Article Information

Author: Paul Venus

Service: Banking & Finance, Corporate & Commercial, Dispute Resolution & Litigation, Employment & Labour, Intellectual Property & Technology, Planning & Environment, Projects Infrastructure & Construction, Property & Development

Sector: Energy & Resources, Financial Services, Government, IT & Telecommunications

In-house counsel and the legal research challenge – some ideas to help you

In-house counsel face challenges balancing quick, practical legal advice with limited resources. Efficient research using free tools, AI, and focusing on industry-specific issues can improve decision-making and reduce risks.

The In-house counsel legal research dilemma!

The role of In-house counsel comes with many practical challenges. You are expected to provide legal advice in a commercial context. Your advice must be delivered quickly and is often relied upon to make important and sometimes critical business decisions. Spending time on a deep dive into a difficult legal issue and undertaking extensive legal research is likely to be a luxury rarely given to you.

You operate under tight budgets, with sometimes small teams and may have few legal resources such as research tools available. Added to all of that, the premium research tools like LexisNexis are costly, and briefing out research requests can also lead to budget blow-outs.

As an in-house counsel, your advice is likely to be very focused on the industry in which your company operates. So, generic legal resources can and often do fall well short of meeting your specific needs. This can be particularly problematic because you are likely to have cutting-edge legal issues which probably are not widely considered in external legal information sources.

Indeed, you live and work in the real world – not the ivory towers of academia. So often, theoretical legal analysis, jurisprudential musings or even obiter dicta fail to provide the practical guidance that you need. When your advice must balance legal risks with business priorities, reading academic interpretations of the law are often a waste of your time.

Free legal research tools may be incomplete, or need updating. That can be a risk as you could miss the correct answer. Also, general research tools often return broad results, requiring more time to sift through irrelevant information to find the key insights needed for a particular legal issue. Some legal research tools are also difficult to use. This can lead to frustration, wasted time, and incomplete research.

Lastly, you may end up suffering from what is known as "Infobesity". In-house counsel can be overwhelmed by the sheer volume of search results when using research tools. The amount of information available on the internet is extraordinary and growing at rates which make it impossible to keep up. And for those of us who see AI as the answer, just try getting ChatGPT to do mathematics! Those tools are still unreliable and must be used with a great amount of caution.

So how do you start to overcome these challenges?

Here are some practical tips to maximise the effectiveness of your research and use the available free research tools to your advantage.

Understand your needs and get the question right

It is often said that if you do not know where you are going, it does not matter which road you take to get there. So, focus your research on the specific issues pertinent to your company, industry, or current legal challenges (e.g., compliance, contracts, employment law, IP).

Put time into working out what the question is – and then you will have a much easier time determining the answer. Make sure you clarify the question with the in-house client so that you are meeting their requirements and understand their needs.

There are a number of ways to clarify your question and then narrow the areas of enquiry that you may undertake to address the question. A starting point is to decide whether you need case law, statutes, regulations, legal commentary, or industry-specific insights. Go to journals, law texts, articles, and blogs first – start general before going to specific.

Stay organised and be methodical

You will want to make sure that your research is efficient, and comprehensive. At the same time you will want to be methodical.

Almost always this means you need to start your research with a plan, and then document the research that you undertake. That will help you to clarify the task, avoid repetition and help you to support opinions you form by identifying the source of the information that you used to come to those opinions.

Maintain clear and organised records of the laws, cases, or regulations you've researched. This will save time if you need to revisit issues or brief other stakeholders.

Use citation generators or legal writing tools to maintain accurate references in your reports or legal documents. Make sure you know how to cite cases and legislation properly. The Australian Guide to Legal Citation is able to be downloaded for free in a view only capacity.

Leverage but don't defer to free legal resources

Please try AI platforms such as ChatGPT, and use it as a starting point to give you guidance in your research. They are fast and written in plain language, so they are easy to read.

ChatGPT

Interestingly, ChatGPT provides the following answer to the question "How do you use ChatGPT for legal research?":

> "Using ChatGPT for legal research can be highly effective for understanding legal principles, case law, and statutes, but it should be approached with the right strategies and expectations. Here's how you can use ChatGPT to assist with legal research:
>
> 1. Understanding Legal Terms and Concepts
>
> - **Ask for Definitions**: You can ask ChatGPT to explain complex legal terms or concepts. For example:
>   - "What is the difference between civil and criminal law?"
>   - "Explain the concept of negligence in tort law."
> - **Get Contextual Insights**: ChatGPT can provide historical, philosophical, or general context around legal principles.
>
> 2. Case Summaries and Precedents
>
> - While ChatGPT doesn't have access to live databases of case law, you can use it to:
>   - **Understand Landmark Cases**: Request summaries of major historical cases and their legal significance.
>   - **Case Law Overview**: Ask about general case precedents or how courts have typically interpreted specific legal issues. For example:
>   - "How have courts interpreted freedom of speech in First Amendment cases?"
>
> 3. Statutory Interpretation and Analysis
>
> - **Explain Statutory Provisions**: ChatGPT can help you understand legal statutes by breaking them down into simpler terms.
>   - "What does Section 230 of the Communications Decency Act mean?"

- **Interpret Legal Language**: Seek clarification on how certain statutory language might be interpreted in various contexts.

4. Legal Procedures and Rules

- **Court Procedures**: You can ask about general procedural rules in different court systems, such as the steps in filing a lawsuit, the discovery process, or trial procedures.
- **Legal Document Drafting Guidance**: ChatGPT can provide guidance on drafting legal documents (e.g., contracts, motions, demand letters), though templates should be reviewed by a lawyer.

5. General Legal Research Techniques

- **Ask for Research Strategies**: You can ask ChatGPT for tips on conducting efficient legal research, such as where to find primary and secondary legal sources, the difference between binding and persuasive authority, or how to use legal databases (e.g., Westlaw, LexisNexis).

6. Legal Writing Tips

- **Improve Legal Arguments**: ChatGPT can help you structure legal arguments by explaining IRAC (Issue, Rule, Application, Conclusion) or other methodologies for writing briefs or memos.
- **Edit and Clarify Legal Language**: Ask for help in revising sentences, improving clarity, or making legal writing more concise.

7. Ethical and Professional Responsibility

- **Clarify Ethical Rules**: ChatGPT can explain rules related to professional conduct, such as the Model Rules of Professional Conduct or fiduciary duties in certain contexts.

Limitations to Keep in Mind

- **No Real-Time Legal Databases**: ChatGPT does not have access to real-time case law databases like Westlaw or LexisNexis.
- **Not a Substitute for Legal Advice**: While ChatGPT can provide general legal information, it does not replace the advice or counsel of a licensed attorney.
- **Jurisdictional Variance**: Laws and legal principles can vary widely by jurisdiction, so always verify information with relevant local legal authorities or resources.

Sounds great doesn't it?

Well practically there are a few things to keep in mind over and above what ChatPGT will tell you.

Whatever you do, don't rely on it for complete or perfect advice. AI is smart and getting better – but it makes mistakes.

So always check everything it tells you. In particular, just because it looks like the correct answer has been provided does not mean it is. ChatGPT may give you a case reference that does not exist or if it provides a legislation reference, it may give you an incorrect section number. Again, useful for an initial review but problematic for giving final advice.

The answers also tend to be written in "American English" – so please carefully check the spelling of any words that you want to copy into your final advice.

Lastly, be careful to check the terms of use of the AI platform. Most platforms give you either a non-exclusive licence to use their output or copyright in what you receive. But they also often require you to attribute the work to the platform.

Google

Google is also a great starting tool – but again beware. It is not a peer reviewed source and so just as "Dr Google" is a dangerous resource to determine if you have an illness, so can "Law Lord Google" come with problems.

Some useful search tips for using Google's search engine are:

- To search for an exact phrase, use quotation marks (e.g., `"the law against perpetuities"`).
- To exclude terms, add a minus sign before the word you want to leave out (e.g., `negligence -trespass`).
- To search within a specific website, use the `site:` operator (e.g., `contract law site:wikipedia.org`).

- To search for one term or another, use `OR` (e.g., `ASIC OR ACCC`).
- To search for specific types of files, use `filetype:` (e.g., `climate change legislation filetype:pdf`).
- Use `*` as a placeholder for unknown words (e.g., `the * of land law`).
- Type `define:` before a word to get its definition (e.g., `define:privacy`).
- You can filter results by time, type (images, news, videos), or other criteria using the options under the search bar.

Other free legal research tools

Legal research tools that are focused are very useful. There are a large array of free legal research tools.

Some examples are:

- Jade Barnet – Offers access to case law, legal journals, and opinions. Use it for federal and state court decisions, and refine your search using date ranges and jurisdiction. It has excellent citation reports.
- Austlii – A comprehensive repository for legislation, cases, and articles.
- The Law Reform Commissions such as ALRC, VLRC and NSWLRC – Have large amounts of valuable information that can be accessed via their websites.
- The Australian Parliamentary Library – Has access to legislation, research publications and other information.
- Fee Fie Foe Firm – A search engine that helps you find law firm bulletins, article, publications and press releases from many Common Law jurisdictions.
- Many court websites offer free access to court opinions, rules, and judicial speeches.
- Many paid legal research platforms (e.g., Westlaw, LexisNexis) offer free trials. You can use these trials to access more comprehensive databases for specific, high-priority research tasks.

Also, be focused when you are using these legal research tools to make your life easier – use Advanced Search Techniques that apply to these tools. Familiarise yourself with search techniques like using quotes for exact phrases, adding "AND" or "OR" to narrow or broaden your search, and using "NOT" to exclude irrelevant terms. Always filter by jurisdiction and date range to ensure relevance to your case or legal question.

Quick tips for finding information

There are an enormous number of ways to find information, but sometimes you just need an answer to a short research point quickly. Often that is when you want to see if the situation you face has already been dealt with by a court in the past.

Consider the following tips:

- Do you want to find cases when you only know the facts? – try a trial of LexisNexis and look at the general cases section, unreported judgments search parameter an then insert the key facts and Boolean into the search field.
- Do you want to find cases when you only know counsel? – try a trial of LexisNexis and look at the unreported judgments section and search the representation field.
- Do you want to determine how a case has been subsequently treated? – see Jade Barnet which can give you subsequent citations.

Lean on Piper Alderman – we want to help you

We actively monitor Legislative and Regulatory Updates – so that you are ahead of the information tsunami. Our webinars and Insights provide you will information to help you understand the changes to the law which are likely to impact your business.

You can leverage our specialist knowledge to help you to understand the changes and also when you will need to seek external help about those changes. This enables you to balance use of the expertise of outside counsel for complex matters with the need to provide BAU advice in a cost effective manner.

Please make sure you sign up to our mailing list to receive regular and up to date knowledge that we share with the in-house legal community.

Finally, if you would like to discuss more tips on how to better conduct legal research, please reach out to us.