when required. However, respondents have become more confident about their abilities to produce all relevant electronic documents, from twenty three percent (23%) five years ago to fifty six percent (56%) today. Nonetheless, there is room for improvement in the ability to produce relevant documents.

In comparison, there has been a more significant improvement in confidence of Australian respondents in the March 2010 Survey over the past five years from twenty percent (20%) five years ago to almost eighty percent (80%) today.

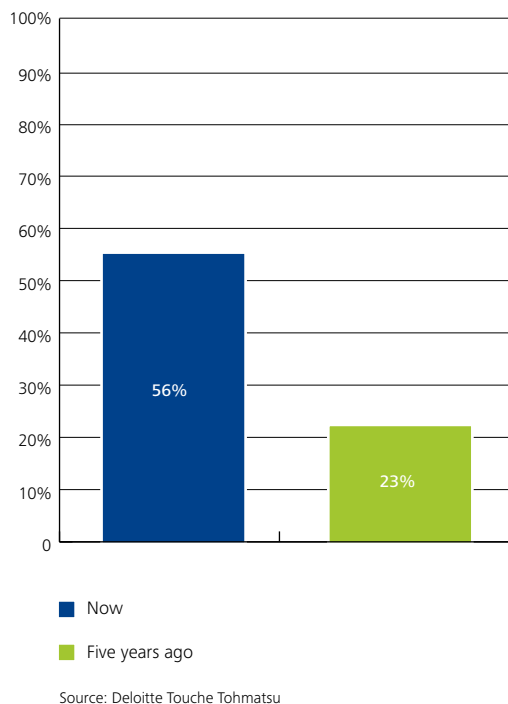
**Figure 25:**

**Organisations with policy on management and retention of electronic records**



**Figure 26:**

**Confidence in ability to identify and produce all relevant electronic documents in response to legal or regulatory request (percentage of respondents who replied 'confident')**

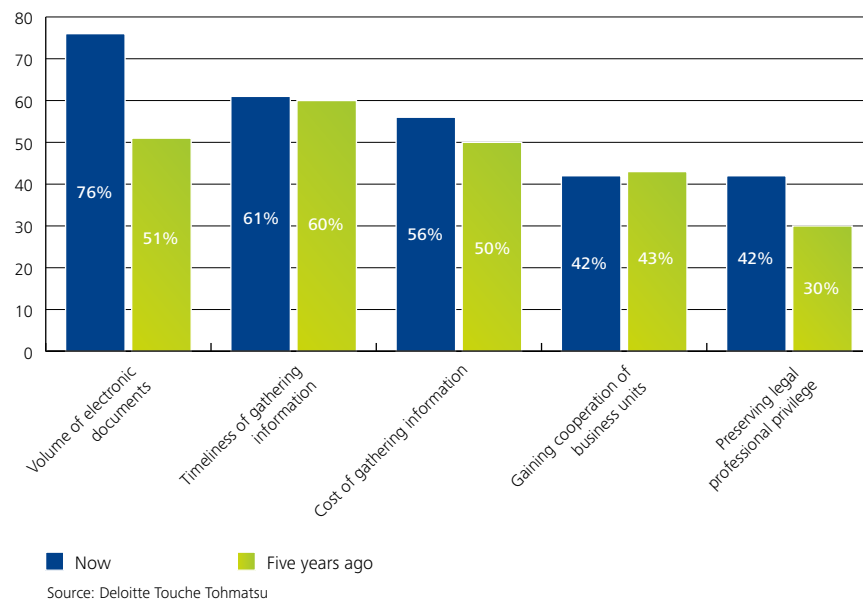


The greatest challenge in managing information related to litigation is the volume of electronic documents, followed by the timeliness of gathering information. These challenges arise from the large volume of professional advice which is increasingly being provided by means of electronic documents.

A similar trend is reflected by Australian March 2010 respondents, with the most significant challenge faced by Corporate Counsel over the past five years being the volume of electronic documents (80.5%) followed closely by timeliness (60%).

**Figure 27:**

**Challenges in gathering, sorting and preserving information related to litigation**



## Demographics

In compiling the survey, Deloitte engaged Bayer Consulting to integrate and analyse the data from surveys conducted globally across ten locations on the changing role of the Corporate Counsel.

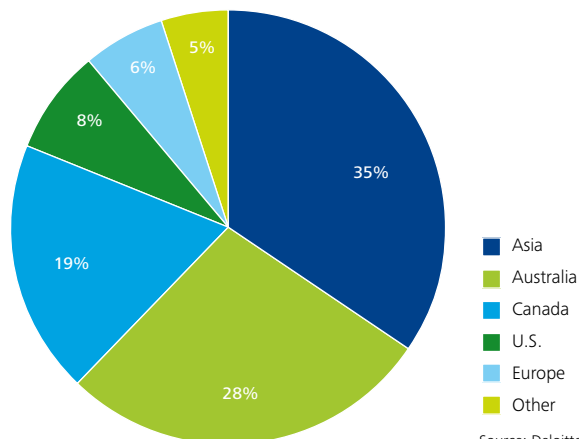
A total of 877 responses were completed.

The most common respondent was a legal practitioner operating in the role of Corporate Counsel or Chief Legal Officer (46%) or Senior legal counsel (29%). The respondent worked in the role typically over six years (6 to 10 years 23%; 10 to 20 years 27%).

The majority of the respondents (57%) worked for either a publicly-traded company or a local subsidiary of a listed company. The remainder were split between private companies (small and large combined to 25%) and government/public sector organisations (6%). In terms of industry, the respondents were mostly situated in the Financial Services sector (17%) and the Manufacturing/Engineering sectors (16%).

**Figure 28:**

### Country/region where respondent primarily perform their role



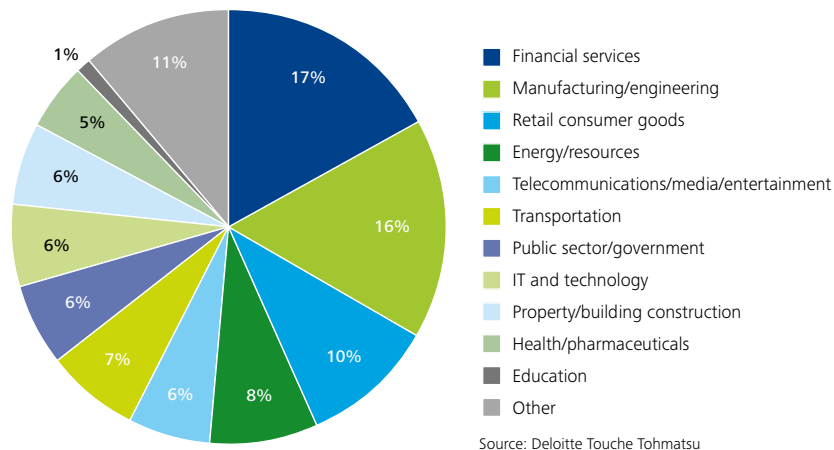
Source: Deloitte Touche Tohmatsu

A large number of the respondents performed their role in the Asia-Pacific region (Asia 35%; Australia 28%) and North America (Canada 19%; United States 8%).

The size of the respondents' company varies. Most of the companies in the survey consist of 2500 or less employees (64%). However where the respondents' company operates globally, the number of employees worldwide commonly exceeds 10,000 (40%).

**Figure 29:**

**Respondents by industry**



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