



THE LAW SOCIETY
OF NEW SOUTH WALES

COMMISSION OF INQUIRY

flip

THE FUTURE OF LAW
AND INNOVATION IN
THE PROFESSION





THE FLIP REPORT 2017

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INTRODUCTION

THE FLIP REPORT 2017

It is no understatement to say that the legal profession in New South Wales and, for that matter, across Australia is undergoing change at a pace never experienced and in ways most lawyers would have found hard to predict at the beginning of the 21st century.

There is no shortage of commentators on the future of lawyers and on what seems like a tidal wave of innovation and change washing through the legal profession. Lawyers together with regulators, professional bodies and universities are all rising to meet the demands and challenges that come with such rapid transformation.

It was against this backdrop that The Law Society of New South Wales established the Future Committee in 2016 and, in turn, the Future of Law and Innovation in the Profession (flip) Commission of Inquiry to better understand the changes taking place in and around the legal profession and to provide the profession with recommendations that will enable lawyers to better accommodate new concepts and ideas, and adapt to changes that are taking place and will inevitably continue to do so. To the extent possible, the report also looks over the horizon in an effort to gauge what might lie ahead.

This report essentially draws on the testimony of 103 witnesses who gave evidence at the inquiry, and on a number of separate interviews and written submissions. The report also has the benefit of receiving input from the members of the Future Committee who were specifically asked to join the Committee because of their experience and expertise. Most are lawyers. Some work inhouse with corporations or government while others are in private practice or in the legal assistance sector. The Committee also includes a legal academic, a senior court official and a technology expert.

The flip Inquiry and therefore the findings and recommendations in this report focussed on clients' needs and expectations, technology, the new ways the profession is working, legal education, the community's needs including courts and funding, diversity, managing change, globalisation and regulation. These specific areas were seen as being affected the most by change and innovation or where the greatest impact on the practice of law was being felt.

In the time available it was not possible to inquire into other areas such as criminal law practice and governments as drivers of change. That is a task for the future.

An evaluation of the evidence given to the Inquiry and also a considerable amount of the available literature has produced 12 key findings and 19 recommendations that are set out in the report.

Without wishing to detract from the importance of the other specific findings, it is worth noting that the Inquiry found (perhaps not unsurprisingly) that:

- clients seeking greater value for legal services and increased competition amongst lawyers are fuelling change, as is the increasing use of technology;
- change has also brought with it new ethical and regulatory issues
- there is an increased awareness that future law graduates need to be equipped with new skills to meet the current and future demands of the profession and
- the wellbeing and mental health of our lawyers needs to be safeguarded by appropriately supporting them through the process of change.

Predicting what lies ahead for the legal profession is problematic. Suffice it to say that change and innovation will continue but at what pace and with what impact only time will tell. The Committee envisages that the Society will have a key part to play in being well informed of and being a thought leader on change and innovation. It is with this role in mind that one of the key recommendations in the report is the establishment by the Society of a centre for legal innovation projects. It is envisaged that the centre's remit will be to undertake projects that include facilitating innovation in legal technology, providing guidance for the profession on the legal technology market, ethics, regulation, continuing professional development, and fostering partnerships to facilitate legal assistance for those most in need.

Other recommendations that come out of the findings include supporting lawyers through the dissemination of information on topics such as new ways of working, the use of technology to improve work practices, wellbeing and the ethical and regulatory issues that come with change.

The work of the Committee, the flip Inquiry and the preparation of this report have involved many people and I would like to acknowledge them and their contributions.

The members of the Future Committee are Pauline Wright (Deputy Chair and 2017 Law Society President), Lana Nadj, Claire Bibby, Darryl Browne, Chris D'Aeth, Justin Dowd, Elizabeth Espinosa, Jane Glowery, Katie Hocking, Roshan Kumaragamage, Michael Legg, David Porter, Edward Santow, Ben Stack, Jodie Thurgood, Michael Tidball, Juliana Warner and Elias Yamine. They each brought to this project a set of skills, knowledge and expertise and I thank them most sincerely for investing the time in attending committee meetings and flip hearings, and for their constructive comments and recommendations in the preparation of this report.

I especially want to acknowledge the outstanding contribution Lana Nadj has made to this project. Her energy, enthusiasm, organisational skills and dedication have been critical to the success of this project and have kept the Future Committee and flip Inquiry squarely focussed at all times. This report is testimony to her ability, intellect and tireless work.

An examination of the future of the legal services in New South Wales began as a kernel of an idea floated in 2015 with Michael Tidball, Chief Executive Officer of the Law Society. His recognition of the importance of a project such as this and the support he gave to it throughout reflects his great vision for the Society and understanding of the legal profession.

The flip Inquiry witnesses came from diverse backgrounds but all had a connection with the legal profession. I want thank each of them for taking the time to give evidence and in doing so make valuable contributions to the work of flip and to this report. I also wish to thank those who provided written submissions or who were separately interviewed.

I also want to thank the 2016 Law Society Councillors for believing in this project and agreeing to the establishment of the Future Committee and the flip Inquiry.

Last but by no means least I want to acknowledge the people who worked behind the scenes during the course of this project. They are Max Soo, Law Society IT Applications Support Analyst, who made sure that audio and remote connections worked smoothly; Richard King of King Creatives who filmed and edited quickly and expertly; Alan Parnell, UTS final year law student and flip Project Assistant; Lisa Whyte, Communications and Marketing Coordinator; Liane Pentecost and Michelle Westlund who supported the project in its early stages; Digital Marketing Strategist, Alexandre Lacoste, who created and maintained the website; Andrew Raubinger who designed the flip logo and overall branding, and Alys Martin, the inspired graphic designer responsible for this report.

The purpose of this report is to shed light on the changes that are taking place within our profession, how it is adapting to those changes, and to make recommendations on the way forward. The implementation of those recommendations represents the start of the next chapter on the future of law and innovation in our profession.

GARY ULMAN

Chair, Future Committee

SUMMARY OF

FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

- ▶ Consumers of legal services are seeking value and **competition is increasing**.
- ▶ **New ways of working** are proliferating.
- ▶ Inhouse corporate lawyers are driving change, seeking **client-focussed service**, using legal technology, re-engineering work processes and monitoring costs.
- ▶ Changing cultures, consumer pressure and lower prices are driving **increased use of legal technology**.
- ▶ **New areas of work** and new roles are likely to emerge with technology.
- ▶ **Artificial intelligence** raises regulatory and ethical issues that require investigation and guidance for solicitors.
- ▶ There is an urgent need for funding for legal assistance and a role for technology and innovation to **aid access to justice**.
- ▶ The law graduate of the future needs a range of **new skills** and knowledge.
- ▶ Change can enhance **personal wellbeing** if its introduction is appropriately supported.
- ▶ A variety of emerging, **flexible work** arrangements (eg freelancing) could promote diversity.
- ▶ Connectivity and **globalisation** raise new and great opportunities and threats for lawyers. Globalisation is challenging domestic law reform.
- ▶ Innovation and changing consumer behaviour require **practical guidance** for solicitors and raise regulatory questions that require further investigation.

RECOMMENDATIONS

- ▶ **Help** solicitors share information about new ways of working.
- ▶ **Establish** a centre for legal innovation projects to research and support change.
- ▶ **Investigate** setting up an incubator for tech-enabled innovation.
- ▶ **Sponsor** an annual hackathon for community legal assistance.
- ▶ **Advocate** for appropriate funding for community legal assistance.
- ▶ **Empower** solicitors to better plan and implement change within practices.
- ▶ **Integrate** wellbeing into CPD, and change and innovation projects.
- ▶ **Promote** diversity and monitor impacts of flexible work arrangements.
- ▶ **Offer** CPD on practical topics in private international law.
- ▶ **Seek** ALRC reference on laws that affect cross-border disputes.
- ▶ **Research** efficacy of online legal documents and investigate regulating legal information.
- ▶ **Raise awareness** of the value of legal advice.
- ▶ **Draft guidance** for lawyers as entrepreneurs and businesspeople.
- ▶ **Continue supporting** solicitors and innovation by investigating how to reduce regulatory barriers.

CHAPTER 1: DRIVERS OF CHANGE: CLIENTS' NEEDS AND EXPECTATIONS

- Consumers across the market for legal services are increasingly seeking value for money and expecting lawyers to be competent users of technology.
- Larger inhouse practices are driving change, seeking greater value from external firms and reducing legal spend. These teams are:
 - streamlining work processes
 - seeking and using improved legal technology and
 - rewarding client-centred service.
- Many inhouse teams' changing work processes and their use of external law firms and service providers rely on dividing work into discrete jobs (unbundling) which are shared between the internal team and external providers.

As budgets shrink and competition grows, clients value timeless qualities in their lawyer: clarity, practicality, an understanding of their motives and objectives, a preparedness to work collaboratively.

CHAPTER 2: LEGAL TECHNOLOGY

- Legal practices are increasingly interested in and engaging with legal technology.
- Interest in technology is being driven by the availability of increased computing power at lower costs, cloud computing, devices and the internet (mobility and connectivity) and consumer behaviour.
- Smaller firms are benefitting from the reduced costs of technology.
- Lawyers are benefitting by applying metrics to analyse business practices (eg for costing work) and learning how data fuels machine learning and other advanced computing applications.
- New areas of work and new roles are likely to emerge as legal technology develops and matures.
- Lawyers' levels of skill and interest in technology across the profession is uneven and some lawyers require encouragement and support.
- Artificial intelligence raises ethical and regulatory issues that require investigation and guidance.

CHAPTER 3: NEW WAYS OF WORKING

- In New South Wales today there is evidence of various ways of working, including ways of pricing, structuring practices, managing projects, and engaging with clients. These include:
 - paperless practices
 - networks of firms
 - inhouse practices, outsourcing and "insourcing" work
 - single principals with panels of freelance lawyers
 - chambers practices
 - legal "hubs" or "marketplaces"
 - part law firm/part technology companies
 - online and virtual firms
 - "alternative fee arrangement"/time-based billers
 - multidisciplinary practices.
- New ways of working are being adopted not only by inhouse practices but in community legal centres, by traditional law firms looking to innovate and by small practices whose agility can be a great advantage.

CHAPTER 4: COMMUNITY NEEDS AND FUNDING

- There is a high level of unmet need for legal services in the community.
- The foreshadowed reductions of Commonwealth Government funding from 1 July 2017 will significantly impede the already constrained ability of legal assistance providers to supply necessary legal services to vulnerable people in the community.
- The cost or perceived cost of legal services is a significant barrier to obtaining legal advice or representation.
- There are many ways that technology can facilitate access to justice provided that solutions are created with expertise and oversight and ethics and design principles at their core.
- There are many examples of innovation among community legal assistance providers but the sector is in urgent need of funding.
- A technology gap threatens to separate corporate and wealthy Australia, and disadvantaged people with legal problems.

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FINDINGS

CHAPTER 5: THE COURTS AND TRIBUNALS

- Fiscal constraints and community behaviours and expectations are driving innovation in courts and tribunals.
- Delays in court proceedings can cause serious societal ills and in recent years, not all courts have been consistently resourced to meet pressing demand.
- Technology is being used to streamline court services.
- There is a growing interest in online dispute resolution.

CHAPTER 6: LEGAL EDUCATION

- In a changing environment, the skills and areas of knowledge likely to be of increasing importance for the graduate of the future include:
 - technology
 - practice-related skills (eg collaboration, advocacy/negotiation skills)
 - business skills/basic accounting and finance
 - project management
 - international and cross-border law
 - interdisciplinary experience
 - resilience, flexibility and ability to adapt to change.
- Further consideration and research has been identified as being necessary to determine how these skills and knowledge areas could be taught within existing curricula.

CHAPTER 7: MANAGING CHANGE AND NEW PROCESSES

- Innovation has the potential to significantly enhance the personal wellbeing of members of the profession if the introduction of change is supported appropriately.
- Change should be incremental and take place within an environment of psychological safety.
- Firms as well as sole practitioners will need support and may need expert assistance with strategic planning and the implementation of change.

CHAPTER 8: DIVERSITY

- Across the profession there are many excellent initiatives under way that are designed to reduce relative disadvantage within the profession.
- Some lawyers continue to be excluded from full participation in professional life and advancement due to discrimination, sometimes operating through unconscious bias.
- The new environment of innovation and heightened competition among firms within the profession appears to be resulting in a greater availability of flexible work.
- A key challenge is to ensure that strategies to achieve diversity and innovation reinforce one another.

CHAPTER 9: GLOBALISATION

- Technology, trade and people are crossing national borders more frequently than ever before. This brings risks and opportunities and requires lawyers to adapt as certain skills and knowledge become more important.
- Blockchain is a technology in its infancy which could have significant impacts on various parts of the economy and eliminate and create areas of work for solicitors.
- Cyber risks are constantly evolving and the preparedness of small to medium-sized firms in the broader economy is poor. Solicitors have a role to play in maintaining their own and others' cyber security.
- An increase in cross-border transactions and disputes mean that a knowledge of private international law is increasingly important to the practice of law.
- The approach taken by law-makers to their increasingly frequent engagement with laws of other jurisdictions and with international instruments has been inconsistent and the process of law reform ad hoc, presenting areas for improvement.

CHAPTER 10: REGULATION OF THE LEGAL PROFESSION

- Innovation and changing consumer behaviour are raising questions that are of interest to the Law Society as co-regulator. These include the use by consumers of low-cost, fully or partly automated online services and the unbundling of legal work.
- The quality of emerging offerings in online legal information was not established.
- Regulators' experiences overseas offer useful insights into consumer and market behaviour.

RECOMMENDATION 1

That the Law Society actively facilitate information sharing across all sectors of the profession about developments in legal technology, work process improvement and client-focussed service.

- » *Chapter 1 Drivers of change: Clients' needs and expectations*

RECOMMENDATION 2

That the Law Society establish a centre for legal innovation projects. The centre should:

- actively facilitate innovation in legal technology and engage with the development of emerging technologies, such as blockchain
- conduct and present research into the ethical and regulatory dimensions of innovation and technology, including unbundling of legal services and solicitor duties of technological competence, in close collaboration with the Professional Standards Department and the Legal Technology Committee of the Law Society
- research and design, in close collaboration with the Law Society's Professional Development Department, continuing legal education programs that assist lawyers to build core competencies in existing and emerging technologies relevant to the delivery of legal services
- foster innovation cultures by creating and participating in networks for professionals and producing guidance for solicitors as to the legal technology market
- foster partnerships including by actively working with the legal technology sector and legal assistance sectors to seek opportunities to secure help from appropriate technology providers for community legal services
- raise awareness of justice-related innovation and of any consultations with courts, tribunals and community stakeholders as to innovations including online dispute resolution
- develop strategies to increase solicitors' aptitude for cyber management (cyber security).

- » *Chapter 2 Legal technology*
- » *Chapter 4 Community needs and funding*
- » *Chapter 9 Globalisation*

RECOMMENDATION 3

That the Law Society consider establishing an incubator in New South Wales dedicated to technology-enabled innovation in the law.

- » *Chapter 2 Legal technology*
- » *Chapter 4 Community needs and funding*

RECOMMENDATION 4

That the Law Society:

- consult more widely with professionals working in novel ways, co-regulators and community stakeholders to increase the level of engagement with new ways of working
 - continue to raise awareness throughout the profession of new ways of working through the centre for legal innovation projects and Law Society publications.
- » *Chapter 3 New ways of working*

RECOMMENDATION 5

That the Law Society sponsor an annual hackathon to harness enthusiasm and expertise to help legal assistance providers find innovative solutions to specific problems.

- » *Chapter 4 Community needs and funding*

RECOMMENDATION 6

That the Law Society:

- continue to advocate in the strongest terms for the reversal of the foreshadowed reductions of Commonwealth funding for the legal assistance sector due to take effect on 1 July 2017
- press the Commonwealth Government to consult with the sector on appropriate levels of interim funding and the development of a robust funding model for future funding allocations.

- » *Chapter 4 Community needs and funding*

RECOMMENDATIONS

RECOMMENDATION 7

That the Law Society:

- augment its participation in consultations with courts, tribunals and community stakeholders as to innovations including online dispute resolution to help ensure that new services are carefully designed and implemented
- continue to raise awareness throughout the profession of such consultations and developments through the centre for legal innovation projects and Law Society publications. See also Recommendation 2, above.

» *Chapter 5 The courts and tribunals*

RECOMMENDATION 8

That the Law Society communicate the report's detailed findings to the Council of Law Deans, Legal Profession Admission Board, NSW and the Admissions Committee of the Legal Services Council as to the further research and consideration that should be given to the seven areas of skills and knowledge identified as necessary for law graduates.

» *Chapter 6 Legal education*

RECOMMENDATION 9

That when crafting strategy, delivering training or drafting material to assist members with change, the Law Society bear in mind the risk of adverse mental health impacts and aim to facilitate wellbeing.

» *Chapter 7 New processes and managing change*

RECOMMENDATION 10

That the Law Society investigate the appropriateness of including practices and skills to promote wellbeing into existing or new mandatory units of solicitors' continuing professional development.

» *Chapter 7 New processes and managing change*

RECOMMENDATION 11

That the Law Society help empower lawyers to make informed decisions about organisational strategies and managing change, through education and the dissemination of information developed by appropriately qualified and experienced experts.

» *Chapter 7 New processes and managing change*

RECOMMENDATION 12

That the Law Society:

- continue to support initiatives throughout the profession designed to promote diversity and inclusion
- monitor the evolving relationship between flexible modes of employment or engagement and innovation, and observe its impacts on groups which are presently at a relative disadvantage within the profession.

» *Chapter 9 Diversity*

RECOMMENDATION 13

That the Law Society include in continuing legal education offerings regular short courses that cover practical topics on private international law.

» *Chapter 9 Globalisation*

RECOMMENDATION 14

That the Law Society write to the Attorney General to seek that the Australian Law Reform Commission be asked to identify any domestic laws that hamper Australian courts and arbitrators being able to efficiently and effectively deal with cross-border disputes and to suggest reforms.

» *Chapter 9 Globalisation*

RECOMMENDATION 15

That the Law Society research the efficacy of online legal documents including by analysing complaints made by consumers.

» *Chapter 10 The Regulation of the Legal Profession*

RECOMMENDATION 16

That the Law Society investigate bringing legal information within the regulatory fold.

» *Chapter 10 The Regulation of the Legal Profession*

RECOMMENDATION 17

That the Law Society actively raise awareness among the members of the public of the value of legal advice.

» *Chapter 10 The Regulation of the Legal Profession*

RECOMMENDATION 18

That the Law Society draft guidance for lawyers to operate as entrepreneurs and businesses. See also Recommendation 11, above.

» *Chapter 10 The Regulation of the Legal Profession*

RECOMMENDATION 19

That the Law Society continue to investigate ways to reduce the impacts of regulatory barriers, to assist solicitors.

» *Chapter 10 The Regulation of the Legal Profession*

THE FLIP REPORT 2017

BACKGROUND AND METHODOLOGY

Why did the Law Society hold a commission of inquiry into the future of the profession? What methods were used?

SUMMARY

WHY?

The Law Society established a commission of inquiry to:

- **identify and understand the changes currently affecting the profession**
- **inform solicitors and to gather data for use in future policy**
- **place itself at the centre of change, so as to help the profession develop the leadership required to respond to the challenges ahead.**

HOW?

The commission of inquiry heard from:

- **more than 100 individuals on eight different topics in commission sessions**
- **a further 10 individuals from various sectors of the profession**
- **the Law Society's Regional Presidents**
- **the Law Society's Legal Technology Committee.**

Why flip?

THE WORLD

In 2016, the world watched as apparently immutable institutions unravelled. British citizens defied expectations to vote for Brexit. US citizens elected Donald Trump to be their President. In part, the decisions reflected an immense public distrust of existing institutions, a hostility that had evidently been growing over time.

Over the same period, the peer-to-peer sharing economy was continuing to flourish. This form of trade *builds* on trust and transparency.

These powerful contradictions spilled into all areas of life.

NEW ISSUES & SPEED OF CHANGE FOR LAWYERS

In late 2015, the Council of The Law Society of New South Wales saw an acceleration in the pace of change affecting the legal profession in New South Wales. It was abundantly clear that there were many opportunities and new problems to analyse and act upon. Flip was established to grasp the big picture, and assess its implications. For the Law Society to provide leadership, it had to ensure it was properly informed of the range of activities being undertaken right now.

The trends apparent in late 2015 were various. Large firms were investing more in technology development and buying equity in start-ups. General counsel asked panel law firms to report on their inclusivity and diversity. They were applying metrics to better cost and resource legal matters. In 2016 the pace of change continued to accelerate. Citizens sought cheap solutions to their legal needs over the internet. When these didn't meet expectations, some but not all turned to solicitors for help. The first end-to-end paperless conveyance in Australia was concluded in New South Wales. Solicitors debated what algorithms could mean for the rule of law and legal chatbots came online.¹ Blockchain also found its way into the vernacular.

Methods

A FOCUS ON NEW SOUTH WALES

Around the world, professional associations have conducted outstanding, comprehensive legal “futures” work. That work has informed this project. However, in 2015, the President-Elect, Gary Ulman, determined that it would be appropriate for solicitors of New South Wales to have their own forum for engagement and discussion, to address issues unique to our jurisdiction and investigate whether and to what extent trends identified elsewhere were discernible in New South Wales. This was the basis for the Law Society’s own investigation, the Future of Law and Innovation in the Profession (flip) Commission of Inquiry. The commission format was inspired by the public inquiry conducted by the American Bar Association, the Commission on the Future of Legal Services.²

On 21 January 2016, the Law Society Council passed a resolution that formally established flip.

THE FUTURE COMMITTEE

In March 2016, a committee was formed to lead the flip Commission of Inquiry. Chaired by Gary Ulman, then Law Society President, the Committee met for the first time in April 2016. Its members were recruited from various sectors of the legal services sector. It includes a legal technology specialist, a non-judicial representative of the Supreme Court of New South Wales, an operations and change manager, general counsel, a university academic, the Australian Human Rights Commissioner, country and city solicitors, members of the Law Society Council and a policy lawyer as executive member. The names of the members of the Committee and its terms of reference are set out in Appendices A and B to this report.

COMMISSION FORMAT

The flip Commission was convened twice each month from May to November and on each occasion the Commission panel was constituted by members of the Committee. The Commission was chaired by Gary Ulman and the session on 20 May 2016 was chaired by Pauline Wright, who has now succeeded Mr Ulman as the Law Society President. The composition of the Commission panel on any given occasion depended on the areas of expertise and interest of individual Committee members, and their availability. Commission panels were typically comprised of three people, although on 30 June 2016, for example, there were six Commissioners.

To facilitate engagement, and in homage to the oral tradition of the common law, the project relied primarily on spoken testimony, using video-link where necessary. To keep the time commitment manageable, two hours were set aside twice each month for the hearings, and witnesses were allocated approximately 10-25 minutes each, including their introductory remarks and time spent addressing questions from the panel.

Each hearing was open to the public and profession in the manner of the public gallery of a court room or tribunal. Sessions were filmed with the permission of witnesses and quickly uploaded to the project website to be available for viewing by the profession and public. These videos can be viewed on the Law Society’s website at www.lawsociety.com.au/flip.

“Each hearing was open to the public and profession in the manner of the public gallery of a court room or tribunal.”

TOPICS

The “Future of Law and Innovation in the Profession” was divided into the 11 topics listed below, which were investigated through dedicated sessions of the Commission. However, no witness was precluded from discussing topics dealt with in other sessions. The strengths and weaknesses of legal education, for example, and the question of the extent to which clients were driving innovation, were subjects of inquiry during most sessions throughout the year.

- Drivers of change (Part 1): Clients’ needs and expectations
- Drivers of change (Part 2): Technology
- New ways of working
- Legal education, information systems and training
- Community needs, courts and funding
- Diversity, new processes and managing change
- Globalisation
- Regulation

There were some gaps in the subjects covered. For example, the Commission could have more fully investigated the distinct experience of inhouse government lawyers. While inhouse government lawyers will face some of the same issues as inhouse corporate lawyers, there are distinctions which may need to be further explored. Also, one area of law that raises markedly different concerns when considering the future is criminal law. The social and legal importance of proper determination of guilt or innocence makes criminal proceedings less suitable as testing grounds for the disruptions of the digital age. Additionally, the jurisdictional differences in criminal offences mean that the profession is less vulnerable to the pressures of globalisation than in civil, particularly commercial, practice areas. Opportunities will also arise. New technologies will likely mean new types of offending. Compelling defences may increasingly require technological know-how from lawyers. These different directions combine to make the case for a separate assessment of emerging and predicted trends in criminal law and practice.

WITNESSES

Some individuals contacted flip in response to calls for witnesses sent via the Law Society’s weekly eNewsletter, *Monday Briefs*, which reaches 30,000 solicitors in the State. Others were identified on the basis of their experience or expertise and were invited by the President to give evidence.

In addition, written submissions were invited throughout the year, and particularly in September as the Commission entered its final phase. Anyone who had been reluctant or unable to give oral evidence was invited to submit their views in writing at any time. Very few written submissions were received, although 103 individuals gave oral evidence to the Commission.

A small number of individuals and organisations were reluctant to be recorded giving evidence to the Commission but wished to share their insights with flip. Likewise, on occasion the dates scheduled for hearings did not suit. Accordingly, discussions that were not recorded on film were held throughout the year with 10 individuals from various organisations. These included Legal Aid NSW, the Legal Assistance Branch of the Commonwealth Attorney General’s Department, Keypoint Law, Google Australia and InfoTrack. The Law Society President and Strategic Policy Lawyer consulted with the Regional Presidents of the Law Society during a meeting held on 27 October 2016 and the Society’s Legal Technology Committee was also consulted.

For a full list of witnesses, the dates of hearings and a list of written submissions received, see Appendix C.

ENDNOTES

- 1 See chapters 1 and 2 of this report for trends shaping legal services.
- 2 Commission on the Future of Legal Services, American Bar Association, *Report on the Future of Legal Services in the United States* (2016), americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.



FLIP WAS ESTABLISHED TO GRASP THE BIG PICTURE, AND ASSESS ITS IMPLICATIONS. FOR THE LAW SOCIETY TO PROVIDE LEADERSHIP, IT HAD TO ENSURE THAT IT WAS PROPERLY INFORMED OF THE RANGE OF ACTIVITIES BEING UNDERTAKEN RIGHT NOW.



CHAPTER 01
**DRIVERS
OF CHANGE:**
CLIENTS' NEEDS
AND EXPECTATIONS

Critical to understanding how clients' needs and expectations are transforming the profession is an appreciation of the diversity of the work that solicitors do. Likewise, the diversity of legal needs and of clients themselves are pronounced. Described in terms of price alone, solicitors' services range from free legal advice to multi-million-dollar representation. Some solicitors work pro bono for the homeless alongside commercial clients.

Certainly, there appears to be a high level of unmet legal need in the community. The oft-used term “missing middle” denotes legal services that are out of the reach of middle-income Australia. Nor are all kinds of need or expectation translating into change. Yet the changes that are under way are dramatic and have far-reaching potential. They are affecting pricing, access to advice and information, the speed and changing modes of service and how courts function. While not without challenges, these changes have enormous progressive implications for society and the profession.

Part 1 highlights three themes common to corporate and consumer services. In part 2 the corporate sector is examined in detail because cost pressures and innovations there are reshaping the profession as a whole. Part 3 and chapter 4 focus on the community more broadly, and include a discussion of free and lower-cost services sought by individuals, small and medium-sized businesses and smaller organisations.

Common themes

The Future Committee found striking parallels between the needs of the high-end commercial market and the community more generally. Overwhelmingly, a reaction to the high cost of legal services including litigation is driving change. However, other needs and expectations of clients are making themselves known and felt across the profession.

First, corporate clients want clear advice in plain English. The same push is evident in the consumer market. For example, legal chat sites using simple Q&A formats are proliferating online as clients seek to spend less, but look for pithy, practical guidance whether cheaply, or for free.

Second, in the community sector, “wrap-around service” describes a collaborative, crossdisciplinary approach to clients that sees legal needs not as something technical and discrete, but rather embedded within a web of social and personal issues like housing, health and financial need. Likewise, corporate clients are urging their lawyers to take a holistic view of their needs and what drives them.

COMMUNICATION

Clients from all walks of life want information to be user-friendly. Advice needs to be clear and up-front. Corporate counsel, David Shannon, told flip:

The last thing a client really wants to hear is that section 75ZZQ of the Act has repealed the first Division but that takes effect when there's a proclamation and until then there are savings provisions.

Their eyes glaze over.

They'd like to know that they can do something or they can't do something, or what the risks associated with a certain kind of conduct are likely to be or what the legal challenges might be or what the risks might be – and if you bring a commercial approach to this as well you'll really provide value-add.¹

The goal of being user-friendly is also reflected in the increased application of “human-centred design”.² And it is not just corporate clients who are demanding changes in the way information is delivered. A recent survey of 4000 older people commissioned by the Council for the Ageing NSW (COTA) showed that poor web design was responsible for a high level of frustration experienced by computer-literate people over the age of 50 who use the internet to look for information, including legal services.³

ENGAGEMENT AND COLLABORATION

Clients of all kinds want their lawyers to know exactly what drives them. In a commercial setting, this means understanding the markets in which clients operate, being familiar with the clients’ internal policies and procedures, and having an appreciation of their specific commercial objectives.⁴ Engagement and collaboration of this kind can lead to sound, strategic advice and shared platforms for service delivery.⁵

Genuine collaboration presents opportunities to break free of the stereotype that “boxes lawyers in” as “deliverers of technicalities ... or someone with a wig who will go to court for you”.⁶ In his practice, business lawyer Noric Dilanchian applies concepts from management consulting and other fields – among them IT and psychology – to understand how business model innovation can work for his clients and help him to provide an integrated service.⁷ In a different context, Rick Welsh, Coordinator of an Aboriginal male-targetted suicide prevention service, The Shed, told flip that lawyers need to see the whole client context.⁸ Mr Welsh spoke of cultural contact plans for children to illustrate his point. Lawyers preparing these plans, he said, commonly overlook the significance of the extended family and the wider Aboriginal community. For example, where a child is precluded from contact with immediate family, to overlook the potential role of the extended family can impede meaningful cultural contact. Mr Welsh noted that successful legal assistance requires lawyers to understand the unique practices, social and cultural needs of their Aboriginal clients, and to engage with the local Aboriginal community.⁹

Clarity, practicality, understanding your client, being prepared to work collaboratively across disciplines and closely with the client are timeless qualities. As budgets shrink and competition grows, they are increasingly the attributes of successful lawyers of the future.

“Clarity, practicality, understanding your client, being prepared to work collaboratively across disciplines and closely with the client are timeless qualities.”

Dramatic changes inhouse

Corporate legal teams are driving innovation as they actively work to contain costs in a flat commercial market. Since the 1990s – but more significantly, in the first decade of the millenium – corporate legal teams have been expected to account for costs by producing metrics, leveraging technology and meeting budgets.¹⁰ For a long time, corporations have treated legal services as an unavoidable and unpredictable cost, associated with dispute resolution rather than prevention. This is no longer the case.

Along with these changes, the roles of the inhouse team and general counsel have altered dramatically. Keeping more work inhouse to cut costs is a major trend that may prove to be cyclical,¹¹ but still appears to be on the rise in Australia.¹² As Katherine Grace, General Counsel and Company Secretary, Stockland Property Group, told flip, recruiting and staffing practices are also shifting. A corporate role is increasingly being seen as an attractive career choice, and solicitors are joining inhouse teams much earlier in their careers than previously.¹³ Law firms are also sharing staff with inhouse teams on secondment more systematically to help reduce client costs.¹⁴

COST AND VALUE

The imperative to keep costs low is the most powerful driver of change today. It has already transformed the corporate sector. It will eventually permeate every corner of the legal services market. Yet value, efficiency, and a deep knowledge of clients' needs – not simply the cheapest service – are the characteristics that are winning work for firms. Testimony to flip strongly suggested that while clients across the entire market are acutely sensitive to cost, it will rarely be the primary reason for choosing a lawyer. As Dominic Woolrych, Head of Legal, LawPath, told flip, the first-time user of a legal service will typically choose between LawPath's three quotes on the basis of price.¹⁵ However, the more sophisticated the client, the greater the concern that the lawyer has quoted on the basis of a thorough appreciation of the client's needs and the full scope of the work. Malcolm Heath, Legal Risk Manager, Lawcover, cautioned law firms against discounting fees without first undertaking careful analysis.¹⁶ Likewise, for David Shannon, an unduly low quote can have the opposite of its intended effect – a red flag to a seasoned client showing that the demands of the job may not have been properly understood.

“The imperative to keep costs low is the most powerful driver of change today. It has already transformed the corporate sector.”

The push for lower costs and budget certainty has led away from purely time-based billing, discussed below and in chapter 3. Added value is being sought by general counsel via the delivery of seminars for staff, access to free legal resources, access to relationships or networks, and the provision of technology solutions like online data rooms for matters with multiple counter-parties or large transactions, and free storage portals for client precedents or deal papers.¹⁷

DATA IS UNLOCKING POTENTIAL

The lead taken by large corporations determined to control their budgets and extract greater value from external lawyers has reframed the terms of exchange more generally. The collection of detailed data is an important lever that inhouse teams are using to decide whether to keep high-volume work inhouse, and to whom to send work. As Strategic Partnerships Manager, Sam Graziano, told flip, a digital legal allocation tool enables Suncorp to generate and use qualitative and quantitative data to measure the performance of panel firms.¹⁸

PROCUREMENT

An extension of the use of data to control relationships is the emergence of procurement as a process and professional service. As is well known, since the 1990s large companies in Australia have utilised legal panels to improve their negotiating positions by restricting work. Likewise, procurement methodologies are an established feature of government agencies' engagement of legal services. Yet in contrast to the US, where the use of procurement professionals appears to be increasing, particularly among Fortune 500 companies,¹⁹ Australia's private sector is embracing some of the principles of procurement, but procurement professionals are yet to make their mark.²⁰ For the US market and an evaluation of procurement services, Silvia Hodge Silverstein's article "What We Know and Need to Know about Legal Procurement"²¹ is an excellent guide.

Data are also being used to create efficiencies within corporations and law firms by helping to prioritise work and redesign processes. Steven Walker, Vice President and South Pacific Counsel, Hewlett Packard Enterprise, told flip that:

... right now we're at the point at which we're harnessing tremendously interesting data on how we deliver our services. The insights that we're starting to gather from the operation of a department at that scale globally is truly mindblowing and we're on the cusp of starting to really mine that information for how we can do things better, cheaper, faster in the future.²²

“The collection of detailed data is an important lever that inhouse teams are using to decide whether to keep high-volume work inhouse, and to whom to send work.”

Data analysis for business intelligence is also helping some firms avoid unsustainable discounting. This process does not need to be expensive. The leaders using data advise firms to start small, suggesting: start measuring what you are doing and the data you collect will help you better understand your own practices. Ask yourself why you keep the data you do, and keep it consciously. It may be that insights for pricing strategies can lead to improvements in service delivery, helping manage information, perhaps reduce paper, identify where expert systems could be used, or apps introduced – or simply start by creating or refining databases to capture knowledge in the most efficient way.²³

It is clear that some corporate legal teams have progressed a long way down this path. Many are encouraging law firms to develop the same acumen and are asking their panel firms to report on their systems and innovative uses of technology.

PRICING

In 2011, the Law Society held a symposium on billing partly in response to growing objections to the solicitor's hourly rate.²⁴ Corporate clients' objections to time-based billing have only grown since that time.

This is an area that will continue to be contentious, primarily because the agreed method of billing reflects an allocation of the risk of underquoting. Yet clients' appetite for "alternative fee arrangements" is clear,²⁵ and many firms have moved decisively to respond.²⁶

The choice is not black and white – it is not a choice between dollars per hour or a fixed fee. As Associate Professor Michael Legg has written,²⁷ capped fees and "collars", two of a number of variants, can allow clients and lawyers a degree of flexibility in working out how the billing method will allocate risk.²⁸ As the name suggests, a capped fee arrangement is an agreement that costs, worked out on an hourly basis, will not exceed a certain amount.²⁹ Under a collared fee, the practice keeps track of the number of hours spent and compares it to a capped fee; if the actual time exceeds the cap by an agreed percentage or amount, the client agrees to pay an agreed proportion of the excess and likewise the practice refunds or credits some of the difference if the work is undertaken in fewer hours than the cap reflects.³⁰

Of the more fundamental objections to the hourly rate is that it reflects a clock-watching mind-set that is antithetical to efficiency and the production of value. It is argued that hourly rates are uncommercial and clients find lawyers' attachment to them arcane and hard to understand. Some corporations have pointed to the existence of "shadow time costing" where fixed fees are levied while time recording continues in the background, as evidence that lawyers are failing to actively shift focus from time to value. There is more than a grain of truth here. However, it is also true that to set a price, a practice needs a good grasp of its costs, including labour costs. Time recording, however temporarily, can be required to support this process, as the example of caps and collars, set out above, suggests.

Further research and guidance for practitioners is needed to help meet clients' expectations of value-based billing in the context of a regulatory environment that has shifted toward greater consumer protection.³¹

"To set a price, a practice needs a good grasp of its costs, including labour costs."



LEGAL OPERATIONS – A NEW ROLE

New roles emerging within legal operations in the US epitomise the paradigm shift in corporate legal services. Job titles include “Legal Operations Analyst”, “Legal Operations and Budget Manager” and “Director of Legal Administration” (or simply “Director, Legal Operations”). The new positions arise from the centralisation of responsibility for legal spend.

Separating the business of legal services from substantive legal work transforms relations between general counsel and law firms. As Connie Brenton told flip, the role “takes the relationship of attorney to attorney out of the business conversation. Substance is still communicated from attorney to attorney, however rates, technology, efficiency, value, is moved into this operations role.”³⁴

Australia may not follow the US lead. Notably, though, a regional arm of the Corporate Legal Operations Consortium “CLOC” was formed in Australia in July 2016.³⁵

TECHNOLOGY

Many large inhouse legal teams are now using technology to deliver “new ... more efficient ... more cost effective ... and *better services*” across their companies.³⁴ These include not only sophisticated workflow systems but suites of dedicated legal applications. Steven Walker, Vice President, South Pacific Counsel and Company Secretary at Hewlett Packard Enterprise, told flip that the HPE legal team is using around 30 bespoke legal apps supporting a wide variety of work, including mergers and acquisitions, contract negotiation, litigation, ebilling, and digital signatures:

*[R]ight now ... we are using ... up to thirty or so dedicated legal applications ... specific legal applications which do specific legal things depending on what your role is in the company, whether it be M&A transactional work, there’s an application that supports that, whether it be contract negotiation work, there’s an application that supports that. Litigation has an application, ebilling has an application, digital signatures ... So we’ve invested a lot of money and time in both the technology and the business processes to implement them, along with the change management to introduce those so they’re a seamless part of legal service delivery.*³⁵

Technology is considered further in chapter 2.

“New roles emerging within legal operations in the US epitomise the paradigm shift in corporate legal services.”

NEW MODELS OF PRACTICE

To what extent are corporate clients driving the emergence of new ways of working? According to Dr George Beaton and Imme Kaschner, corporate clients' needs and expectations as to cost have played a key role in the creation of new actors, or "NewLaw" providers.³⁶ The trend, Beaton and Kaschner aver, reflects the market's response to an outdated model. They argue that the legal market today is in a mature phase, characterised simultaneously by consolidation and fragmentation, possibly on the eve of an "endgame" marked by hypercompetition. The pyramid structure of law firms based on the "Cravath system", founded in New York in 1819, was suitable when markets were expanding and globalising but is entirely unsuitable, they argue, in the present day, where it continues to constrain the operations of many traditional firms. Features of the Cravath system include a restricted number of equity owners at the top, and a partnership structure in which profit is not retained and where "partner-owners behave as largely autonomous units"³⁷ inhibiting agility and investment in the future. Along with numerous other analysts, Beaton and Kaschner see the increased use of technology, the shift to a buyer's market and an increasingly well-informed clientele as some of the factors shaking up the market and creating the conditions for new models of practice to succeed.³⁸

In chapter 3 we describe some of the new models themselves in more detail.

NewLaw providers who gave evidence to flip revealed a mix of motivations for delivering legal services in a new way. After 18 years of practising, looking ahead to retirement, Lyn Lucas set up a nation-wide online divorce service because online lawyering offered a less stressful way of working. Leonie Chapman, principal of LAWyal Solicitors, left an inhouse role at Macquarie Bank to open a "virtual legal practice" primarily to work from home and keep her own hours.³⁹

Finding new ways of working will be attributable in any given case to the unique personal preferences of the practice founders. Yet the desire to claim some of the market share of the large law firms appears to be at least a secondary motivation, or else a consequence that in turn affects the market. While Ms Chapman of LAWyal told flip that the reason she set up her practice as a virtual firm was to work her own hours from a home office, she is certainly tendering for work in direct competition with large firms. Lexvoco is one NewLaw provider that set up to service the needs of corporate clients. Lexvoco's clients have included Allianz, Australia Post, Santos and Samsung and the company consciously differentiates itself from traditional offerings in the market. LegalVision has grown rapidly over the past four years by focusing on the SME, or small and medium-sized enterprise, segment of the market. However, more recently, the company has also started working more closely with inhouse teams of large organisations, collaborating to design streamlined processes (including through the use of software).⁴⁰

“Beaton and Kaschner see the increased use of technology, the shift to a buyer’s market and an increasingly well-informed clientele as some of the factors shaking up the market.”

Targetted offerings are being developed. The “Allens Accelerate” practice includes a suite of legal documents for start-ups. Via Accelerate, law firm Allens provides legal guidance to cash-strapped fledgling businesses, many in the technology sector, free of charge. Allens recognises that while many will fail, some of these companies could be tomorrow’s Fortune 500. Through the free, commoditised service Allens builds trust with future clients. The founder of Allens Accelerate, partner Gavin Smith, explained that:

The question was, for us: how does a big firm like Allens go and do something in [the start-up] sector when we traditionally are a firm that services the big end of town.⁴¹

Allens Accelerate is an interesting example of what Dr Beaton describes as BigLaw remaking itself: large practices using innovative methods to do law differently and in so doing, consistent with Dr Beaton’s conception of the market, insuring themselves against obsolescence. Many large firms over the course of the year have not only paid more heed to their innovation committees, but have invested significantly in the NewLaw market, including Norton Rose Fulbright which has allied with LawPath and Gilbert + Tobin with LegalVision.

UNBUNDLING, INSOURCING AND OUTSOURCING

Flip was also keen to understand whether corporate clients are concentrating their energies upon encouraging their trusted panel firms to innovate, or whether they are turning to low-cost, NewLaw providers to outsource legal work. The first point to note is that, as mentioned, trends in the corporate market presently point to “insourcing” not outsourcing. However, this distinction is not absolute. Inhouse teams are increasingly dividing legal work into component tasks. Counsel then determines that some tasks on a particular matter are more efficiently undertaken inhouse, with related but separate tasks more effectively outsourced. This approach sees a matter as a bundle of tasks to be “unbundled” and parcelled out either to a law firm or service provider. Significantly, it can mean that routine, high-volume work, which might otherwise have been briefed to external lawyers, is kept inhouse.⁴² This might be the

case, for example, where the team’s precedents have been automated or new graduates or secondees are employed to do the work. On the other hand, unbundling can mean that more work goes outside, such as where a legal process outsourcing company, like an e-discovery specialist, will get the task finished faster and at a lower cost.

How a client’s needs translate to insourcing or outsourcing depends on the quality of services available on the market and the client’s knowledge of its own processes, as discussed under the heading of “Data”, above. As Katherine Grace, General Counsel and Company Secretary, Stockland Property Group explained:

The legal profession and legal services quite often follow the other professional services. ... In large corporates now we’re seeing a lot of outsourcing or external provision of back-office finance services, for example. ... The challenge for many organisations around moving to these types of services is the level of sophistication in the organisation itself around how those services are provided. So understanding what your processes and procedures are is a fundamental baseline before you could move to any form of outsourcing – so for a lot of company, that’s the first transition that they need to make. ... That can be quite a challenge. ... It comes down to how much structure, and precedents, and organisation you have within an inhouse team as to whether you could then take it to the next step of outsourcing.⁴³

Not all companies are at the stage where they understand their processes well enough to unbundle their legal work. The experience across the profession is varied, with some legal teams within banks and insurance companies unbundling work to keep more of it inhouse, and large companies leveraging technology to streamline work, as the HPE example set out on page 20 suggests. Amongst smaller firms there is a growing trend of finding savings by contracting with a second law firm to undertake work on a file, where the firm would previously have briefed a barrister to perform the outsourced task.

These trends point to a further distinction between types of legal work, namely work that can be “commoditised” (high-volume, routine tasks), and potentially automated or performed by a low-cost provider, and work that is more complex and necessarily “bespoke”. Certainly, there is no consensus about the degree to which legal work is capable of being commoditised. The premise of much of Professor Richard Susskind’s work is that lawyers have historically vastly underestimated the extent to which legal work can be divided or unbundled into routine tasks.⁴⁴ Satyajit Das, on the other hand, has cited legal work as one of the few fields where the variety of factual circumstances and their unique importance in any given matter in a common law system render the profession more immune than most from disruption, as the service must necessarily be “bespoke”.⁴⁵

According to Professor Susskind, lawyers’ resistance to the idea that legal work can be commoditised would be overcome (and a barrier to access to justice removed) if only lawyers were to accept that clients and those who can’t afford a lawyer do not want or need a bespoke service. Lawyers are expensive because they provide a “Rolls Royce”⁴⁶ service to the few, thereby underservicing the community as a whole because their fees are out of reach of the majority of the population.

Unbundling creates various regulatory and ethical issues for lawyers, as discussed in chapter 10 and further, below.

The lines between overservicing and adequately servicing, and the appropriate mix of commoditised and bespoke work, are impossible to identify in the abstract but it is critical to raise a number of concerns about this critique at the outset.⁴⁷ There is an enormous and serious unmet need in the community in New South Wales, an issue that is treated separately in chapter 4. Across Australia, as a result of a funding reduction to community legal assistance that is due to take effect on 1 July 2017, the problem of unmet legal need is set to deepen significantly, with devastating personal and social impacts on the most vulnerable in our community. The detrimental consequences of this reduction will affect underserved low and middle-income Australians, and flow to taxpayers as individuals’ problems are neglected in increasing numbers and will grow in complexity and cost to the state in the absence of early intervention.

Not only does Commonwealth funding need to be restored but it needs to be augmented and in the private sector, legal services must continue to change to bring the costs of services down.⁴⁸ Yet a truth that is underappreciated across the community is that notorious top dollar legal fees do not reflect the lived reality of the vast majority of solicitors in the State, or their clients. Most practices in New South Wales are “one-partner” practices, and of these, the vast majority do not employ a solicitor at all.⁴⁹ Their profits are relatively low and fees charged are a world away from those of large law firms. Reflecting the cost of regulatory compliance, real estate, and sometimes heavily discounted or pro bono services, a perhaps surprising number of lawyers pay themselves a salary in lieu of any profit at all.

There is a good reason for regulation. It serves the public by ensuring quality and, in turn, protects consumers. The implication of Professor Susskind’s view that in order to meet genuine need in the community, lawyers can no longer provide bespoke services, does not sit comfortably with the standards of service that solicitors are held to by the courts and by the Law Society itself and the Legal Services Commissioner, under legislation designed to protect the public. The guarantee implicit in the qualification and licensing regime for legal practitioners is, like that of an electrician, of a safe, expert service. Today, this system in practice means that there are corners that cannot be cut – not because of any perverse attachment to overservicing, but because of the duties and sanctions that the law imposes on solicitors (discussed in chapter 10).

If this situation is to change, and the full potential of the enormous implications of technological advancement, new forms of pricing and innovation in service delivery are to be realised in the manner envisaged by Professor Susskind in his most optimistic scenarios, statute and common law may need to be reconsidered to allow the solicitor to lawfully pass risk to the client and bring down the cost of service where appropriate.

Flip's investigation of companies' use of commoditised services, available via online platforms such as LawPath and LegalVision, was limited. Claire Bibby, Senior Vice President and General Counsel, Brookfield Properties, observed that corporates and clients with their own inhouse legal teams are among the most sophisticated purchasers of legal advice and in that regard have "little need for services of this nature". Ms Bibby told flip that:

*... having said that, commoditised services would more likely appeal to a large number of smaller clients with less bespoke legal needs and lower legal budgets and they thus fill an important space in the market in terms of servicing more customers at a lower cost.*⁵⁰

Indeed, one Chief Executive Officer of a global not-for-profit company with a small office in Sydney reported seeking a quote for a company constitution from a New South Wales law firm and being put off by the price. He searched online and soon purchased the document instead from an off-the-shelf provider for just under \$1,000, far less than the fee quoted. The client was unable to say whether the standard document had been prepared by a lawyer although he assumed that it complied with current legal requirements and met his needs. Another client of an online provider, the founder of a start-up who had run several businesses prior to his current venture, told flip that in the first phase of his business he had purchased standard documents offered by a well-known commoditised, low-cost online firm. However, he told flip that he quickly perceived that he needed "bespoke" legal advice and turned to a different firm for this.

In the US, tech-enabled legal services firm Axiom⁵¹ claims to have half of FTSE 100 and Fortune 500 companies as clients.⁵²

Obviously, ad hoc accounts are an inadequate basis for any conclusions as to whether the needs and expectations of corporate clients are driving the emergence of commoditised services. The paucity of data that could accurately capture the range of legal services that are used, for what purposes, and how well those services have met needs and expectations, is discussed in more detail in the next part. Certainly, it is desirable for more research in this area to be undertaken.

The wider community: Are needs and expectations driving change?

As the Productivity Commission found in December 2014,⁵³ there is a pressing need for data that captures how members of the community interact with the legal system. Large corporate clients are well placed to ensure their expectations and needs are known. They have industry associations, access to the media, and their practices and needs are regularly surveyed and analysed; the same cannot be said for smaller organisations or for individual members of the community. People in the wider community who consult lawyers are a disparate group and there is no high quality, up-to-date data about them. It is impossible to draw precise conclusions about the extent to which their diverse needs are contributing to the changes in the market and profession.

However, some general observations may be made. The majority of legal practices in New South Wales are small firms,⁵⁴ and in addition to work they might perform for larger, corporate clients, they also serve small and medium-sized enterprises and individual clients from all walks of life. In November 2016, flip spoke with the Presidents of Regional Law Societies in New South Wales about the needs and expectations of their clients. During flip sessions throughout 2016, solicitors and legal sector service providers who gave evidence were asked about the kinds of clients with whom they work, and whether these clients expect their lawyers to be working in new, more innovative ways. These discussions strongly suggested that clients in the wider community have an appetite for cheaper offerings and prefer predictable costs. Solicitors are also encountering expectations that they use technology to provide service in a contemporary way.

CLIENTS ARE COST-CONSCIOUS AND EXPECT TECHNOLOGY TO BE USED

Since the shock of the global financial crisis, not only large corporations but households and businesses have remained extremely cost-conscious. Available data indicates a high level of unmet legal need in the community due to poverty and the cost of legal services, as well as unfamiliarity with the benefits of legal advice and the offerings available.⁵⁵ In large measure the problem persists because need is *not* driving policy: as previously mentioned, Commonwealth funding to legal assistance services is to be cut significantly from

1 July 2017. Like those of individual households, government budgets continue to be subject to tight fiscal restraint. Over the past decade economists have begun to speak of a permanently slow-growth or even no-growth global economy.

Certainly, as discussed in chapter 4, Legal Aid NSW and community legal centres have been finding new ways to deliver services to maximise the effectiveness of scarce resources. However, concerns for access to justice have also generated entirely new partnerships and offerings in the private sector. DoNotPay is a free online service designed by Stanford law student Josh Browder: a “robot” lawyer that overturned 160,000 parking tickets in New York and London.⁵⁶ Hackathons⁵⁷ and incubators are attracting lawyers, students and technology experts with the explicit aim of creating affordable solutions to legal problems.

Enabled by technology, these low-cost or free solutions will resonate with a generation that likes to socialise online, and review and find services online. Millennials⁵⁸ are the first “digital natives” and the rise of new forms of exchange, sometimes described as sharing or distributive economies, is attributed to their influence. Members of this cohort are early adopters of new technology, avid consumers of AirBnB, Uber, GoGet and other “disruptive” services, and they are said to prize independence and experiences over ownership⁵⁹ (perhaps reflecting flexible labour arrangements that pay less while requiring fewer hours of work).

During a discussion in November 2016 on the future of legal services, a number of the Law Society’s Regional Presidents discussed the rise of so-called “DIY” clients. These clients meticulously research the law themselves and try to solve their legal problems using online resources available directly to the public, and interestingly, increasingly consult solicitors to check whether the “standard” documents they have purchased are fit for purpose, or because they need assistance resolving a dispute that has resulted or arisen. Other

solicitors, too, have told flip that over the past 10 to 15 years the focus of their practices has shifted from transactional to contentious work largely because of DIY clients. As clients seek to save costs and government agencies have slowly digitised services, more people are taking more steps to secure their rights unaided – such as obtaining trademark certificates, for example – only to seek legal advice when a problem arises.

Flip heard that clients in the wider community are seeking a more sophisticated service. The founder of lawlab and software company Rundl, solicitor Richard Bootle, warned against complacency, saying that like licensed taxi drivers faced with Uber, solicitors’ legislative protections could disappear. Mr Bootle cautioned:

I make the observation that taxi drivers had licenses that protected them, but legislative protection is obviously incredibly changeable, and will change [with respect to legal services] if consumers are not given a digital experience through lawyers’ service provision.⁶⁰

Claire Martin, Head of Property at Kreisson Lawyers, spoke to flip in June after successfully using the sale of her own apartment as the vehicle for Australia’s first paperless conveyance. For the transaction Ms Martin used a combination of the available technologies but noted that various limitations in the technology has meant that change across the sector has been slow. She said the mind-set of the profession, particularly the reluctance of the other transacting parties’ agents to try a paperless conveyance, has often created additional hurdles. Ms Martin noted that clients are increasingly sophisticated users of technology, and speaking as a member of her own generation, said “we’re used to doing *everything* online”. She emphasised that “sharing documents and collaborating with clients [online] gets a better outcome because they get to have ... more input.”⁶¹

“Clients in the wider community have an appetite for cheaper offerings and prefer predictable costs.”

Dominic Woolrych, Head of Legal at LawPath, described the company’s business clientele as “the new type of client”: small-to-medium businesses and new businesses which are “comfortable engaging lawyers online – they engage all other services online.” Mr Woolrych told flip: “I see the legal profession as the last ones to really make it into the online space.”⁶²

Recommendation

In important ways, clients in the wider community stand to benefit from the kinds of changes that are being generated by corporate clients, described in Part 2, above. For example, technology that is developed to meet the needs of inhouse legal teams can be purchased by private firms with clientele from all walks of life. Due to the collegial nature of professions, cultural changes (such as an increasing emphasis on quality of service and client satisfaction), can spill over from one client group to another, as lawyers share information.

The Committee recommends that the Law Society of New South Wales actively facilitate this process of sharing information.

ENDNOTES

- 1 David Shannon, flip testimony (19 October 2016) 3:18–53. See also Katherine Grace, flip testimony (13 May 2016) 9:48, “a lot of my commercial colleagues inhouse aren’t necessarily interested in the back story to the legal advice. They want an answer, can I do x or y (and can I do it yesterday!) and if not, how do we deal with that situation?”
- 2 John Mayer, *A Bottom Up Approach to the Justice Gap Problem*, <http://bcove.me/fra3yetb>.
- 3 Ian Day, flip testimony (20 May 2016) 7:30. See also Council on the Ageing (NSW), *50+ Report: with a focus on how people get around and access information* (2015) 40–41, <http://www.cotansw.com.au/MediaPDFs/2015-50-plus-Report.pdf>.
- 4 Shannon above n 1, 1:44–3:12, “the one thing that external lawyers can do to make themselves of much greater use and to add more value ... is to have a much clearer understanding of the markets in which those [corporate] clients operate, to try and understand their internal policies and procedures to try and understand the commercial outcomes they’re trying to achieve ... If they do that and if they get to know the corporate clients much more closely and much more intimately, they will have a much better understanding of what’s required and then they will give advice and service that is much more valuable to the client in the long run”.
- 5 Connie Brenton, flip testimony (20 May 2016) 15:08. See also Shannon above n 1, 6:59–7:50: where guidance provided by external lawyers on insider training may have been perfectly accurate at law but not in sync with the organisation’s own policies, which were stricter.
- 6 Noric Dilanchian, flip testimony (20 June 2016).
- 7 Ibid.
- 8 Rick Welsh, flip testimony (13 May 2016).
- 9 Ibid.
- 10 Brenton above n 6. See also ‘Game Changers: How a New Breed of General Counsel is Remaking the Traditional Law Firm Model’, *Legal Review, The Australian*, 27 May 2016.

“I see the legal profession as the last ones to really make it into the online space.”

DOMINIC WOOLRYCH, HEAD OF LEGAL AT LAWPATH

- 11 Andrew Price, flip testimony (19 October 2016).
- 12 Joel Barolsky et al, *Australia: State of the Legal Market 2016* (Whitepaper) (2016) 5, <http://insight.thomsonreuters.com.au/resources/resource/state-of-the-australian-legal-market-2016/?gated=true>. See also Sam Graziano, flip testimony (20 May 2016), “*what we’re hearing more from our General Counsel is a push for internalisation of our legal services*”, and Marianna Papadakis, ‘In-house counsel: the biggest threat to law firms’ *Australian Financial Review* (online) 18 February 2016, <http://www.afr.com/business/legal/inhouse-counsel-the-biggest-threat-to-law-firms-20160216-gmbvz0>.
- 13 Grace above n 1, 1:50–2:33.
- 14 Stuart Naphthali, flip testimony (20 May 2016) 4:00.
- 15 Dominic Woolrych, flip testimony (13 May 2016) 4:35.
- 16 Malcolm Heath, flip testimony (13 May 2016) 7:20–8:36.
- 17 Emails from Claire Bibby, Senior VP and General Counsel, Brookfield Properties, 12 December 2016 and 15 January 2017, on file.
- 18 Graziano above n 12, 4:14–5:56.
- 19 Silvia Hodges Silverstein, ‘What we know and need to know about legal procurement’ (2016) 67 *South Carolina Law Review* 485, 493, 501. The article is reproduced as an American Bar Association Futures Commission White Paper: see http://www.americanbar.org/content/dam/aba/images/office_president/silverstein_whitepaper.pdf.
- 20 For a suggestion of the activity of procurement professionals in Australia see Lara Bullock, ‘Corporate counsel questions value of legal procurement’ *Lawyers Weekly* (online) 6 September 2016, <http://www.lawyersweekly.com.au/news/19510-corporate-counsel-question-value-of-legal-procurement>.
- 21 Silverstein above n 21.
- 22 Steven Walker, flip testimony (20 June 2016) 3:30–3:44.
- 23 David MacNiven, flip testimony (20 June 2016).
- 24 Law Society, Costs, <http://www.lawsociety.com.au/ForSolicitors/professionalstandards/Costs/index.htm>.
- 25 See CLANZ In-House Lawyers and Australian Corporate Lawyers Association, *2015 Benchmarks and Leading Practices Report* (2015) <http://acla.acc.com/documents/item/1512>. According to this report, just 7 per cent of inhouse counsel agreed that the hourly rate was the best approach to billing, 45 per cent indicated that the hourly rate was not ideal but no alternatives are provided. While alternative fee arrangements (AFAs) had been used for two-thirds of functions inhouse, of those, only half were rated successful. The report concludes that “[t]here is unmet need for AFAs that work and there is an oversupply of pricing by the hour”: executive summary, ix.
- 26 Naphthali above n 14, 3:00.
- 27 Associate Professor Michael Legg, ‘The Financing of Commercial Litigation into the Future: Alternative Fee Arrangements and Unbundling of Legal Services’, *The Future of Civil Procedure: Innovation and Inertia*, Australian Centre for Justice Innovation, Monash University, Melbourne, 17 February 2016 (unpublished).
- 28 See also the excellent chapter on pricing in George Beaton and Imme Kaschner, *Remaking Law Firms: Why and How* (American Bar Association, 2016) ch 21.
- 29 See Legg above n 27: “A capped fee provides the company with cost certainty, but may not be appropriate for the law firm for cases in which the scope of the engagement is unpredictable. ... [A] collar... provides some protection against an incorrectly set fee and can be useful when a firm is transitioning to an AFA [alternative fee arrangement] such as a fixed fee or capped fee.”
- 30 *Ibid* 4.
- 31 Under the *Legal Profession Uniform Law 2014* (NSW) pt 4.3, the requirement that costs be fair and reasonable applies across the board and not only in the context of costs assessments. Further, the Legal Services Commissioner NSW has enlarged powers to scrutinise the application of this standard: see, eg, the *Legal Profession Uniform Law 2014* (NSW) ss 292 and 299.
- 32 Brenton above n 5, 2:11.
- 33 Founded and led by Mick Sheehy, Telstra’s General Counsel,

- Finance Innovation Technology and Strategy, with Connie Brenton as Chief Executive Officer. See Corporate Legal Operations Consortium, *CLOC Regional Groups* <https://cloc.org/regional-groups>.
- 34 Walker above n 22.
- 35 Ibid 2:32–3:44.
- 36 Beaton and Kaschner above n 28, xi. See also George Beaton, *NewLaw New Rules: A Conversation about the Future of the Legal Services Industry* (Beaton Capital, 2013): Dr Beaton uses the term ‘NewLaw’ to denote innovative business models as distinct from the hegemonic, traditional partnership model.
- 37 Ibid 13.
- 38 Ibid 14–15, citing Larry E Ribstein and William D Henderson. Note that Beaton and Kaschner make the point that it is too simple to attribute the various individual failures of law firms in the last 20 years to their use of an out-dated model: “[t]heir stories are more complex and worth looking at in details, as for example, David Parnell has done in his instructive book *The Failing Law Firm: Symptoms and Remedies* [ABA Publishing, 2014]”.
- 39 Leonie Chapman, flip testimony (30 June 2016).
- 40 Conversation with Thomas Kaldor, Lawyer & Partnerships Manager, LegalVision, 30 November 2016; email correspondence, 6 February 2017 (on file).
- 41 Gavin Smith, flip testimony (28 July 2016).
- 42 The obverse is also the case, such as where retail and commercial leasing previously undertaken solely inhouse has been outsourced.
- 43 Grace above n 1, 7:44.
- 44 Daniel Susskind and Richard Susskind, *The Future of the Professions: How Technology will Transform the Work of Human Experts* (Oxford University Press, 2015). See also Richard Susskind, *Tomorrow’s Lawyers: An Introduction to Your Future* (Oxford University Press, 2013).
- 45 Satyajit Das, Lecture in association with Satyajit Das, *Banquet of Consequences* (Penguin Books, 2015), (Speech delivered at the Mosman Library, Sydney, 28 February 2016).
- 46 Susskind and Susskind, above 44, 248.
- 47 See Susskind and Susskind above n 44, 34. Professor Susskind’s thesis rests on the view that the professions, including the legal profession, current inadequately serve the community in terms of reach but also quality: “*The fifth problem with the professions is that they underperform. This is not to suggest that the professions invariably achieve low levels of attainment. Rather, we maintain that in most situations in which professional help is called for, what is made available may be adequate, good, or even great, but rarely is it world-class. . . The finest experts are a very scarce resource*”.
- 48 These are already subject to mounting cost pressures, as outlined earlier in the chapter.
- 49 A smaller, but significant percentage of one-partner practices employ only one solicitor, and fewer employ two solicitors.
- 50 Email from Claire Bibby, 15 January 2017 (on file).
- 51 www.axiomlaw.com.
- 52 Michael Skapinker, ‘Technology: Breaking the law’, *Financial Times* (online), 12 April 2016, <https://www.ft.com/content/c3a9347e-fdb4-11e5-b5f5-070dca6d0a0d>.
- 53 Australian Government Productivity Commission, *Access to Justice Arrangements – Inquiry Report* (3 December 2014), <http://www.pc.gov.au/inquiries/completed/access-justice/report>.
- 54 Urbis for the Law Society of New South Wales, *2015 Profile of the Solicitors of NSW – Annual Report Final* (2016), <https://www.lawsociety.com.au/cs/groups/public/documents/intercontent/1149382.pdf>.
- 55 The issue is examined separately in chapter 4, ‘Community needs and funding for legal assistance’.
- 56 Jessica Chasmer, ‘Stanford student’s robot lawyer has beaten 160,000 parking tickets’, *The Washington Times* (online), 29 June 2016, <http://www.washingtontimes.com/news/2016/jun/29/joshua-browder-stanford-students-robot-lawyer-has-/>. See also Josh Browder’s website at www.donotpay.co.uk.
- 57 A hackathon is an event based on the collaboration of people with diverse expertise, including computer programmers. Hackathons usually last between a few hours and a few

days, are fast paced, and often competitive. They may focus on solving (“hacking”) a particular problem; participants use diverse means including designing systems, developing software or applications.

- 58 According to the Strauss-Howe generational theory, Millennials are born between 1982 and 2004 (Philip Bump, ‘Here is when each generation begins and ends’, *The Atlantic* (online), 25 March 2014, <http://www.theatlantic.com/national/archive/2014/03/here-is-when-each-generation-begins-and-ends-according-to-facts/359589/>). See also Australian Bureau of Statistics, *Australian Demographic Statistics, June 2015*, Table 51, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Jun%202015?OpenDocument>: the breakdown of population by year of birth per State shows the most populous age groups in New South Wales today to be Millennials, aged between 21 and 23 (men), aged 29 (women) and men and women between 30 and 33 years of age.

- 59 Bright Side, *Why young people don't buy cars and apartments anymore*, <https://brightside.me/inspiration-psychology/why-young-people-dont-buy-cars-and-apartments-any-more-238710/>.


- 60 Richard Bootle, flip testimony (20 June 2016).

- 61 Claire Martin, flip testimony (30 June 2016).

- 62 Dominic Woolrych, flip testimony (13 May 2016).



Katherine Grace, General Counsel and Company Secretary, Stockland Property Group

A person in a dark suit and white shirt is using a tablet. The background is blurred, showing other people in a professional setting. An orange semi-transparent rectangle is overlaid on the image, containing white text. In the bottom right corner, a pair of black-rimmed glasses and a pen are visible on a wooden desk.

CHAPTER 02
LEGAL
TECHNOLOGY

The most compelling reason for lawyers to take an interest in technology is because the right tools optimised to a lawyer's needs and individual practice ultimately make the job far more enjoyable, and far more effective and efficient.

Competition and changing client expectations are other important reasons, as technology is already transforming the delivery of legal services. Indeed, the rate of change is of a magnitude that could take many by surprise.

This chapter gives an overview of the changes and makes recommendations as to how the Law Society can provide leadership and assist members to use legal technology to do even better what lawyers do best: identify and solve problems.¹

Trends

Since at least 2014 Australia's technology sector has been attracting serious investment capital. It is a market which has "truly boomed" with "unprecedented levels of investment, corporate activity and value creation".² In the US, online legal services have risen from a zero base a decade ago to the \$4.1 billion industry it is today, with growth of 8 per cent (to 2019) predicted.³ There is no reason to assume that Australian consumers will behave differently. Australian households and organisations are highly connected: 22 million mobile internet subscriptions plus 13.3 million unique land-based connections service our population of 24.3 million people.⁴

The success of US companies like Rocket Lawyer and LegalZoom, which use technology for high-volume work, has reverberated here. Large law firms accustomed to operating in traditional ways are hedging their bets by forging alliances with start-ups. Last year, the Australian office of Norton Rose Fullbright increased its financial stake in Australia's LawPath, a company that supplies low-cost documents online and connects clients to lawyers for fixed-price work.⁵ Also in 2016, Gilbert + Tobin increased its stake in Australian technology-enabled legal practice LegalVision by close to 20 per cent,⁶ from \$600,000.⁷ Allens has developed its own

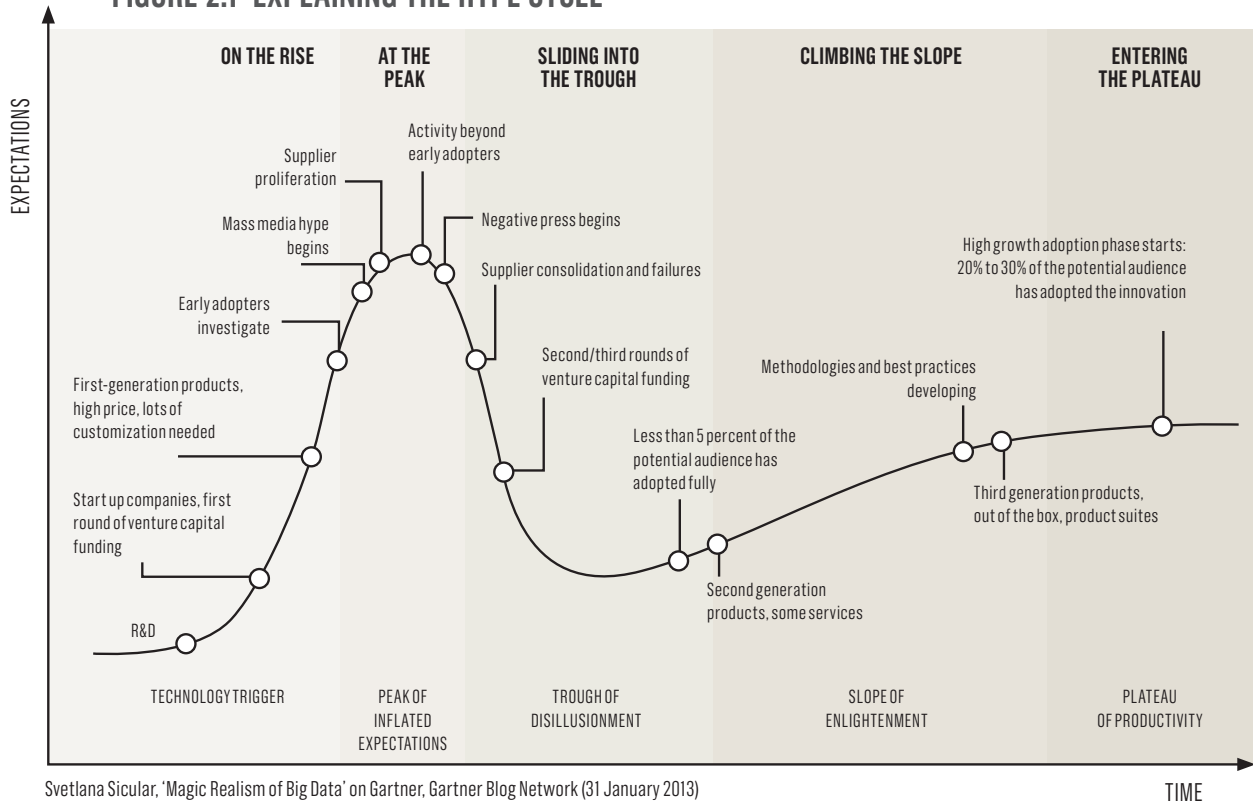
suite of fully downloadable, free documents for the start-up market and has reported 3,000 unique downloads as at July 2016. Gavin Smith, Allens partner and co-founder of Allens Accelerate explained:

We have two sides to the practice: one is the practice focussed on advising start-ups and emerging companies themselves; the other is advising investors into that sector. For start-ups ... we made a suite of 15 core legal documents on a fully open access, open source basis to the start-up community. ... We deliberately made those documents fully customisable for the start-ups. They have guidance notes throughout with optionality throughout, so the hope was that to a reasonably large degree start-ups could use those documents themselves, without having to incur significant costs in using lawyers. ... We also sell fixed blocks of time ... well below our standard charge-out rates. ... [These are] our Level 1 services.⁸

Business-to-business technology-enabled services are also having a big impact. Legal process outsourcing, or LPO, is typically routine or "commoditised" process work undertaken by businesses engaged by law firms or general counsel. LPO is a \$1 billion industry in the US.⁹ In October, flip heard from a Sydney-based representative of global LPO giant DTI which has recently entered the Australian market. Leopold Lucas, DTI Business Development Manager, told flip that the company has delivered efficiencies of around 25 per cent from just one of its services. Real-time transcripts, which are shareable and can be annotated, are speeding up hearings in digital court and commission settings.¹⁰

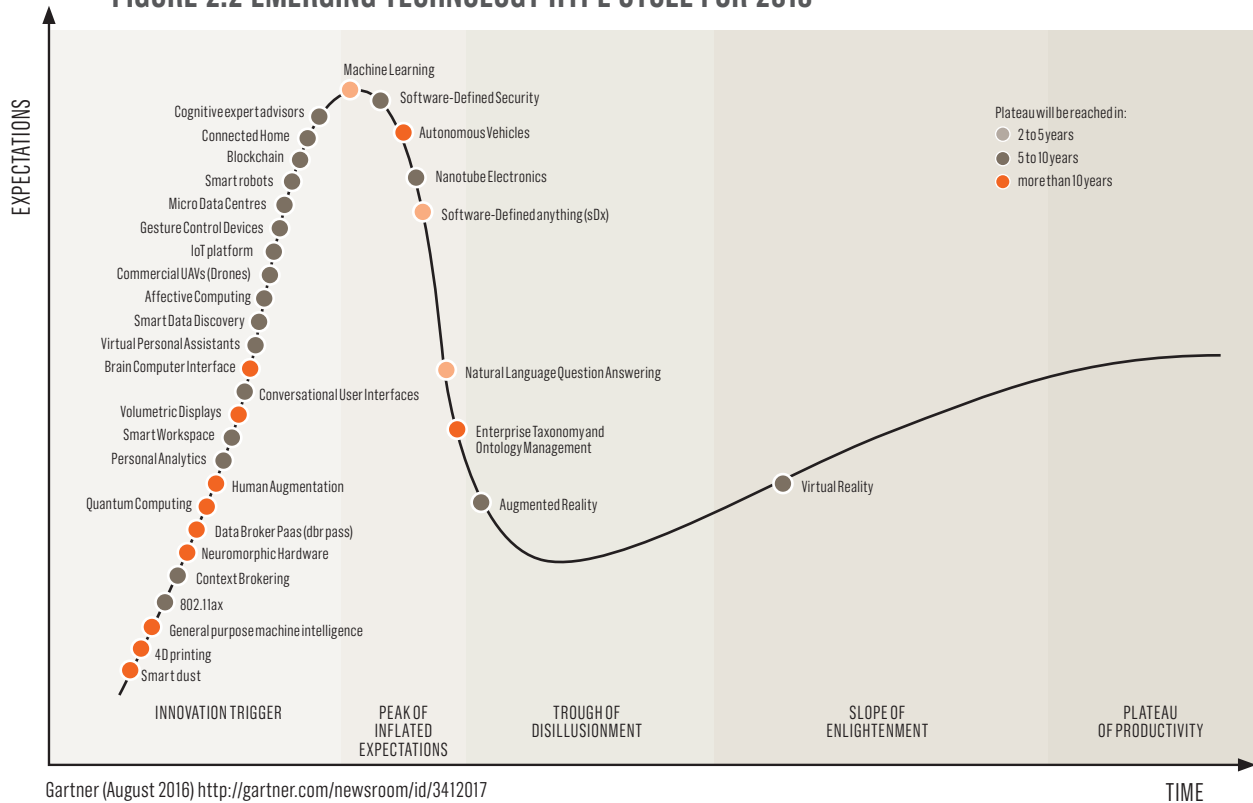
Large law firms in Australia routinely beta test legal software for developers, and the explosion of interest in technology solutions on the part of general counsel¹¹ suggests there is some prospect that the legal operations role may be on the horizon in Australia.

FIGURE 2.1 EXPLAINING THE HYPE CYCLE



Svetlana Sicular, 'Magic Realism of Big Data' on Gartner, Gartner Blog Network (31 January 2013)
<http://blogs.gartner.com/svetlana-sicular/magic-realism-of-big-data>

FIGURE 2.2 EMERGING TECHNOLOGY HYPE CYCLE FOR 2016



Gartner (August 2016) <http://gartner.com/newsroom/id/3412017>

Canadian legal futurist Jordon Furlong sees legal operations professionals coming soon to Canada, a development he views as a potential game-changer.¹² Conceived initially in the US, legal operations personnel are senior staff dedicated to controlling legal spend of a corporation, focussed strongly on using and developing legal technology. A recent survey showed that two-thirds of US Fortune 500 companies use legal procurement professionals¹³ which operate in the same legal ecosystem. These professionals are typically external hires engaged to drive down legal spend, including by negotiating deals with LPOs.

Paradoxically, the rapidity and true scale of the changes wrought by technology are often *obscured* by the hype common in media reports. As any reader of legal news knows, artificial intelligence and machine learning are magnets for hyperbole. Business lawyer Noric Dilanchian of Sydney-based firm Dilanchian Lawyers is a smart user of information technology and adviser in intellectual property. He notes the “Gartner Hype Curve” (see Figures 2.1 and 2.2) depicts the dynamic interaction between hype and hard commercial activity (development, investment and adoption). Gartner’s curve suggests that once hype peaks, activity stabilises but growth in underlying trends continue. According to Mr Dilanchian, we are presently at the peak of the hype curve for artificial intelligence and legal apps. If accurate, this means that the “real” activity will shortly be seen.

Root causes

The enthusiasm for technology-enabled services has affected many markets and social spheres, far beyond the law. There are too many examples to cite: consider the rapid take-up by consumers of AirBnB for accommodation, Uber and GoGet for personal transport, Fiverr and AirTasker for small jobs and Massive Open Online Courses for further studies. It is no wonder that a growing community of lawyers and court administrators are exploring ways to do things differently with the help of technology.

Three key factors help explain the changes:

- the exponential growth in information technology
- cloud computing and
- increasingly mobile technology.¹⁴

“The enthusiasm for technology enabled services has affected many markets and social spheres, far beyond the law.”

MOORE'S LAW – “THE CENTRAL PHENOMENON OF THE COMPUTER AGE”

Exponential improvements in “the critical building blocks of computing – microchip density, processing speed, storage capacity, energy efficiency, download speed” have created what Erik Brynjolfsson and Andrew McAfee call the “second machine age”, sometimes referred to as the fourth industrial revolution.¹⁵ The exponential trajectory that Brynjolfsson and McAfee describe, charted in Figures 2.3 and 2.4, is consistent with Moore’s Law. Moore’s Law is a prediction made by philanthropist, entrepreneur and electrical engineer Gordon Moore, based on improvements in computer circuitry in the early 1960s. Moore wrote, in effect, that the integrated circuit computing power one could buy for a dollar was doubling each year, and forecast that this would continue for 10 years. Although apparently correct in principle, Moore’s prediction was conservative. As Brynholfsson and McAfee have observed:

sustained exponential growth ... eventually leads to staggeringly big numbers. ... [T]his amazing pace of improvement ... has made Moore’s Law the central phenomenon of the computer age.¹⁶

Just last year, start-up ROSS Intelligence launched its eponymous “robot lawyer”, built on IBM’s Watson. Watson is an example of an artificial intelligence platform that can process masses of structured and unstructured content to answer questions posed in natural language. It famously beat the best human experts in the US quiz show *Jeopardy!* in 2011 and has gone on to spawn several commercial applications across a range of professional industries, including medicine.¹⁷ Figure 2.5 shows how Moore’s Law applies to digital progress including the increases in computational speed that have made Watson and ROSS possible. Moore’s Law helps explain why so many of the technological innovations we might associate with HG Wells and Schwarzenegger’s Terminator have appeared so rapidly, and so recently.¹⁸

FIGURE 2.3 EXPONENTIAL GROWTH OVER TIME: THE POWER OF CONSTANT DOUBLING, A LINEAR SCALE

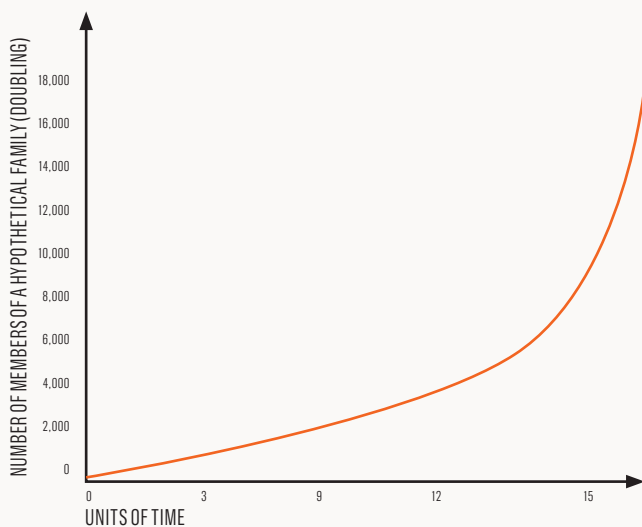
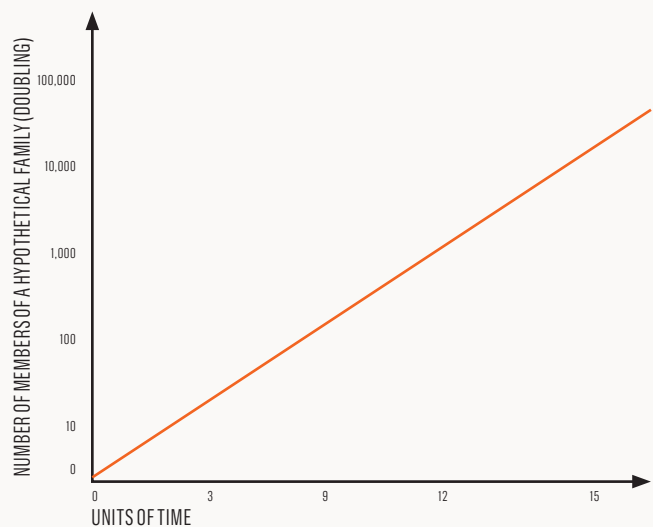


FIGURE 2.4 EXPONENTIAL GROWTH OVER TIME: THE POWER OF CONSTANT DOUBLING, A LOGARITHMIC SCALE



Adapted from Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies* (W W Norton & Co, 2014) 43–44.

CLOUD COMPUTING

Looking back on the dot-com boom of the late 1990s, Nick Abrahams writes that:

... startups had to spend money on hardware and services to set up websites. Today, cloud providers like Amazon Web Services make this infrastructure available on demand and at a bare fraction of the price it used to cost.¹⁹

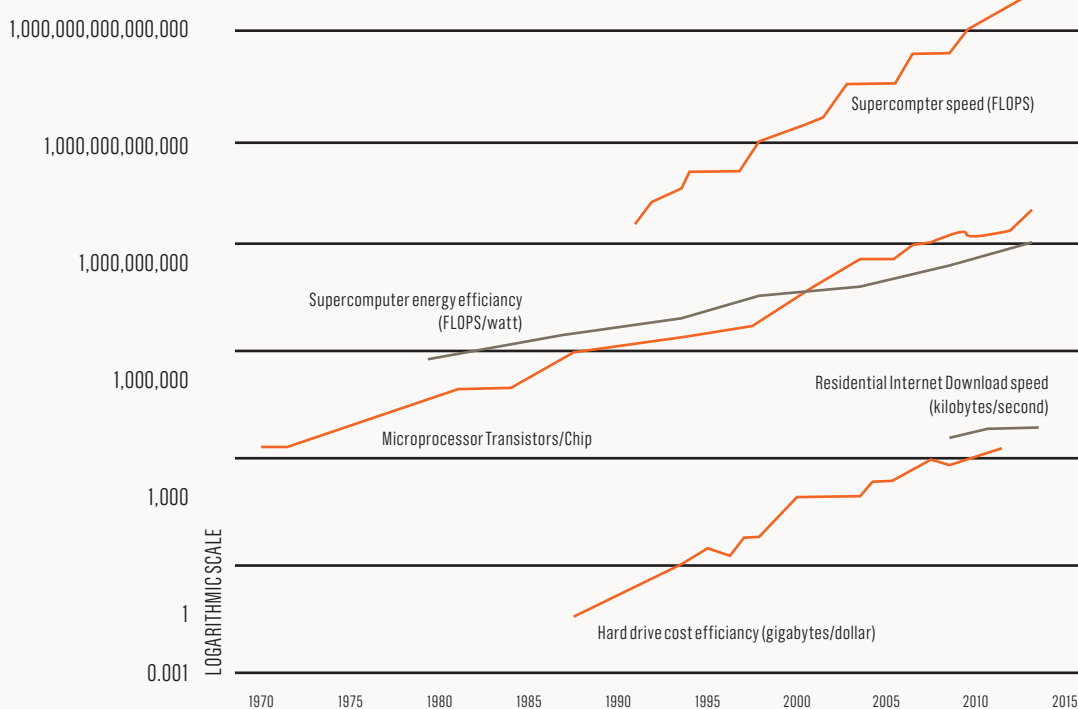
According to data provided by legal software company LEAP, more than 3,600 firms in Australia currently use its cloud-based practice management and accounting products.²⁰ As the company's Executive Chair, Richard Hugo-Hamman, told flip, practitioners' shift to the cloud has "already happened",²¹ driven by the forces of competition.

INCREASINGLY MOBILE TECHNOLOGY & CONNECTIVITY

According to David Abrahams, there is a compelling case that the movement of ideas since the invention of the internet in the late 1960s and into the contemporary era has vanquished the "tyranny of distance" that has defined Australia for so long.²² As Mr Abrahams reminded flip, "the largest transport network in the world is now available on mobile phones ... likewise, the largest accommodation provider, AirBnB, doesn't own a physical asset." The "internet of things" is now very much a reality with predictions, for example, that by 2022, 14 billion devices in households within OECD countries will be connected to the internet.²³

Mobility of people and of devices means that we are far less tied to location, whether that be the Sydney office or a remote New South Wales country town.²⁴ Sydney solicitor Leonie Chapman told flip that until recently, she was employed by Macquarie Bank and often worked from her laptop in the cafe attached to the office.

FIGURE 2.5 THE MANY DIMENSIONS OF MOORE'S LAW



Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies* (W W Norton & Co, 2014) 48.

She soon realised it was her virtual, not physical, presence that mattered most to her stakeholders and team. Armed with this insight, Ms Chapman teamed up with her computer scientist husband to create a new law firm, LAWyal. Based on the software the couple developed, the virtual firm now acts for a wide range of clients, large and small, in a range of locations. Ms Chapman works from home or visits clients at their convenience.

The flip commission heard testimony about many such inspiring projects. Some of the highlights included the online divorce service established by Lyn Lucas in Newcastle; the pioneering firm lawlab, co-founded by Richard Bootle, based in capital cities but headquartered in Nyngan, in rural New South Wales; Hive Legal, Redenbach Legal, and more.

New and emerging technologies also have the potential to bridge some of the “access to justice gap” that is felt most keenly by disadvantaged people. For instance, those technologies can make it easier for people in rural, regional and remote areas to contact a lawyer. On the other hand, there are risks that these technologies – some of which are still in relatively early stages of development – could be deployed to give access to a lesser standard of justice for disadvantaged people. For example, while the growth in the use of videolink technology can mitigate the problems of geography, lawyer-client conversations on matters of great sensitivity or complexity are often more effectively had face to face. Lawyers in the legal assistance sector report problems in ensuring that such technology is available in a way that allows them to provide the standard of legal service needed by their clients.

President of the North & North-West Law Society, Natalie Scanlon, expressed cautious optimism about technology’s ability to connect people where recruitment and retention is an ongoing issue.²⁵ Ms Scanlon observed that her region covers approximately 600 km and includes 160 lawyers. To be sure, as the roll-out of the National Broadband Network begins to be felt, regional and rural Australia will be less constrained by geography. However, professional networks and businesses will need to optimise the opportunities presented by digital technology to make the tyranny of distance truly obsolete.²⁶

INNOVATING – OR JUST AUTOMATING?

When considering the nature of the effects of technology it can be helpful to bear in mind a distinction that is commonly drawn between automating and innovating. Sometimes expressed as the difference between sustaining or disruptive applications,²⁷ the basic idea is that the impact of technology can be more or less profound. An example of technology that is merely sustaining might be the optimisation of a work process via automation; that is, completing work faster without otherwise altering the basic structure of the original process. Certainly, this kind of change can be highly significant: automation can produce vastly improved business practices. It can result in better client engagement, driving down costs (and placing pressure on competitors).

In contrast, though, technology can also be used to achieve work outcomes by departing from usual processes and adopting entirely new methods. When IBM’s Watson won *Jeopardy!* in 2011, the computer and the human contestants were not playing the game in the same way. At the risk of oversimplifying, Watson’s approach was not based on human judgment and experience, it depended on finding word associations and calculating probabilities from a huge data set of content (correlation and frequency) at a rapid pace (known as “brute force processing”)²⁸. (On pp 40-42 we discuss the strengths and limitations of artificial intelligence in more detail.)

As Brynjolfsson and McAfee point out, at some point a difference in quantity can become a difference in quality, so that the difference between automation and “pure” innovation may be best thought of as a continuum, not a dichotomy.²⁹



“Why bother with technology, if you’re finding a new way to work?”

My answer is to tell you a story that happened to me ... It prompted me to think [about] this question: should anyone be denied access to justice because they cannot afford the cost of photocopying? How do we make litigation once again affordable to the middle class? You can repeat slogans, like just, quick and cheap, which is s 56 of the Civil Procedure Act 2005, but the only way that \$11,000 became \$990 [for my client] is because somebody embraced technology.”

Philippe Doyle Gray, Barrister.



“My preliminary finding from the [UNSW 2016] hackathon from day one was this: that if you give a law student limited information and ask them to solve a problem, they can’t do it. If you give it to a technology student, they can. ... Once we stopped feeding [the law students additional] information, they started to turn over their ideas, and by the end of it we had solutions that were brilliant.”

Adrian Agius, law student and organiser, UNSW hackathon, 2016



“Six months ago we employed our first developer, who is a lawyer as well ... and she’s building technology now that we can deploy to our clients.”

Anthony Wright,
Director of law firm, lexvoco



“We are looking at putting the agricultural supply chain on the Blockchain, or on a distributed ledger. ... These days lawyers have been much more active ... in terms of meet-ups and off-site community gatherings around technology points such as Blockchain or smart contracts.”

Emma Weston,
Chief Executive Officer, Full Profile



“All of the data on AustLII is free access, and ... surveillance-free. So there are no log-ins. ... There’s no tracking of individual users by companies serving up ads, and there are no value-added extras ... which you have to pay for: everything on AustLII is value-added, premium, professional and free.”

Professor Graham Greenleaf, Co-Director, AustLII:



“The idea behind Hive Legal was .. to develop a truly contemporary and innovative legal solutions provider which would improve the experience for clients and the firms’ team as well. ... We have a cloud-based system .. [and] are a paperless office. ... The new generation of law graduates ... have these amazing combinations of skills including coding ... and they’re very much involved with working with our senior lawyers and principals to develop apps. We’re recently developed one for the superannuation industry on breach reporting.”

Melissa Lyon,
Business Development Consultant, Hive Legal



“There are now 24,000 digital court files. ... Most importantly... the digital court file is not the solution to ... digital litigation: that’s the next step. ... We plan in the future to move to a situation where hearings – predominantly all hearings, small medium and large – would be done in a digital environment in the court room.”

Warwick Soden OAM, Principal Registrar and Chief Executive Officer of the Federal Court of Australia

Innovative technologies by definition potentially affect the whole legal ecosystem, including regulation and education, as well as how solicitors structure practices and deliver services.³⁰

They have been predicted to include the technologies listed in the box below.

As a corollary to the changes in the sector, new jobs will emerge in new disciplines that “will give rise to services that can only be provided by people with deep legal training and experience”.³³ The Canadian Bar Association has pointed to the emergence of Knowledge Engineers, Legal Process Analysts, Legal Support System Manager, and Legal Project Managers.³⁴

Testimony to flip demonstrated that solicitors and court administrators in New South Wales are working with technology in ways that span the continuum of automation and innovation. The full array of testimony can be viewed online, but a sample of the wide range of experiences described is provided on p37. Further information can be found in chapter 3, where we examine new ways of working, and in chapters 4 and 5 which focus on the legal assistance sector and the courts and tribunals respectively.

Blockchain is a technology as yet mentioned only briefly, which warrants close engagement.³⁵ The Committee sought witnesses’ views on Blockchain during sessions of the flip commission and received a compelling submission in writing on the subject from solicitor David Coleman, Lawyers and Legal Services. Flip also heard from Standards Australia about a three-year international program being coordinated from Standards Australia’s Sydney office, to develop shared global protocols for interoperability, security, privacy, smart contracts, and other areas of fundamental importance to the continued viability of the technology.

The Committee is of the view that Blockchain is a technology with which the Law Society should actively engage and agrees with Mr Coleman that “there is an urgent need for lawyers to supplement their existing skills with knowledge of emerging smart contract technology and Blockchain networks.”³⁶ The Law Society’s engagement with Blockchain should seek not to frame Blockchain as a risk, but to balance a healthy assessment of risk with an appreciation of the enormous potential efficiencies to be gained by supply chains, asset transfers, provenance checks and more being automated in the way envisaged by Blockchain developers and enthusiasts.



INNOVATIVE TECHNOLOGIES AND PRACTICES SHAPING THE FUTURE

- automated document assembly
- relentless connectivity
- the electronic legal marketplace
- e-learning
- online legal guidance
- legal open-sourcing
- closed legal communities
- workflow and project management
- embedded legal knowledge³¹
- online dispute resolution
- intelligent legal search
- Big Data
- artificial-intelligence-based problem-solving³²

“New jobs will emerge in new disciplines that ‘will give rise to services that can only be provided by people with deep legal training and experience’.”

Opportunities and challenges: Costs, skills and access to information

COST OF TECHNOLOGY

Levels of interaction with technology vary significantly across the profession and some large corporations and law firms have been quick to take advantage of the growth in the legal technology market, inspired by the big savings that can come from economies of scale.

In many areas, the cost of technology continues to decrease, meaning smaller firms can now access new and emerging technologies that historically would have required impossible capital outlays. As mentioned in the context of cloud computing, for example, there are now opportunities for small firms to buy technology services in economical ways, like pay-per-use, that avoid large sunk costs. Claire Martin, Head of Property, Kreisson, explained to flip that “there’s a lot of software out there ... With InfoTrack [payment is calculated] ... per contract; with setting up a subscription to a file-sharing platform it depends on the size of the document.” In some cases reported to flip, smaller firms have been able to keep costs down and help shape software products by offering to test or trial products and collaborate with technology providers.

The large datasets that power artificial intelligence (discussed below in more detail) are, however, costly to obtain and as a consequence artificially intelligent systems remain expensive to develop.³⁷ In this case, it appears likely that cost will continue to limit the offerings of smaller firms unless the market radically transforms. Together with the questions about artificial intelligence canvassed below, the Committee recommends that the Law Society study this issue in more detail with a view to considering how to encourage the application of artificial intelligence while avoiding a technology divide.³⁸

LEARNING ABOUT TECHNOLOGY AND THE LEGAL TECHNOLOGY MARKET

The Committee has identified two key areas where smaller practices can find themselves stuck. While these areas present challenges, they also illustrate the enormously positive role that legal technology can play in today’s increasingly competitive environment.

The market

The first challenge is not to be overwhelmed by the diverse legal technology market: to develop deep knowledge about platforms, products and services, and keep up-to-date with what others in the profession are doing.³⁹

To the uninitiated, the market can seem opaque, requiring a knowledge of unfamiliar systems and languages from another world.

The Committee is of the view that the Law Society is well placed to foster professional, multi-disciplinary networks and produce publications that disseminate market information, facilitating the exchange of tips and insights into available and evolving legal technology products and services.

Because of the critical importance to society and the profession that a supported transition to the digital age take effect, the Committee is of the view and recommends that the Law Society should establish a centre for legal innovation projects, to augment and focus the Society’s contribution to empowering its members to use technology well. It would be appropriate for such a centre to have within its remit the creation of professional networks and an active engagement with the legal technology market, becoming for its members a trusted source of up-to-date information about products and services.

Using data to reduce inefficiency

The second challenge is to identify areas of inefficiency arising from the way a practice is functioning.

Legal technology can only boost efficiency if a firm has bought or developed it on the basis of a thorough understanding of how the tool will address the strengths and weaknesses of the practice’s current operational and business models. This may be easier said than done. It involves understanding that, as Simon Lewis, Director of Sinch Software Pty Ltd put it, lawyers are (among other things) information managers.⁴⁰

It has been said that data are the least sexy member of the technology group: certainly, they are the least hyped. Yet understanding how data can measure business outputs, and understanding how data feeds into and affects the results generated by software or apps, is key to harnessing legal technology of all kinds. “Clean” data and well-understood, uniform data collection processes are critical to all forms of technology, from machine learning or artificial intelligence to basic automation and business analytics. Understanding and properly managing data is critical in transitions to digital practices, replacing paper with electronic databases to record and store information.

The opportunities presented by better data management and analytics, even just to boost efficiencies (for example, by calculating how value-pricing can work for an existing practice or by reducing costs in litigation with large document sets⁴¹), have enormous potential value for members and their clients. Understanding and harnessing data is a business skill that needs to be acquired and, conversely, can be taught. The Committee is of the view that these building blocks should be integrated into a suite of educational offerings by the Law Society and included in Law Society publications.

Metrics to measure progress

Malcolm Heath, Legal Risk Manager for the insurer Lawcover, explained to flip that many practices mistake being busy for profitability.⁴² Certainly, data can be used to help a practice thrive, but the challenge is to ensure that the way the practice operates is consistent with achieving its strategic aims as a business. Experts advise that the first step is to change nothing but just to observe (and begin to measure) what the practice is doing.⁴³ The practice must be clear on its strategy, including what areas of work to target and which areas to forgo. Again, this might be a decision based on data, or one that is recalibrated in the face of data that reveals unsustainable losses – or an area where a firm’s staunch commitment to a particular area of work means investigating and developing processes, where practicable, to streamline work or approach it altogether differently.

Data, data and more data ...

The contrast drawn previously between automation and innovation is likewise a useful way of thinking about the impact of data. Like the technologies they fuel, data can be divided into mere operational legal data on the one hand, and substantive legal data on the other or, in parallel, data for business intelligence, and Big Data.

As discussed, data may be applied operationally for business intelligence to measure time spent to predict the cost of work. Data can be used to build and feed expert systems that capture lawyers’ knowledge in a decision tree – a kind of automated precedent. In each of these examples the lawyer applies the data to a known question – it is the *answer* that is unknown. In contrast, Big Data has value where the lawyer does not know the precise *question*. Instead, one looks for patterns across large data sets: collecting, discovering and interpreting meaningful patterns. In this way, for example, in the US the legal analytics platform *Lex Machina* analyses large case datasets to predict case outcomes, not on the basis of applying *rationes decidendi*, but on the basis of patterns that might have nothing to do with black letter law at all.⁴⁴

ARTIFICIAL INTELLIGENCE – WATSON AND ROSS

As previously mentioned (“Innovating – or just automating?”), when IBM computer Watson beat Ken Jennings and Brad Rutter on *Jeopardy!*, the computer and the human contestants were not playing the game in the same way. At the simplest level, Watson’s approach was fundamentally based on word association and calculating probabilities. To illustrate the difference, consider first that Watson’s algorithms had to use natural language processing to isolate clues, or key words, from each cryptically phrased question. This allowed the computer to predict the semantic structure of the answer sought (which was necessary because of the use of English, a “natural language” but also, specifically, because the questions were cryptic). Using brute force processing, it then reviewed 200 million pages of content⁴⁵ within milliseconds, to locate associations of words that correlated with those clues. The higher the frequency of those associations, the higher the computer’s level of confidence as to the accuracy of its answer. For the game-show, Watson was programmed to activate a buzzer and submit its answer only once the probability that one of its search results was correct reached a certain threshold. This meant that from time to time Watson failed to answer, or answered incorrectly, and sometimes

submitted patently absurd answers. However, over the course of three shows the frequency of Watson's correct answers steadily surpassed those of the human contestants – previous champions of the game.

It is evident of course that designers of artificially intelligent programs do not seek to replicate human processes of reasoning, judgment or intuition, but use algorithms that constrain and weigh information in large datasets to produce results quickly. Watson, for example, had been “trained” by humans at IBM who voted preliminary results up or down, thereby refining the algorithm's operation. Significantly, the quality of the outcome from a cognitive computer (or machine learning, or artificial intelligence) depends critically on the quality of the data made available to it. The time spent “training” the algorithm and the degree of expertise and insight that the human trainer has into the task at hand are also of vital importance, for example, in the case of predictive coding.

The year 2016 saw the emergence of bankruptcy “lawyer” ROSS, built on the Watson cognitive computing (or artificially intelligent) platform. At the moment a key issue holding back the broader application of artificially intelligent engines is the unavailability of so-called “clean” data across the justice system and in legal practice. As we know, the vast majority of legal disputes settle and case material is proprietary data that is not typically shared; from an information technology perspective, judgments and orders in the public domain are far from “clean” or uniform as they are produced using different styles and formats within different programs. Before it could be harnessed by an intelligent computer, this public data would need to be “cleaned” – a job that is extraordinarily time-consuming and therefore costly. The paucity of clean data is an issue that various vendors are working on, but limited access to good training data is slowing down innovation and adoption rates in legal services.⁴⁶

ETHICS AND COMPETENCE

Artificial intelligence is delivering enormous efficiencies particularly in document review⁴⁷ and with applications in law that perhaps have not yet been imagined. Some potential applications include using artificial intelligence to scan large proprietary data sets for conduct that raises red flags (for example signs of sexual harassment, or corruption) to avoid costly litigation.⁴⁸ The reality of predicting case outcomes on the basis of algorithms that

parse substantial legal datasets may not be very far off, issuing lawyers with new insights that we will need learn to handle and raising ethical challenges.⁴⁹ One scenario imagines judges themselves having access to data that predicts which way their decision will fall. What does the judge do with such data?

It will be recalled that last year an artificially intelligent bot called DoNotPay helped around 160,000 people successfully appeal their parking tickets. Josh Browder, the law student who designed the app, is now set to launch a “drag-and-drop builder” that “will allow anyone to develop a bot for dealing with a legal issue”.⁵⁰ Restrictions upon access to justice will only be exacerbated in Australia if planned funding reductions to the legal assistance sector take effect from 1 July 2017; the demand for technology-enabled assistance with legal issues, perhaps powered by artificial intelligence, is set to increase.

Before leaping to the future, there are some basic points worth stating. As Philip Argy, Chair of the Law Society's Legal Technology Committee pointed out, there is a distinction between being comfortable with technology (as a “digital native” will be) and being “conversant with the deployment of technology in one's practice”.⁵¹ That is, there is an important connection between technological competence and governance. In New South Wales, lawyers have a fundamental duty to deliver legal services competently. Where a lawyer provides a legal service that has been supported by technology, whether outsourced or provided inhouse, can this duty be discharged if the lawyer does not have, at the very least, a basic understanding of how that technology works? If a lawyer augments part of their service with an artificially intelligent application, for example, to what extent should that lawyer be required to understand the workings of the algorithms and the integrity of the data used to produce the legal work? If a lawyer hosts confidential client data on a third party cloud service, to what extent should that lawyer be required to understand the technologies used by that service to ensure data security?⁵²

The profession globally is having to come to terms with these issues. In the US, the American Bar Association in 2012 formally approved a change to the Model Rules of Professional Conduct to make clear that a lawyer's duty of competence included that they stay abreast of changes in relevant technologies⁵³. To date, at least 25 states have adopted that change with many also mandating that lawyers include technology specific learning as part of their continuing professional development⁵⁴. A non-profit

organisation, the Legal Technology Core Competencies Certification Coalition, or LTC4, has emerged with the aim of developing and maintaining a set of legal technological core competencies and certification for lawyers⁵⁵. The Coalition's membership is continuing to grow, with several global law firms now members. In Europe, several legal professional bodies have issued guidance for the profession on the importance of keeping up to date with changes in technology, particularly in the areas of data security and client confidentiality.⁵⁶

The Committee is of the view that further work needs to be done to provide practitioners in New South Wales with access to guidance and continuing legal education in areas of technology relevant to the delivery of competent legal services. What form that takes and whether it should include changes to the regulatory framework for lawyers in New South Wales should be explored.

On the other side of the disciplinary divide, a recent report arising from proceedings convened in 2016 by the White House under the Obama Administration has recommended that computer science students be required to undertake studies in civil liberties, civil rights and ethics.⁵⁷ The recommendation is an acknowledgment of the increasingly critical role being played by information technology experts. The same report made the following statement and recommendation on the questions of transparency and accountability:

Problem: *AI and automated decision-making systems are often deployed as a background process, unknown and unseen by those they impact. Even when they are seen, they may provide assessments and guide decisions without being fully understood or evaluated. Visible or not, as AI systems proliferate through social domains there are few established means to validate AI systems' fairness, and to contest or rectify wrong or harmful decisions or impacts.*

Recommendation: *Support research to develop the means of measuring and assessing AI systems' accuracy and fairness during the design and development stage.*⁵⁸

In addition to transparency and accountability in legal technology a further concern associated with creating an expert system and designing an algorithm centres on the treatment of ambiguity in law. Dangerously, there is in the public realm a "common understanding" that "law is certain. The reality is that the law is often uncertain."⁵⁹

How much of law can be coded for, and how is ambiguity or discretion accommodated by an automated, rule-based system? How do we ensure that ambiguity is not overlooked? Are we worrying too much?

The late Ronald Dworkin explained the process by which law commands "when the law books are silent or unclear or unambiguous"⁶⁰ by reference to an imaginary ideal judge, Hercules. To resolve hard cases, Hercules invoked his entire ethical being, his knowledge of the principles underpinning legal institutions in a democracy, his familiarity with legal policy, a sense of the need for coherent doctrine and finally, his knowledge of the specific statute and case law, to approach matters for which there was no precedent.⁶¹ How do we code for Hercules?

Analysts Richard Susskind and Satyajit Das have expressed divergent views about the ripeness of the legal profession for disruption. The difference in their views reflects a divergence as to the extent to which legal services can be made routine and broken down into discrete, repeatable tasks, or the prevalence of certainty versus ambiguity in real life cases. Professor Susskind notoriously believes that the profession will inevitably change (whether by force of circumstances or voluntarily) to the extent that he speaks of "the end of lawyers". He appears to be comfortable with adequate law, a corollary to technological disruption, or the "liberation of expertise", at least when faced with a choice between nothing and an unaffordable service.⁶² Das views the acceptance of lower standards as a hallmark of technological disruption, but by contrast to Susskind, has predicted that legal services will be immune to large-scale change. Das attributes this to the inherently personal nature of legal services, which, as for health professionals, requires empathy and other valuable, interpersonal skills, and to the unique nature of each dispute or issue, which typically require a complex and bespoke response.⁶³

The disagreement matters, because as Professor Jeremy de Beer took pains to emphasise to flip, working with futures scenarios means being an agent of change. Futurists imagine not one but multiple possible futures; they evaluate interlinked trends across those potential futures. Futurists articulate their own shared values, which underpin policies designed to achieve the particular version of the future that they hope will transpire. It is a critical question, then, as to whether members of the legal profession (including the legislature, regulators and judiciary who impose high standards of service) *wish* to see the standardisation of legal work, including the transformation of the bulk of legal services into high volume, perhaps free offerings, where standards for all reflect the easy and routine, but not the hard cases.

The issue is not black and white, and requires further research and careful thought. It raises fundamental questions about the nature of law and the role of lawyers, a question at the intersection of jurisprudence, ethics and technology. Do the technicians who code need to be working alongside experienced lawyers? What are the policy solutions that are needed to preserve Hercules' approach to integrity in the law and serve the public well? Is this even possible?

Recommendation

In view of the enormous possibilities (and attendant concerns) associated with rapid and ongoing developments in legal services, the Committee recommends that the Law Society establish a centre for legal innovation projects. The centre should:

- actively facilitate innovation in legal technology and engage with the development of emerging technologies, such as blockchain
- conduct and present research into the ethical and regulatory dimensions of innovation and technology, including solicitor duties of technological competence, in close collaboration with the Law Society's Professional Standards Department and Legal Technology Committee
- research and design, in close collaboration with the Law Society's Professional Development Department, continuing legal education programs that assist lawyers to build core competencies in existing and emerging technologies relevant to the delivery of legal services
- foster innovation cultures by creating and participating in networks and producing guidance for solicitors as to the legal technology market
- foster partnerships in the service of legal assistance to communities.


The Committee recommends that the Law Society consider establishing an incubator in New South Wales dedicated to technology-enabled innovation in the law.

ENDNOTES

- 1 See Philip Argy, flip testimony (20 June 2016) 6:50–6:56.
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- 3 Commission on the Future of Legal Services, American Bar Association, *Report on the Future of Legal Services in the United States* (2016) 30, http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.
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- 8 See Allens, *Allens Accelerate*, <http://www.allens.com.au/services/accelerate/> and Gavin Smith, flip testimony (28 July 2016).
- 9 American Bar Association, above n 3, 27.

- 10 Leopold Lucas, flip testimony (28 October 2016).
- 11 Lenore Adkins, 'Study: Corporate Law Departments' Spend on Software Set to Explode', *Bloomberg Big Law Business* (online), 25 February 2016, <https://bol.bna.com/study-corporate-law-departments-spend-on-software-set-to-explode/>. See also chapter 1.
- 12 Yves Faguy, 'Looking to 2017: Jordan Furlong on the state of the legal marketplace', *Canadian Bar Association National* (online), 2016, <http://www.nationalmagazine.ca/Articles/December-2016/Looking-to-2017-Jordan-Furlong-on-the-state-of-the.aspx>.
- 13 Cited in American Bar Association above n 3, 30.
- 14 Beth Patterson, flip testimony (30 June 2016). Daniel and Richard Susskind give four factors, "exponential growth in information technology[;] increasingly capable machines[;] increasingly pervasive devices[;] increasingly connected humans": Daniel Susskind and Richard Susskind, *The Future of the Professions: How Technology will Transform the Work of Human Experts* (Oxford University Press, 2015) 155, Box 4.1.
- 15 Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies* (W W Norton & Co, 2014) 49.
- 16 *Ibid* 45–48. See also chapter 3, 'Moore's Law and the second half of the chessboard'.
- 17 See *Jeopardy!* exhibition matches between IBM's Watson, Brad Rutter and Ken Jennings, February 2011: YouTube, *Jeopardy! The IBM Challenge (Day 1 – February 14)*, https://www.youtube.com/watch?v=i-vMW_Ce51w. See also Anthony Sills, 'ROSS and Watson tackle the law' on IBM Watson, *Built with Watson* (14 January 2016), <https://www.ibm.com/blogs/watson/2016/01/ross-and-watson-tackle-the-law/>.
- 18 Brynjolfsson and McAfee above n 15, 48.
- 19 Abrahams above n 2, 12.
- 20 Richard Hugo-Hamman, flip testimony (30 June 2016).
- 21 *Ibid*.
- 22 David Abrahams, flip testimony (19 October 2016).
- 23 Andy Wyckoff, Organisation for Economic Co-operation and Development, 'The Digital Economy in the Age of Disruption' (2016) No 307 Q3 OECD Observer, 21, <https://issuu.com/oecd-publishing/docs/oecd-observer-307-digital-economy-1>.
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- 25 Natalie Scanlon, flip testimony (7 July 2016).
- 26 This point was made by Regional Presidents during a consultation on 27 October 2016 when it was noted that the Law Society, too, must continually upgrade and utilise technology to optimise its engagement with solicitors in rural and regional New South Wales.
- 27 See, eg, Canadian Bar Association Legal Futures Initiative, *Futures: Transforming the Delivery of Legal Services in Canada* (2014) 24, <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/Futures-Transforming-the-Delivery-of-Legal-Service>.
- 28 Susskind and Susskind above n 14, 187.
- 29 Brynjolfsson and McAfee above n 15, 56.
- 30 Canadian Bar Association Legal Futures Initiative above n 27, 24.
- 31 Embedded legal knowledge denotes objects, structures or systems that are designed for automatic compliance with regulations. Examples might ultimately include self-driving cars incapable of driving over a particular speed limit in particular zones: see Susskind and Susskind above n 14, 131–2.
- 32 Richard Susskind, cited in Canadian Bar Association Legal Futures Initiative above n 27, 24.
- 33 Canadian Bar Association Legal Futures Initiative above n 27, 21.
- 34 *Ibid*.
- 35 See Mo Marshall, 'IBM goes all-in on blockchain: Launches app-making ecosystem', *VentureBeat* (online), 6 December 2016, <http://venturebeat.com/2016/12/06/ibm-goes-all-in-on-blockchain-launches-app-making-ecosystem/>. For introductory material on Blockchain, see Allens Linklaters, *Blockchain Reaction* (2016), allens.com.au/blockchain and Tatsiana Yablonskaya, 'Ernst & Young's Report Anticipates Blockchain To Reach Critical Mass in 3-5 Years', *Coinspeaker* (online), 24 July 2016, <http://linkis.com/www.coinspeaker.com/6fyRP>.
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- 37 Kate Crawford and Meredith Whittaker, *The AI Now Report: The Social and Economic Implications of Artificial Intelligence Technologies in the Near-Term* (22 September 2016), https://artificialintelligencenow.com/media/documents/AINowSummaryReport_3_RpmwKHu.pdf.
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- 40 Simon Lewis, flip testimony (7 July 2016), 2:42.
- 41 Jonathan Prideaux, flip testimony (30 June 2016); Philippe Doyle Gray, flip testimony (28 July 2016).
- 42 Malcolm Heath, flip testimony (13 May 2016).
- 43 Mick Sheehy, General Counsel, Finance Innovation Technology and Strategy, Telstra, at Legal Innovation & Tech Fest conference, Melbourne, 17 May 2016.
- 44 LexMachina, *How it Works – Lex Machina*, <https://lexmachina.com/what-we-do/how-it-works/>.
- 45 200 million pages of content across 4 terabytes of disk space: see Joab Jackson, 'IBM Watson Vanquishes Human Jeopardy Foes', *PC World* (online), 16 February 2011, http://www.pcworld.com/article/219893/ibm_watson_vanquishes_human_jeopardy_foes.html. See also Stephen Barker, *Final Jeopardy* (Mariner Books, Reprint edition, 2012).
- 46 These reflections are drawn from observations made by Julian Tsinis, Program Manager, Legal Technology, Google (USA), during the Legal Innovation & Tech Fest Conference in Melbourne on 17 May 2016.
- 47 Kira Systems claims that artificially intelligent review creates efficiencies, is more accurate and "and anywhere from 20 percent to 90 percent faster than manual review", see Kim above n 38.
- 48 The 'Do Less Law' movement focusses on reducing legal spend by harnessing technology and taking a preventative approach. See #DoLessLaw Twitter hashtag. See, eg, Sam Harden, 'How One Lawyer Uses Big Data to Find Whistleblower Clients', (online), 9 March 2016, <https://lawyerist.com/104325/how-one-lawyer-uses-big-data-to-find-whistleblower-clients/>.
- 49 Creative Consequences Pty Ltd, written submission to flip, (14 October 2016).
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- 51 Argy, above, n 1.
- 52 Creative Consequences Pty Ltd above n 49.
- 53 American Bar Association, 2012 Amendment to Model Rules of Professional Conduct, http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120808_house_action_compilation_redline_105a-f.authcheckdam.pdf
- 54 Robert Ambrogi, '13 15 17 18 20 21 23 24 25 26 States Have Adopted Ethical Duty of Technology Competence' on Robert Ambrogi, *LawSites* (16 March 2015), <http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html>.
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- 57 Crawford and Whittaker above n 37, 5.
- 58 Ibid 4.
- 59 Lord Woolf and Christopher Campbell-Holt, *The Pursuit of Justice* (Oxford University Press, 2008) v. The full quote, applied liberally here to the Australian context, is: "A common understanding is that English law is certain. The reality is that the law is often uncertain." (emphasis added).
- 60 Ronald Dworkin, *Law's Empire* (Belknap Press, Cambridge Mass, 9th printing, 1995), preface.
- 61 Ronald Dworkin, *Taking Rights Seriously* (Gerald Duckworth & Co) 197 (on Hercules, see "Hard Cases" pp. 81 – 131); see also Dworkin above n 60.
- 62 Susskind and Susskind above n 14, p 248.
- 63 Satyajit Das, Lecture in association with Satyajit Das, *Banquet of Consequences* (Penguin Books, 2015), (Speech delivered at the Mosman Library, Sydney, 28 February 2016).

A woman in business attire is walking on a modern staircase. She is holding a coffee cup in her right hand and a folder in her left. The background is a large glass and metal structure. A large orange graphic overlay is positioned in the foreground, containing the chapter title.

CHAPTER 03
**NEW WAYS
OF WORKING**

Innovation and competition are reshaping the way lawyers are finding clients, performing tasks, setting up practice and providing services.

Testimony to flip revealed a breadth of unique practice types and approaches to work.¹ These include value-based billing; online, paperless and “virtual firms”; enterprises that are part technology company, part legal practice; legal hubs or marketplaces, chambers practices and multi-disciplinary collaborations.

TAXONOMY: A CHANGE CONTINUUM

Dr George Beaton and Imme Kashner distinguish between the business models of traditional law firms, which they term “BigLaw”, non-traditional entities called “NewLaw”, and “remade law firms”, that is, firms which have:

reacted to client demands and anticipated changes in an increasingly mature market for legal services by changing aspects of how work is won and how work is done, while maintaining a partnership-based governance structure.²

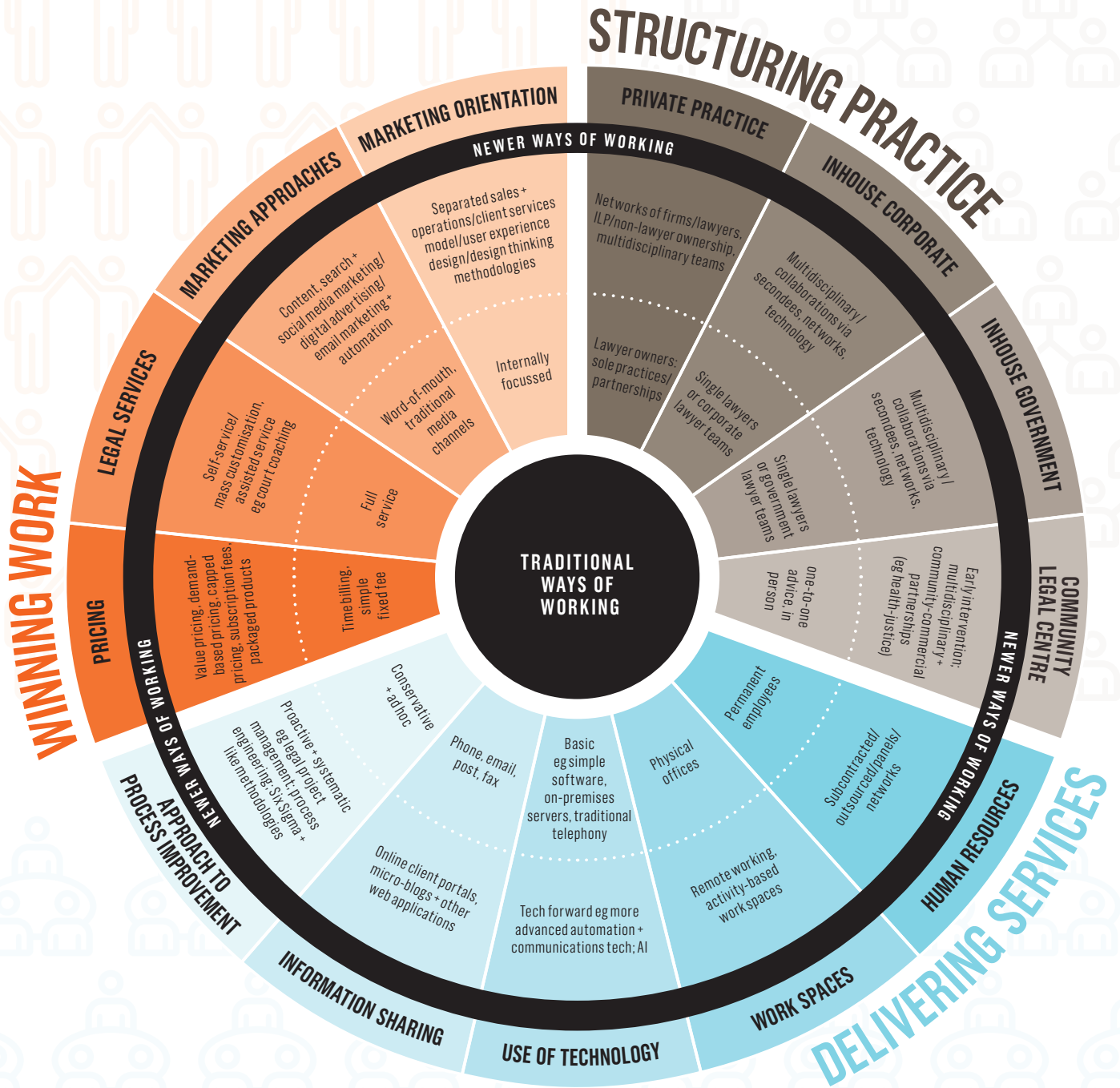
Dr Beaton told flip in his introductory remarks, that:

‘New ways of working’ is, from the perspective of the private branch of the profession ... the most important feature of the next 5 – 25 years, depending how fast one judges the rate of change to be ... We are seeing a phenomenon where the breakaways from the very large law firms ... are beginning to recreate the profession as it was 60 or 70 years ago.

The Committee notes that hybrid practices that combine elements of the old and the new are increasingly common.

“We are seeing a phenomenon where the breakaways from the very large law firms ... are beginning to recreate the profession as it was 60 or 70 years ago.” DR GEORGE BEATON

NEW WAYS OF WORKING IN THE LEGAL PROFESSION



NEWLAW

Flip heard from online firms, “virtual firms” and companies that are part law practice, part technology business.

ONLINE-DIVORCE-LAWYER @ FLIP

- Lyn Lucas set up an online firm at 69 years of age and uses social media and mobile digital technology to run a niche online family law service. Based in Newcastle, the small firm is able to service clients across Australia.³

LAWYAL SOLICITORS @ FLIP

- Leonie Chapman established LAWyal partly because she had young children and sought more flexible working arrangements.⁴
- Bespoke software was built for the “virtual firm” which allows freelance lawyers to work remotely for LAWyal and keeps overheads low.
- Clients include large banking and finance institutions but also fintech “disruptors” who have synergies with a virtual firm.
- After using the LAWyal client portal regularly, one of the firm’s clients is starting to integrate LAWyal’s software with its own.
- LAWyal is looking into the commercialisation of the software.⁵

The driver for our business was flexibility and control; we’re attracting people who want that flexibility and control.

Leonie Chapman, Principal, LAWyal

LEGALVISION @ FLIP

- LegalVision is an incorporated legal practice (ILP) with a strong technology strategy that includes investing in machine learning, document technology and blockchain.⁶
- The firm was a “pure software business” that became an ILP once it discovered that “customers actually wanted a lawyer to help them out”,⁷ rather than build their own documents online.
- LegalVision Chief Executive Officer, Lachlan McKnight, told flip that clients include small and medium-sized businesses and large corporations. As at late July 2016, LegalVision was growing at a rate of 5 per cent month on month.
- LegalVision builds client portals for clients and supplies various apps including a trademarking tool, but provides its technology at cost where possible, to focus on securing and providing legal work.⁸

LAWPATH @ FLIP

- LawPath’s online legal documents are based on automated systems using conditional logic generated by software that LawPath has built. The company is “looking at AI systems to verify and check documents”.⁹ LawPath sees itself as a “technology company not a law firm”, but one that “provide[s] legal services.”¹⁰

“ LawPath sees itself as a ‘technology company not a law firm’, but one that ‘provide[s] legal services’.”

▶ NETWORKS

Networks are proliferating – including networks of firms operating across the globe, knowledge networks and simple referral networks. Technology is facilitating this growth. Flexible networks or panels of freelance or casually employed solicitors are an emerging trend.¹¹

Ben Stack, Chief Executive Officer, Stacks Law Group, explained:

At one end of the spectrum there are very simple referral-type networks that might be formal or informal, and most law firms will have something to that effect in place, where they are exchanging essentially client enquiries particularly around matter types they don't practice. ... You see in the legal marketplace knowledge networks where firms are connecting for the purpose of exchanging information and perhaps running private CPD [continuing professional development]. You then see chambers practices, which are really firms as a network, coming together to share premises and facilities. Then you start to come down the spectrum, and you see more integrated networks of firms that, for instance, might go to market under a common brand and there are many examples of this in Australia historically as well as today, from networks of state-based partnerships, which go to market as a national brand, to examples of global networks and the Swiss Verein models

[Last], you have networks of firms that have full financial integration, which for all intents and purposes are one firm ... but are structured as independent firms working together.

HIVE LEGAL @ FLIP

- Business Development Manager Melissa Lyon told flip that having a large casual pool of solicitors means that Hive can “flex up and flex down” according to client need.
- Casual solicitors are not obliged to work exclusively for Hive.
- Sophisticated software supports its paperless operations.¹²

REDENBACH LEGAL @ FLIP

- Former top-tier law firm partner Keith Redenbach is using software he designed himself to conduct a wholly paperless practice.
- Panels of freelance solicitors and paralegals enable his new practice to run matters, including multi-million-dollar claims.¹³

[I asked:] What do my clients do? Which leads me to what I'm doing in my firm, which is, really, becoming an “outsourced” firm. That's something which in the construction industry is commonplace. The contractual chain has a principal, maybe then a main entity that is dealt with, say a barrister or even a fellow colleague who is expert in intellectual property law, or other areas. The networks that I've generated over those 20 years have led me to a path of understanding partners who have made a similar decision to mine (or even haven't); so when you can work with people and outsource the things that you're not expert at, what you get is the best of both worlds for your clients. They get you, they're coming to you for your expertise, but you get the flexibility to be able to use who's best for the job.

Keith Redenbach, Principal, Redenbach Legal

LAWPATH @ FLIP

- Not a law firm, LawPath conducts its business online and has three major operations, one of which is a network (or “marketplace”) of lawyers. LawPath:
 - provides services such as registering a company using a fully-automated platform that LawPath built
 - sells electronic legal documents¹⁴ online
 - provides a “marketplace” of lawyers. LawPath brokers fixed-fee quotes from the marketplace to help the prospective client select and engage their lawyer. Lawyers have their own professional indemnity insurance. As at May 2016, there were 600 lawyers registered with the marketplace.¹⁵
- Clients are mostly small and medium-sized businesses.¹⁶ LawPath has signed up approximately 20,000 clients.¹⁷

KEYPOINT LAW

- Keypoint Law is an incorporated legal practice which engages the services of senior lawyers under percentage fee-sharing arrangements that includes back office support, professional indemnity insurance, research, professional development and more; as well as referred work and team work. Keypoint offers physical premises but its senior lawyers can work remotely if they prefer.
- Keypoint does not specify billing targets or dictate charges or rates, and solicitors can work as little or as much as they like.¹⁸

CLARENCE CHAMBERS @ FLIP

- Founded by a former partner of Corrs Chambers Westgarth who left the firm to work as a sole practitioner, Clarence Professional Group is Australia’s largest chambers practice with 145 solicitors and 15 barristers on six floors in two cities.¹⁹
- Individual firms and lawyers pool resources in a collegial setting. Clarence provides offices and meeting rooms, back-office services, professional development, professional networking and more.

PWC @ FLIP

- PwC Partner Andrew Wheeler described PwC as a global network of firms. PwC operates in 158 countries around the world and practises regulated legal services in 86 of those jurisdiction with approximately 200,000 people working across the various PwC offices.²⁰
- In Australia, around 60 of PwC’s 550 partners are legally qualified with practising certificates and more than 100 further PwC lawyers have practising certificates.²¹ See the discussion under “Multi-disciplinary partnerships”, below, for more detail.

“Keypoint does not specify billing targets or dictate charges or rates, and solicitors can work as little or as much as they like.”

▶ VALUE-BASED BILLING

The hourly rate is being challenged by “alternative fee arrangements”, or value-based billing.

ASSOCIATE PROFESSOR MICHAEL LEGG @ FLIP

Michael Legg, Associate Professor of Law, UNSW, pointed to three key factors that have challenged the dominance of hourly billing:

- a shift from process to outcome. Associate Professor Legg explained that:
[i]n business there is now a greater focus on the results, or the value that’s achieved, rather than [the question of] ‘how did you get there?’
- the economic downturn and increased competition and
- technology. For example, data mining means that law firms can estimate their costs far more accurately.²²

AFAs and limited scope services have been around for quite some time, but technology is making them far more possible and attractive. Alternative Fee Arrangements are basically a way of charging a fee that is not time-based or the hourly fee. ‘Alternative’ means an alternative to time-based billing. Legal fees have been charged throughout history in a whole range of different ways and some of those are starting to come back into fashion. Time-base billing or the billable hour is probably the most used arrangement. Interestingly, ... in the seventies there was a lot of research done in the US and Canada, and they came to the conclusion that the lawyer who records time is consistently a higher earner than the non-time-keeper. That sort of research and study was picked up and used by a lot of law firms. Time-based billing has dominated for about the past 40 years, and so the question is: what is it that has changed, to challenge that domination?

Associate Professor Michael Legg, UNSW

PHILIP ARGY @ FLIP

- Philip Argy, Chair of the Law Society’s Legal Technology Committee, pointed to the construction industry to explain what clients expect and how lawyers should think about pricing. A builder will use a bill of materials based on their past experiences as a precedent for a job, and scale it

accordingly, rather than pricing on the basis of an estimate of the time a new job will take.

- Mr Argy described how technology can empower lawyers to help cost matters in the same way, starting with a standard price and allowing for “extras” for non-standard iterations, like a bill of materials.²³

HIVE LEGAL @ FLIP

- Melissa Lyon, Hive Legal, told flip that 95 per cent of the firm’s work is value priced and the firm does not time-record.²⁴ Hive collaborates with clients at the start of a matter to fix a price on the basis of few or no built-in assumptions. Ms Lyon said the practice’s very senior practitioners have a good grasp of the costs of undertaking various matters, and the complete certainty provided by value-based pricing benefits clients and lawyers:

It means that our lawyers can get on and do the work without the distraction of the timesheets ... rewarding efficiencies and outcomes as opposed to the time that it takes to do things.²⁵

LAWPATH @ FLIP

- Using fixed fees is a condition of registering with the LawPath legal marketplace. The fee is worked out between the client and lawyer but the client chooses between three different quotes supplied by LawPath.²⁶ LawPath told flip that 90 per cent of its work is commercial work, much of which is undertaken for small to medium businesses, many of whom are online businesses.

All of our lawyers scope the job by speaking to the client first, so what we find is that clients are happy to move forward with a lawyer that they have a good relationship with, rather than just on price.

Dominic Woolrych, Head of Legal, LawPath

- LawPath views its work as “commoditised law”, describing this as “legal work that can be set within a scope and can be fixed priced.”²⁷

INSOURCING AND OUTSOURCING – MANAGING WORK AND PROCESSES

As discussed in chapter 1, more work is being “insourced”, or brought inhouse, although for some work, outsourcing is viewed as more efficient. New processes and managing change is discussed further in chapter 7.

What we contemplate when hiring an external lawyer [is a question that] encompasses the whole legal ecosystem. So it really is ‘right-sizing’. What should go to the bespoke attorney (what should go to outside counsel)? What can be outsourced to India (our NDA)? And what can go to technology? Or what can come back inhouse? Because it’s far less expensive to bring things inhouse than it is to send it out, unless of course, you can get it onto technology or into an outsource provider’s hands.

Connie Brenton, Senior Director, Legal Operations, NetApp (US)

CORPORATE LAWYERS COMMITTEE @ FLIP

- Experienced financial services lawyer and Chair of the Law Society Corporate Lawyers Committee Coralie Kenny told flip that controlling costs within large companies is based on keeping work inhouse and employing work processes that rely on unbundled services, like “lining up spare parts” on a production line.²⁸

LEXVOCO @ FLIP

- Lexvoco is a law firm that also supplies inhouse lawyers to medium-sized and large organisations on a contractual basis, sourcing lawyers with inhouse experience and commercial nous.
- The firm undertakes consulting and strategy work for inhouse legal teams to identify process improvement and other ways of extracting value from legal services, focusing on using technology and improving work systems.
- Lexvoco employs a developer who is also a lawyer, and builds some legal technology inhouse.²⁹

Outsourcing can mean off-shoring but also refers to sending work to another company, an affiliate or a third-party within the same jurisdiction.³⁰

- Caroline Hutchinson, Head of Litigation, Coleman Greig, told flip that the firm uses an off-shore word processing service which produces work of a high quality.³¹
- Stuart Naphthali, Senior Associate, Maddocks, indicated that outsourcing can be advantageous when huge volumes of documents and short timeframes are involved. He observed that initial forays into outsourcing some years ago were not as effective as some had hoped, but was optimistic that the sector would continue to evolve. He pointed to the need to manage the process carefully.³²
- Leopold Lucas, Business Development Manager, DTI Australia, told flip how third-party managed document services and e-discovery can improve efficiency and quality, and must be managed carefully.³³

Some of the key [ethical considerations] are ... that when they’re engaging an LPO that they should obviously get consent from the client; because we are a third party, so if they’re going to be sharing sensitive information they’ve got to get the consent from the client initially. Then they also have to ensure that there [are] procedures put in place to maintain confidentiality if that’s an issue that they need to consider. And then also they need to realise that at the end of the day they are under certain responsibilities to ensure that if something does go wrong that they will have some ... responsibility. It is important [when you] look for LPOs or any service company for law firms [to] ensure that you’re looking for quality and consistency in the process and the services that are being provided.

Leopold Lucas, Business Development Manager, DTI Australia

MULTIDISCIPLINARY PARTNERSHIPS AND COLLABORATION

PWC AUSTRALIA @ FLIP

- In 2008, PwC Legal, which had been a separate partnership, became a multidisciplinary partnership. Andrew Wheeler, PwC Partner, told flip that it is not a full-service legal practice but practises in corporate advisory, regulatory, capital projects, infrastructure and real estate, employment law and tax litigation: areas that create synergies for PwC clients.
- A group within the firm, Core Legal, undertakes regulatory and corporate advisory work, but otherwise lawyers are dispersed throughout the practice working hand-in-glove with other professionals. Mr Wheeler explained:

Employment lawyers sit within a group called 'People' [that] consists of professionals within PwC who touch a client's workforce. Whether you are designing a remuneration system, whether you are advising on fringe benefits tax, whether you are doing an employee share plan, whether you are doing a workplace change project – so you have everyone from psychologists through to actuaries through to tax people through to lawyers – they all sit together ... We think there is a better synergy for the lawyers to be going to market with non-lawyers when they're looking at a client's workforce because the lines between what is a legal issue and what becomes a business issue ... are quite blurred. From an HR manager's perspective, they have a problem and they want it solved. There will be multiple touch-points within the organisation to solve a problem like that.³⁴

CORPORATE LAWYERS COMMITTEE @ FLIP

- Committee Chair Coralie Kenny observed that collaboration within commercial teams helps inhouse lawyers to develop very strong skills. In various roles, Ms Kenny has physically sat with the teams she has looked after and told flip:

You become involved in activities and decisions that are not necessarily just legal, but as a consequence of that you're able to add value far more quickly.³⁵

REMADE LAW

- Allens Partner Gavin Smith told flip that Allens founded Allens Accelerate three years ago when the firm recognised that investment capital was flowing into Australia and start-ups were emerging particularly in fintech and agritech, without necessarily being able to afford legal services. Allens Accelerate provides low-cost and in some cases free services to start-ups and high-growth companies to service the “clients of the future”.³⁶
- Charles Coorey, Partner, Gilbert + Tobin, told flip that as a result of work of the firm's Excellence Committee, legal project management principles have been introduced. The firm has developed and patented technology that it has used to reduce the number of hours lawyers bill.³⁷ It has invested in LegalVision, as noted in chapter 2, and established a new technology-focussed cross-disciplinary team, g + t <i> (i = innovation). The firm is focussed on:
 1. a symbiotic relationship with technology including artificial intelligence
 2. optimised work processes
 3. advanced data and knowledge centres and capturing.³⁸
- Stuart Naphthali, Senior Associate, Maddocks, told flip how the firm is moving toward commoditised legal work and is tackling the challenge of pricing large-scale work. Mr Naphthali explained that:

It is absolutely critical to create bespoke pricing arrangements with our individual clients. It's not something that can be done ... wholesale ... Whilst there is a lot of front-end time put into that, it allows us to create a more tailored approach ... that results in fixed-fee, capped-fee type arrangements, monthly retainer structures ... the standard time-based billings for large-scale transactions, and ... any opportunity in between.

The firm is also identifying redundant capacity within the firm and is collaborating with clients to improve their inhouse services.³⁹

Testimony to flip showed that the scope and variety of changes today appear to strike more fundamentally than ever before at the core of how we practise as lawyers.

Freed up by the deregulation of legal practice in New South Wales and spurred on by competition, lawyers are already working in new ways in a manner that suggests a profession that is reinventing itself.


Recommendation

The Committee recommends that the Law Society:

- augment its participation in consultation with professionals working in novel ways, co-regulators and community stakeholders, to increase the level of engagement with new ways of working
- continue to raise awareness throughout the profession of such consultations and new ways of working through the centre for legal innovation projects and Law Society publications.

ENDNOTES

- 1 Testimony can be viewed in full at lawsociety.com.au/flip.
- 2 George Beaton and Imme Kaschner, *Remaking Law Firms: Why and How* (American Bar Association, 2016) 15. The authors note that “[m]any of them have also built an innovation portfolio, by investing in NewLaw providers through setting up captive entities or pure legal staffing providers, or by providing commoditized Internet-based services”.
- 3 Lyn Lucas, flip testimony (13 May 2016).
- 4 Leonie Chapman, ‘Embracing technology in legal services’ on LAWyal, *LAWYAL Insights* (22 September 2013), <https://insights.lawyal.com.au/2013/09/22/embracing-technology-in-legal-services/comment-page-1/#comment-19>.
- 5 Leonie Chapman, flip testimony (30 June 2016).
- 6 Thomas Kaldor, flip testimony (20 June 2016).
- 7 Lachlan McKnight, flip testimony (28 July 2016).
- 8 Ibid.
- 9 Dominic Woolrych, outline of submission to flip, ‘Inquiry into the Future of the Legal Profession’ (8 April 2016).
- 10 Dominic Woolrych, flip testimony (13 May 2016). See also the discussion under the heading, ‘Networks’.
- 11 Chapter 8, ‘Diversity’, explores some of the positive and negative consequences for solicitors of freelancing.
- 12 Melissa Lyon, flip testimony (28 July 2016).
- 13 Keith Redenbach, flip testimony (7 July 2016).
- 14 See Lawpath, *Starting a Business – Legal Documents*, <https://lawpath.com.au/legal-documents?filter=starting-a-business&pg=2>.
- 15 Woolrych above n 10.
- 16 Woolrych above n 9.
- 17 Woolrych above n 10.
- 18 Meeting with Warren Kalinko, CEO, Keypoint Legal, 30 October 2016.
- 19 Jennifer Miller, flip testimony (7 July 2016).
- 20 Andrew Wheeler, flip testimony (28 July 2016).
- 21 Ibid.
- 22 Associate Professor Michael Legg, flip testimony (7 July 2016).
- 23 Philip Argy, flip testimony (20 June 2016).
- 24 Lyon above n 12. Ms Lyon told flip that the remaining 5 per cent reflects clients’ preference for an hourly rate.
- 25 Ibid.
- 26 Woolrych above n 10.
- 27 Ibid.
- 28 Coralie Kenny, flip testimony (13 May 2016).
- 29 Anthony Wright, flip testimony (28 July 2016).
- 30 For a useful, recent discussion, see also Sameena Kluck, ‘Law Firms Need to Learn What Can Be Outsourced and How to Do It, Panel Observes’ *Thomson Reuters – Legal Executive Unit* (online), 7 December 2016, http://legalexecutiveinstitute.com/law-firms-outsourced_ccl/.
- 31 Caroline Hutchinson, flip testimony (20 May 2016).
- 32 Stuart Naphthali, flip testimony (20 May 2016).
- 33 The Office of the Legal Services commissioner NSW, *Outsourcing Practice Note*, <http://www.olsc.nsw.gov.au/Documents/practice%20note%20Outsourcing%20%20AC.pdf>
- 34 Wheeler above n 20.
- 35 Kenny above n 28.
- 36 Gavin Smith, flip testimony (28 July 2016).
- 37 See also Misa Han, ‘Gilbert + Tobin automates IPOs to cut client costs’, *The Australian Financial Review* (online), 13 October 2016, <http://www.afr.com/business/legal/gilbert--tobin-automates-ipos-to-cut-client-costs-20161010-grymlj>.
- 38 Charles Coorey, flip testimony (28 July 2016).
- 39 Naphthali above n 32.



CHAPTER 04
**COMMUNITY
NEEDS AND
FUNDING**

In Australia, net funding to legal assistance services has been shrinking year on year while demand from vulnerable and disadvantaged people for legal assistance continues to grow.

The failure to meet that demand causes three inter-related problems:

- a growing section of our community is unable to resolve legal problems effectively, thereby worsening individual problems of poverty, inequality and unremedied injustice
- inadequate legal assistance makes the broader justice system operate less efficiently and effectively, and this carries with it financial and other burdens and
- where relatively minor legal problems are left unaddressed, there are flow-on consequences in other sectors – such as health and social services – involving significant additional financial costs.

Those problems are not shrinking, nor are they steady; they are growing as legal assistance funding continues to decline. From 1 July 2017, the legal assistance sector is facing a reduction of 30 per cent of Commonwealth funding, known throughout the sector as the “funding cliff”. This is despite successive independent reports

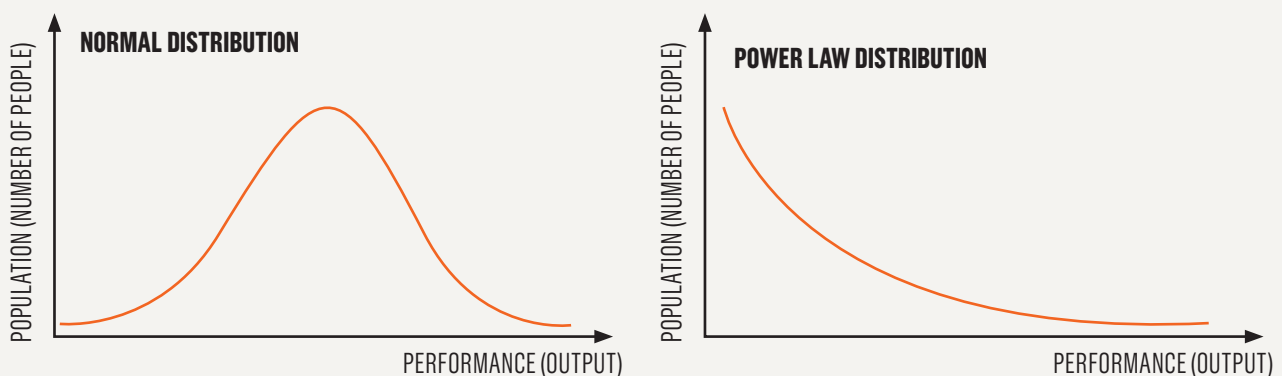
and experts recommending that additional funding is urgently needed in this sector.

Innovation and improved service provision present some opportunities to provide legal assistance more efficiently. While those potential gains are important, they cannot make up for a short-fall in core funding of the legal assistance sector – especially given that previous funding cuts mean that the sector already operates with a high level of efficiency. The future for the most vulnerable, and even for people who may simply be of limited means, looks very bleak if the planned funding cuts to legal assistance go ahead.

Who engages lawyers?

Empirical research shows that the pattern of use of legal services forms the shape of a U.¹ The highest users on either end of the U are the very vulnerable (often poor) and the wealthy. Changes in income distribution over the past 20 years world-wide have seen the gap between rich and poor increase within countries, but the gap between the rich and very rich has also widened at the top, while the incomes of the so-called “lower-middle classes” have stagnated.² Indeed, these changes have been so dramatic that some analysts say the global income curve has shifted from a bell curve to a Pareto curve or power law distribution for the first time in history.³

FIGURE 4.1 COMPARING BELL CURVE WITH PARETO CURVE (NORMAL VS POWER LAW)



Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies* (WW Norton & Co, 2014) 160.

Of course, “rich”, “poor” and “vulnerable” are imprecise terms. Here they are adopted to illustrate changing demographics that suggest a rising demand for legal assistance.⁴ As detailed research by the Law and Justice Foundation of New South Wales (LJF) has demonstrated, legal need in the State varies in type and intensity consistently with other markers of socio-economic disadvantage. Those markers tend to overlap and include age, indigeneity, income, family status, geography and personal capability. Indeed, the research undertaken by LJF is extraordinarily rich, and provides insight into collaborative planning for Australia’s legal assistance sector, on the premise, based on empirical evidence, “that legal assistance services may be most efficient and effective when they are targeted, joined up, timely and appropriate to the legal needs and capability of intended users.”⁵ It is costly to commission surveys on the scale undertaken by the LJF most recently in 2008, but if legal assistance services are to be targeted, joined-up, timely and appropriate, a firm empirical basis that is up-to-date is essential.

National Partnership Agreement for Legal Assistance Services 2015-2020

The Commonwealth Government is making progress to support the collection of data by States and Territories to identify gaps in service provision and help constituents decide how funds should be allocated among service providers. However, this process is taking place within the framework of the National Partnership Agreement for Legal Assistance Services⁶ (NPA), which has already come into operation and for which an overall funding figure has already been set. This figure does not appear to have been based on any empirically grounded, detailed needs assessment. Instead, the sum total of funding appears to have been determined by the Government’s assessment of the fiscal outlook, and legal assistance providers are objecting that the figure is far too low to meet critical need. The package reflects a 30 per cent reduction in funding to the sector from 1 July 2017, against a background of persistent poverty levels in Australia,⁷ acute need in particular areas,⁸ and a history of previous cuts to the sector.

The late Bill Grant OAM, the then Chief Executive Officer of Legal Aid NSW, explained to flip that under the NPA, “Legal Aid’s funding cut ... was \$2.6 million in the first year [2015/2016], rising to over \$16.5 million over the five-year life of the Agreement.” On the overall

approach taken by the Commonwealth Government, Mr Grant said that:

It is really depressing. National partnership implies ... you have a meeting of minds of various levels of government who sit down and work out what is needed in a particular area and apply themselves to providing what resources they can in constrained and difficult economic times, but in a logical and concise way. One illustration: the Commonwealth has acquired a number of jurisdictions from the States and Territories over the years – consumer law, industrial law: no transfer of resources to the legal assistance sector to deal with those. And we all know within the sector how difficult it is to help people who have employment law or consumer law problems. It is really difficult, and you can only scratch the surface of those types of problems.⁹

Unmet need

It is not surprising that Mr Grant should have expressed frustration at the limited funds provided to account for consumer and employment law advice. According to the LJF LAW Survey results, 21 per cent of people who experience a legal problem report having a consumer law problem, and employment law problems are also widely experienced.¹⁰ Indeed, the research shows that members of the community experience legal problems both widely and, as Mr Grant emphasised in his evidence to flip, deeply, depending on their degree of disadvantage. As the LJF has reported, “a small minority of people (9%) account for the majority of the legal problems experienced by the population (65%).”¹¹ According to the LJF, disadvantaged people are particularly likely to fall into this group.¹² These are the people with the very highest levels of need.

Unmet legal needs are not simply those needs that should be, but are not being, met by the legal assistance sector, for lack of appropriate funding or lack of planning or some other reason. Citizens expect the state to protect disadvantaged people by providing an efficient safety net including access to legal assistance. Where this is not achieved, the consequences are not limited to those people who do not secure that assistance; they extend to the entire community given that the cost of leaving legal problems partially or wholly unresolved has significant flow-on financial and social costs that are borne by the whole community. In Australia today, this is an urgent

issue because the funding that has been promised falls far short of protecting the most vulnerable: government policy failure in this area is heartless and demonstrates false economy and poor planning.

Beyond the vulnerable, though, there exists another recognised gap: this is the “missing middle” referred to previously, whereby individuals and small and medium-sized businesses and organisations experience legal problems but rarely or never engage professional legal services.¹³ This is a particularly dynamic area of unmet need, one which is beginning to be researched in more detail.

It should be noted that:

[a]lthough ignoring legal problems is common, in some cases taking no action is appropriate or ‘informed’ and does not reflect unmet legal need. For example, people sometimes do nothing because the problem is not important enough or is resolved quickly or because they were at fault. However, people are also sometimes ‘constrained’ from taking action to resolve their legal problems, for reasons such as the time, stress or cost involved to resolve the problem, being worried about damaging relationships, having more pressing problems or not knowing the avenues for resolution [see Figure 4.2].¹⁴

FIGURE 4.2: REASONS FOR TAKING NO ACTION IN RESPONSE TO LEGAL PROBLEMS – PEOPLE AGED 15 YEARS OR OVER, AUSTRALIA

REASON FOR NO ACTION	ALL LAW SURVEY RESPONDENTS
CONSTRAINED ACTION	
Would take too long	35.4%
Would be too stressful	29.6%
Would cost too much	27.1%
Would damage relationship with other side	12.7%
Had bigger problems	31.1%
Didn't know what to do	21.4%
'INFORMED' ACTION AT FACE VALUE	
Problem not very important	43.0%
Problem resolved quickly	56.1%
Would make no difference	56.2%
Was at fault/no dispute	27.4%
Didn't need information/advice	39.2%

Table 5.3 in Christine Coumarelos et al, Collaborative Planning Resource – Service Planning (2015) 17. [http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/CPR_Service_Planning_Nov2015.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/CPR_Service_Planning_Nov2015.pdf).

Crucially, the LJF has reported that:

The most significant barrier to obtaining legal assistance experienced by people who are financially disadvantaged may be the cost of legal services – particularly amongst people who do not meet eligibility criteria for public legal assistance, but cannot otherwise afford private practitioners. Although the LAW Survey found that cost was a factor constraining action to resolve legal problems, it was not the most common constraint on action, given that most legal problems are handled outside the legal system. Cost was, however, the most frequently cited barrier to obtaining advice and assistance from legal practitioners, being reported for nearly one-quarter (23%) of these cases. Thus, cost can be a major barrier for many legal problems for which people wish to obtain expert legal advice.¹⁵

Flip has heard evidence that savvy marketing techniques and attractive price-points have helped technology-enabled providers to begin to address the gap in the market. LegalVision, for example, reported that a typical matter in 2016 cost the client around \$1,500.¹⁶ Chief Executive Officer, Emma Weston, of the start-up Full Profile, told flip that the fledgling company doesn't have a legal budget as such. For small amounts of advisory work, Ms Weston said she consults a solicitor in the traditional way, but more regularly purchases LawPath's online documents for simple issues, and uses Allens Accelerate's free suite of downloadable documents.

As Professor Richard Susskind has somewhat scornfully pointed out, like other professionals, lawyers tend to think of themselves as artisans.¹⁷ One of the dilemmas associated with the view that solicitors should provide more low-cost, high-volume work in response to unmet legal need, is the risk of entrenching a two-tier justice system, with lower standards for precisely those who are less sophisticated users of the system, less well placed to understand and accept the exposure to legal risk that comes with potentially incomplete advice. Others counter that second-best is better than nothing at all – Daniel and Richard Susskind have cited Voltaire: “we should not let the best be the enemy of the good”¹⁸ – but the Committee is concerned that the Law Society should embrace the possibilities of innovation only with appropriate safeguards in place, protecting quality for service providers and consumers alike.

The Committee firmly believes that this is possible. In chapter 10, “The Regulation of the Legal Profession”, the Committee recommends that the Law Society undertake further research to investigate potential ways to resolve this question.

It must be noted that unbundled or limited services have long been provided to clients, particularly in the legal assistance sector. Consider advice given in a half-hour session during a drop-in legal clinic at a community legal centre. The advice will be recorded in a file note and carefully vetted by the supervising lawyer. Internal processes and resources made available within the centre will provide a high level of quality assurance. Nevertheless, limited advice given in a short timeframe has always presented a risk that an area pertinent to the advice given may not have been explored with the client. The difference today is that as funding levels drop and disputants' ability to access a lawyer reduces with them, demand for partial or “unbundled” assistance in various settings appears likely to rise.

“As funding levels drop and disputants' ability to access a lawyer reduces with them, demand for partial or ‘unbundled’ assistance in various settings appears likely to rise.”

Tori Edwards, Manager of the Justice Connect Self Representation Service, told flip that the Service provides “discrete, task-oriented or unbundled assistance to litigants” in bankruptcy and Fair Work matters, human rights, discrimination and judicial review of decisions related to social security and other benefits. Clients usually come to the Service by referral from registry staff, Ms Edwards told the Commission. The client is consulted by a paralegal or student at first instance to check their eligibility for assistance, and then meets with a pro bono lawyer at a later date for a one-hour appointment. Having received a brief from the student or paralegal, and after consultation with the client, the lawyer might help the client draft court documents, give advice on the best forum in which to file, or assist the client to prepare for a court date or mediation, including giving advice on what might constitute a reasonable settlement. Ms Edwards explained that advice typically also includes procedural and practical tips.¹⁹

“Unbundled” or partial assistance is probably unavoidable for lawyers just as it is for judges. Certainly, the services of a duty lawyer will be constrained by circumstances. Judicial officers of various courts, including the President of the New South Wales Court of Appeal, the Honourable Justice Beazley AO, and former Judge of the Federal Circuit Court of Australia, Mr Stephen Scarlett OAM, have given extrajudicial consideration to the challenges posed by self-represented litigants.²⁰ However, while a judge cannot ignore his or her responsibility to the litigant to provide a fair trial, a legal practitioner, although an officer of the court, has no particular responsibility to the court to accept a client. Unlike a judge, immune from suit for matters associated with the exercise of judicial functions, a solicitor enjoys no immunity in negligence for overlooking matters relevant to the client’s case. Nor is a solicitor obliged, like a barrister, to accept a brief and may decline to assist a client if unable to properly do so. Of course, these observations go only a very small way toward exploring this issue. The Committee recommends that the Law Society research the situation of the solicitor in New South Wales who gives limited advice or assistance, in the context of the significant cuts to Commonwealth funding to the legal assistance sector and in light of the dynamics that are driving innovation more generally across the profession.

Funding reductions

COMMONWEALTH REDUCTIONS

During flip hearings in September 2016, managers of community legal services told flip of the impacts that the Commonwealth funding reduction would have on their services. Acting Chief Executive Officer of Redfern Legal Centre, Jacqui Swinburne, calculated that the loss of Commonwealth funding received by the Centre would exceed 30 per cent from 1 July 2017. Despite the importance of prevention and early intervention in reducing demand and pressure on court resources, the Centre’s community education scheme would most likely be cut, so that “front-line staff” including domestic violence workers may be retained.²¹

Helen Campbell, head of the Women’s Legal Service NSW, said the busy telephone advice service would have to be reduced from five to three days per week and services overall would need to be cut. Ms Campbell said that a recruitment freeze was already in place.²²

Jonathon Hunyor, Chief Executive Officer of the Public Interest Advocacy Centre (PIAC), which runs the Homeless Persons’ Legal Service, expressed concern about the potential impacts of cuts to that service. While these were largely unknown as at September 2016, Mr Hunyor said the organisation leverages about \$2 million in pro bono support for the \$500,000 in Commonwealth and State funding that PIAC relies upon to run the Service. He indicated that recent rises in homelessness and the effectiveness of the Service meant demand was strong, yet the threat of funding cuts remained.

It’s fair to say that if we built it they would come: if we doubled the size and the scope and the reach [of the Service], we would be able to keep everybody fully busy. There’s been an increase in homelessness in the inner city .. and demand for those services is always very strong. ... It is the sort of service whereby when we’re present, that’s what allows people to come forward. When we’re able to reach into other community services – and we try to co-locate with other community services so that we’re available and accessible that’s what gives people who are homeless the opportunity to come forward with their problems and help us try to find a solution for them.

Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre

The Chair of peak body Community Legal Centres NSW, Nassim Arrage, told flip that community legal centres across Australia turned away 160,000 people in 2014/2015 who appealed for assistance, and more would have to be turned away in the future.

IMPACTS OF STATE EFFICIENCY SAVINGS AND PUBLIC PURPOSE FUND REDUCTIONS

Many legal assistance providers are funded jointly by the Commonwealth and State governments, and sometimes receive funds from additional sources. For example, the NSW Public Purpose Fund²³ is administered by the Law Society. Due to falling interest rates over the past 10 years, income earned by the Fund has declined and, as a consequence, trustees of the Fund have curtailed discretionary payments.

In 1997, the Commonwealth decided that it would only continue to fund legal matters that fell within the jurisdiction of the Commonwealth, so that complementary funding provided by the New South Wales Government began to take on far greater significance. The State Government now requires funding recipients, including the courts, to show that they have achieved savings by introducing efficiencies, which in practice can and often does mean cutting back on services. LawAccess NSW is a highly successful free legal helpline and referral service whose funding comes from Legal Aid NSW, the State Government and the NSW Public Purpose Fund. LawAccess Director Janet Wagstaff told flip that the service has already had to find \$800,000 in savings due to Public Purpose Fund reductions, and has cut staff, reduced a casual pool to nil and been forced to abolish a well-functioning clerkship program. Ms Wagstaff told flip that in 2015/2016 LawAccess had 91,000 abandoned calls (hang-ups), compared to 27,000 in 2013/2014, before these reductions came into effect.

Innovation

As mentioned in chapter 1, clients across the community need collaborative, often multidisciplinary responses to their problems. Research by the LJF has shown that 36 per cent of individuals with legal problems who take action with some assistance (as distinct from doing nothing or handling the problem on their own, without seeking advice) seek that assistance from a professional, but not from a lawyer.²⁴ Accordingly, Legal Aid NSW has trained many hundreds of community workers to identify legal problems and make appropriate referrals, and established health justice partnerships.²⁵ Legal Aid NSW and other actors in the legal assistance sector have forged partnerships with government departments and within communities to address cycles of disadvantage and help address non-legal causes of legal problems, through case work and close collaboration.²⁶

Across the legal assistance sector, there has been a strategic focus on intervening early to prevent problems from escalating, with community education provided by many centres and Legal Aid NSW.²⁷

The Public Interest Advocacy Centre conducts strategic test cases to harness litigation as a tool for social change with wider effects for vulnerable people, rather than only for the litigant in a particular dispute.

Community legal centres are also using the internet and digital technology in innovative ways. Particularly notable is AskLOIS, the “virtual workshop” or online information service for community workers created by Womens’ Legal Service NSW. AskLOIS uses a secure internet portal to provide training, one-on-one communication through chat, as well as referrals and urgent services. It has almost 2,000 actively engaged members and around 80-150 users logged in per webinar, reaching individuals and service providers in cities and across rural New South Wales.

“Clients across the community need collaborative, often multidisciplinary responses to their problems.”

Recommendations

The Committee was interested to hear about the innovative ways in which community legal centres and Legal Aid NSW are reaching their clients, and believes that a centre for legal innovation projects could serve to further promote innovation in support of the sector.

ANNUAL HACKATHON

The Committee also recommends that the Law Society sponsor an annual hackathon²⁸ to harness enthusiasm and expertise to help legal assistance providers find innovative solutions to specific problems.

TECHNOLOGY TRANSFERS

The Committee considers that a centre for legal innovation projects could act as a conduit for the transfer of legal technology from vendors willing to help bridge what could be a widening technology gap as corporate systems become increasingly sophisticated. Donations of appropriate software and other technologies could assist in test case litigation or in the management of cases against large corporate or government defendants. The Committee recommends that the centre actively work with the sector to seek opportunities to secure the interest and assistance of appropriate technology providers.

INCUBATOR

The Committee recommends that the Law Society consider establishing an incubator for legal technology which could help develop innovative solutions for the sector on an ongoing basis. The incubator would enhance access to justice by fostering the development of well-designed products to support the work of solicitors in the sector and the private profession.

RESEARCH

The Committee recommends that the Law Society research the situation of the solicitor in New South Wales who gives limited advice or assistance, in the context of the significant cuts to Commonwealth funding to the legal assistance sector and in light of the dynamics that are driving innovation more generally across the profession.

ADVOCACY

The Committee recommends that the Law Society continue to advocate in the strongest terms for the reversal of the reductions to Commonwealth funding for the legal assistance sector that are currently due to take effect on 1 July 2017, and to press the Commonwealth Government to consult with the sector on appropriate levels of interim funding and the development of a robust funding model for future funding allocations for legal assistance.

“[AskLOIS] has almost 2,000 actively engaged members and around 80-150 users logged in per webinar, reaching individuals and service providers in cities and across rural New South Wales.”

ENDNOTES

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- 2 Thomas Piketty, *Capital in the Twenty-First Century* (Belknap Press, 2014), ch 12; 'Forget the 1%', *The Economist*, 6 November 2014, <http://www.economist.com/news/finance-and-economics/21631129-it-001-who-are-really-getting-ahead-america-forget-1>; Department of Economic and Social Affairs, United Nations, *Inequality Matters: Report of the World Social Situation* (2013) <http://www.un.org/esa/socdev/documents/reports/InequalityMatters.pdf>.
- 3 Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies* (WW Norton & Co, 2016), 160–161.
- 4 Greg Jericho, 'Housing affordability, Housing Inequality and our Flatlining Household Incomes', *The Guardian*, 21 July 2016, <https://www.theguardian.com/business/grogonomics/2016/jul/21/housing-affordability-inequality-and-our-flatlining-household-incomes>; see also Greg Jericho, 'Wages Growth is at Record Lows – Unless You're a Commonwealth Bank CEO', 18 August 2016, *The Guardian*, <https://www.theguardian.com/business/grogonomics/2016/aug/18/wages-growth-is-at-record-lows-unless-youre-a-commonwealth-bank-ceo>.
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- 6 Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services* (2015), <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/NationalPartnershipAgreementOnLegalServices.PDF>.
- 7 Australian Council of Social Service, *Poverty in Australia Report* (2016) <https://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>.
- 8 Such as domestic violence and other criminal law matters, and areas of family law and civil law.
- 9 Bill Grant OAM, flip testimony (29 September 2016). By way of context, before 1997 the Commonwealth funded State and Commonwealth law matters but since then has confined funding to Commonwealth matters only.
- 10 Christine Coumarelos et al, Law and Justice Foundation, *Legal Australia-Wide Survey: Legal Need in Australia* (2012) ch 9, [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf).
- 11 Coumarelos, above n 1, 19.
- 12 Ibid.
- 13 Coumarelos, above n 10.
- 14 Coumarelos, above n 1, 16.
- 15 Ibid 72–3 (footnotes omitted).
- 16 Ursula Hogben, LexisNexis, *SmartLaw: 2016 LexisNexis Roadshow Report* (18 August 2016), <http://lexisnexis.com.au/media-centre/blog-articles/2016-Oct-12-Smart-Law-2016-LexisNexis-Roadshow-Report>.
- 17 Daniel Susskind and Richard Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, 2016), p x.
- 18 Ibid 269.
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- 21 Jacqui Swinburne, flip testimony (7 September 2016).
- 22 Helen Campbell, flip testimony (7 September 2016).
- 23 *Legal Profession Uniform Law Application Act 2014* (NSW) pt 5 div 2.
- 24 Coumarelos above n 5, 16.
- 25 Grant above n 9. See also Liz Curran, 'Health and Justice Partnerships (HJP) Working ethically to reach those in most need of legal and medical support & to improve outcomes' (2016) *Health and Justice Partnership*, University of London, London.
- 26 See Legal Aid NSW, *Annual Report 2013–14* (2014) 4–5, http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0019/20287/Legal-Aid-AR-2013-2014-sm.pdf, and Legal Aid NSW, *Annual Report 2014–2015* (2015) 4–5, http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0009/23022/

Legal-Aid-NSW-2015-Annual-Report.pdf.

- 27 For example: Redfern Legal Centre, Women's Legal Service NSW, Eastern Community Legal Centre, and others.
- 28 A hackathon is an event based on the collaboration of people with diverse expertise, including computer programmers. Hackathons usually last between a few hours and a few days, are fast paced, and often competitive. They may focus on solving ("hacking") a particular problem; participants use diverse means including designing systems, developing software or applications.

Rick Welsh, Coordinator, The Shed, Men's Health Information and Resource Centre, Western Sydney University





CHAPTER 05
**THE COURTS
AND TRIBUNALS**

Around the world, community expectations and constraints on government spending are driving change in courts and tribunals. In the near to medium-term future, online dispute resolution looks set to transform how a wide range of common disputes are handled, while paperless trials are on the horizon.

Changing practices

FROM PAPER TO SCREEN

Litigation today naturally produces very large volumes of evidence in electronic form – documents of almost every sort are computer-generated, and countless emails are entered in evidence. While courts have introduced digital solutions, progress has varied. Major litigation and some public inquiries in New South Wales have been conducted mostly without paper, but individual litigants have not yet seen the major benefits that digital trials will bring.¹ In evidence to flip, Philippe Doyle Gray of counsel emphasised the benefits of technology, pointing out that scanning alone can save clients thousands in photocopying costs.² Caroline Hutchinson, Head of Litigation and Principal, Coleman Greig, told flip that processes with respect to subpoenas in the State courts continued to be a problem. Ms Hutchinson explained:

We have to instruct an agent to come in and photocopy those documents and deliver [them] to us. I don't understand why the court can't just have all those documents scanned when they are received and put into the system so that we can access it, when we've got the orders.

Technology can also enhance a lawyer's skill in the court room. In a recent matter in the Supreme Court, Claire Martin, Head of Property at Kreisson, loaded the court books on a USB stick and connected her laptop to the court room screens. Ms Martin told flip that while the opposing party preferred the paper court book, she was able to zoom in on historical plans and aerial photographs that looked tiny on paper, and reveal the outlines of a property that had not been visible on the paper file at all. Ms Martin said:

It gave us an advantage: getting the most use out of the evidence that we had. I think the courts are actively embracing technology ... We're going to have to shift the mind-set of the profession.

A LONG WAY TO GO ...

Suburban and regional practitioners alike rely on technology to remain competitive. If courts are not using e-filing, or if e-filing is restricted in its application, costly travel has to be undertaken or agents engaged to make special trips to court in Sydney – sometimes for claims involving very small sums in dispute.

For example, the main office of law firm Coleman Greig is situated 23 kms from Sydney in Parramatta. Caroline Hutchinson told flip of a Local Court matter where a very small amount was claimed but the statement of claim could not be filed online because the company was an international corporation.³ Warwick McLean, Chief Executive Officer, Coleman Greig, told flip that to comply with court requirements, solicitors in the practice travel to Sydney for judgments to be handed down, entering an appearance which can last for just five minutes at substantial cost to the client where this could be done by videolink.⁴

“Scanning alone can save clients thousands [of dollars] in photocopying costs.”

THE FEDERAL COURT OF AUSTRALIA - A SUCCESS STORY

An acknowledged leader among courts, the Federal Court of Australia has not created a paper file for over two years. Legal practitioners have opted in to the well-designed system; as at 30 June 2016 there were 24,000 digital files on the Court system. Principal Registrar and Chief Executive of the Federal Court of Australia Warwick Soden OAM told flip that e-lodgment transferred documents straight onto the digital court file without any processing by the Registry. The seamless file enables flexibility; for example, a judge can see when a new document has been filed in a matter using a tablet, 24/7, from anywhere in the world. Importantly, the system has facilitated consistent national service delivery and is supporting the administrative functions of Federal Circuit Court and Family Court of Australia. Mr Soden told flip that the next step, within the next three to five years, is for the Court:

... to move to a situation where hearings ... small, medium and large, would be done in a digital environment in the court room ... The proposal [is] not to have paper in the court room ... That will require a huge engagement by us with the profession ... and include the necessity for re-education of many people through CLE-type programs.⁵

DISTRIBUTED COURTROOM PROJECT, NSW DEPARTMENT OF JUSTICE

The New South Wales Department of Justice is consulting in relation to the possible introduction of “distributed courtrooms”. Broadly, the proposal is to utilise video link in court rooms and court-like spaces but, through particular design features, to give the impression of eye contact and suggest the presence of all parties in a single physical space. Proposed design features would include the orientation of screens and cameras to suggest traditional placement of parties in a court room, and the use of directional sound. While trial and fact-finding have been ruled out by court user stakeholders consulted by the Department as inappropriate contexts for the initiative, it may be suitable for some parties for pre-trial proceedings and sentencing and in civil matters, subject to further development, consultation and safeguards.⁶

THE LOCAL COURT OF NEW SOUTH WALES

Offices of Public Prosecutions routinely use sophisticated technology in their investigations of terrorism, organised crime and fraud, and sometimes even provide technical resources to support courts.⁷ In New South Wales, the Commonwealth Department of Public Prosecutions has now asked the Local Court to provide the capability to file and serve all briefs electronically,⁸ and the Court is working to deliver the service.

Magistrates in the Local Court currently work on iPads and Court Registrars are using tablets to access custom-built expert systems.

THE FEDERAL CIRCUIT COURT OF AUSTRALIA

Around 45,000 divorce applications are lodged each year in the Federal Circuit Court of Australia. To handle these volumes, the Court initiated e-lodgment in 2015. In those centres where the court file is wholly digital, the Registrar works from a screen in the court room and enters orders directly on the electronic file.

“The Federal Court of Australia has not created a paper file for over two years.”

With the help of metrics made possible through digitisation, the Court recently realised that its divorce application form needed improvement. A redesign of the application form increased the e-filing rate from 26 per cent to 50 per cent in three months. Similarly, a careful redesign of online information for litigants reduced calls to the Court's national enquiry centre by 20 per cent, literally overnight – an enormous efficiency that reflects the rewards that flow from thinking of a service from the point of view of the recipient.⁹ Steve Agnew, Executive Director of Operations, Federal Circuit Court observed that:

The good thing with the website is that now we have metrics that sit behind it that allow us to measure the impact and where the sticking points are for users of the system. So we've identified [say,] two points, we'll do more work on that, and hopefully get a greater flow through that whole system.

Today's pressures: funding shortfalls

Flip heard in stark terms how serious the human costs of failing to sufficiently fund courts can be, especially for the most vulnerable.

One in four unsentenced prisoners in custody across Australia is an Indigenous Australian.¹⁰ In late 2015, triggered by ongoing backlogs in the District Court, the accommodation of prisoners on remand exceeded gaol capacity,¹¹ prompting a public outcry and a one-off \$20 million State Government funding package for the Court.¹²

In the Local Court, too, additional resources in the form of 11 new magistrates promises to relieve mounting pressures.¹³ In 2015, 40,000 new cases coincided with cuts to judicial resources, causing the Chief Magistrate, the Honourable Judge Graeme Henson, to warn in the pages of the Court's 2015 annual review that the strain could "begin to challenge the ability of the Court to maintain its high standards of professionalism as a result of burnout."¹⁴

Perhaps most concerning of all is the potential impact of court delays on children in need of protection. Kylie Beckhouse, Director, Family Law Services (now Acting Deputy Chief Executive Officer), Legal Aid NSW, told flip of societal dangers associated with cuts to legal assistance combined with delays in the Family Court and the Federal Circuit Court.

Ms Beckhouse explained that basic, critical services for vulnerable people such as risk assessment and safety planning are not necessarily being provided at an early stage because of insufficient resources to unpack what early risk factors are. Ms Beckhouse told flip that when a matter may not be heard for two or three years:

That means you have children where there are allegations of risk that are not being determined by courts because there are not the judicial resources to make those determinations – and sometimes those determinations about risk can't be made for at least three years. And whilst that happens, there are children who are either in homes where they are exposed to dangers, or their relationship with a parent is interrupted or disrupted whilst we wait for courts to have the resources to deal with those families.¹⁵

“Basic, critical services for vulnerable people such as risk assessment and safety planning are not necessarily being provided at an early stage because of insufficient resources.”

The future for tribunals and courts

Systems under heavy strain cannot readily cope with change, and the innovation agenda, while critically important, is no substitute for appropriate funding. Reliable data that measure how people use the system can and should anchor both innovation and sustainable services.

NEW RESEARCH INTO CIVIL JUSTICE

In November 2016, the State Government published five papers by the Law and Justice Foundation of New South Wales (LJF) into aspects of the operations of the New South Wales Civil and Administrative Tribunal (NCAT) and the Local Court.¹⁶ As Figure 5.1 shows, NCAT and the Local Court together deal with the overwhelming majority – around 91 per cent – of all civil matters in

New South Wales.¹⁷ Further, the disputed amounts are typically extremely small.¹⁸ The LJF research found that the average (mean) claim amount for liquidated claims in the Local Court during 2014 was \$6,500¹⁹ with nearly 47 per cent of liquidated claims finalised in 2014 seeking amounts of less than \$2,000.²⁰ More than a third were local councils pursuing unpaid council rates where the average value of claims was \$1,600.²¹ Many orders sought at NCAT are not monetary orders, and, at present, orders sought are only recorded for four of the nine Consumer and Commercial Division lists (see figure 5.2).²² However, the recorded data for those jurisdictions shows that the median amounts claimed range from \$1,885 to \$9,748.²³

The LJF research points to more detailed quantitative work to be done, including, critically, the introduction of ways to consistently record data across the courts

FIGURE 5.1 FINALISATIONS FOR CIVIL MATTERS, BY JURISDICTION IN NSW, 2014–2015

NSW CIVIL JURISDICTIONS	FINALISATIONS	
	N	%
NCAT (2014–2015)	72,781 [#]	41.6%
Local Court (2015)	85,852	49.1%
District Court (2015)	4,788	2.7%
Supreme Court* (2014)	10,167	5.8%
Land and Environment Court finalisations (2014)	1,227	0.7%
Estimated total	174,815	100.0%

*Sources: Most recent annual reports or reviews available. NCAT Annual Report 2014–2015, p. 7; Local Court of New South Wales Annual Review 2015, p. 16; District Court of New South Wales Annual Review 2015, p. 22; Supreme Court of NSW Annual Review 2014, pp. 49 & 51; Land and Environment Court of NSW Annual Review 2014, p. 30.
* Common law civil and equity Divisions.
This figure differs from the number of cases reported in this report due to differences in timeframe and potentially, in the way that finalised matters are selected for reporting.*

Suzie Forell and Catriona Mirrlees-Black, Law and Justice Foundation, Data insights in civil justice: NSW Civil and Administrative Tribunal Overview (2016) 13 Table 2.

FIGURE 5.2 MEDIAN VALUES OF ORDERS SOUGHT IN LISTS WITH VALUE RECORDED IN A REPORTABLE FORM

LIST	MEDIAN VALUE
CCD General list	\$1,885
CCD Home building list	\$9,748
CCD Motor vehicles list	\$6,300
CCD Commercial (dividing fences only)	\$2,790

Suzie Forell and Catriona Mirrlees-Black, Law and Justice Foundation, Data insights in civil justice: NSW Civil and Administrative Tribunal Overview (2016) 23 Box 1.

and tribunals. Some of these changes are already under way.²⁴ Significantly, the LJF research has been presented in conjunction with a State-wide online survey and consultation that foreshadows the introduction of online dispute resolution (ODR) across New South Wales.²⁵ The Commonwealth Attorney-General's Department, Legal Assistance Branch, is also undertaking early thinking about ODR.²⁶

During Commission proceedings, flip heard a range of views including serious concerns that the cost of going to court made litigating disputes unaffordable for the vast majority of Australians.²⁷ One witness, solicitor John Henshaw, attributed this to the adversarial nature of the system, and recommended the adoption of a more inquisitorial model. In fact, mediation, the establishment of specialist courts that take holistic approach to a defendant's problems and more intensive case management, all represent aspects of a powerful trend toward what might be termed "less-adversarial" justice. As Associate Professor Sarah Murray has observed:

*The legal system is changing and the less-adversarial trend presents one manifestation of this process. This trend has seen a rise in initiatives which are positioned towards the inquisitorial end of the judicial spectrum and which involve the judge more actively in the conduct of cases, the holding of settlement discussions and the tackling of multi-dimensional problems such as drug addiction. The catalysts of less-adversarial processes are many, but they have at their core the recognition that traditional adversarialism is not necessarily ideal in all cases and that judges need to draw on a range of practices across the continuum.*²⁸

One such "less-adversarial" trend coming to the fore is ODR.

ONLINE DISPUTE RESOLUTION

ODR started as a series of online tools for solving problems related to online interactions, such as mediating antisocial communications in the early days of closed intranet communities. Later, on a much larger scale, these tools handled online consumer disputes and were eventually applied to "offline" conduct, that is, disputes that have their origins in the real, not just the virtual, world.²⁹ The most frequently cited example of ODR today is eBay's disputes system, which resolves 60 million disputes per year online.³⁰ Over the past 15 years, mediators, arbitrators and software designers

have integrated many lessons from alternative dispute resolution (ADR) practice into ODR systems. More recently, vastly improved videolink technology and high quality, flexible platforms have meant that sophisticated ODR tools can help lawyers achieve effective results for clients.

As the preceding discussion of the LJF research into the size and type of claims being handled by NCAT and the Local Court might suggest, ODR can be and is being presented as a way to bridge the justice gap. ODR has the potential to enhance access not just generally but for disadvantaged groups specifically. Technology can reduce or remove barriers, such as geographical isolation, sight or hearing impairment and language difficulties, for some disadvantaged groups.³¹ Alan Limbury, lawyer, mediator and Managing Director of Strategic Resolution, advised flip that ODR should be viewed by lawyers in a "constructive manner" with the caution that "ODR has gained a lot of traction because it fits the cheap and quick model". Mr Limbury observed that:

*We're paying a huge price for selling ADR in general, and ODR in particular, as cheap and quick. Instead, the focus needs to be on a good outcome for our clients. We need to be efficient but we also need to be effective, and sometimes that is not cheap or quick but it does produce enduring solutions which have better value. So what we offer that software cannot is wisdom and judgment.*³²

In July 2016, RMIT University and National Legal Aid showcased Rechtwijzer 2.0,³³ a Dutch platform powered by artificial intelligence that has been operating in the Netherlands for almost two years in divorce proceedings. Rechtwijzer's user feedback surveys appears to show very high rates of satisfaction with the process³⁴ and promotional material focuses on the emotional dimension of divorce and the way the tools enable "healing".

It is interesting to note that the wholly online administrative tribunal of the Canadian provincial government of British Columbia, the Civil Resolution Tribunal,³⁵ commenced operations on 13 July 2016.³⁶

The Committee agrees with Mr Limbury's advice to flip that the profession needs to think more strategically about ODR. Mr Limbury warned that ODR will "cut us out completely in many situations" but lawyers who consider the deeper interests of clients will continue to have a large role to play.³⁷ In his evidence to flip, Mr Limbury adverted to developments in the UK³⁸ and predicted that the use of ODR would not be limited to claims handled by the lower courts and tribunals, but will eventually constitute a set of tools used by judges and legal practitioners in the superior courts of the country.³⁹

When asked about the future of courts and litigation, Mr Soden told flip that he foresaw the possibility of arbitration clauses in commercial contracts being replaced by Big Data – perhaps by clauses that reflect parties' agreement to allow artificial intelligence to predict the potential outcomes of their dispute. This does not seem to be beyond the realm of possibilities. Mr Soden explained:

The consequences of Big Data systems are looming. One can imagine how that might be used in a situation where there are a lot of facts that might be able to be put into a Big Data application that has stored in it all the law, all the precedent in relation to the consequences of a factual situation; and a Big Data solution could [take] minutes, not days and not hours. It's easy to imagine the attraction to business, the customers of the legal profession, to that type of potential solution. So one could even perhaps imagine a shift from the dispute resolution clauses in commercial contracts, from arbitration to something that a Big Data system might supply.

While technology holds great promise for reducing the cost of justice, there are at least two concerns that need to be borne in mind. First, achieving access to justice requires careful attention to appropriate context, design considerations, such as being user-friendly and impartial, as well as being affordable, if the promise is to be realised. As set out in chapter 2, there are risks that technology could be deployed to give access to a lesser standard of justice for disadvantaged people. While the growth in the use of videolink technology, for example, can mitigate the problems of geography, lawyer-client conversations on matters of great sensitivity or complexity are often more effectively had face to face. Second, courts using technology to innovate is to be encouraged but it will be constrained by the essential characteristics of the judicial function. This is not to say that adherence to the conduct of litigation as currently conceived must continue, but rather, that the essential characteristics of a court, such as procedural fairness and open justice, need to be identified and preserved.⁴⁰

Certainly, innovation in dispute resolution raises a great many issues for lawyers and the broader community.⁴¹ As courts digitise files and move toward digital trials, and the New South Wales and Commonwealth Governments begin to work on ODR, the reasons for engaging with technology have never been more compelling.

“Courts using technology to innovate [should] be encouraged but it will be constrained by the essential characteristics of the judicial function.”

Recommendation

The Committee recommends that the Law Society:

- augment its participation in consultation with courts, tribunals and community stakeholders as to innovations including ODR to help ensure that new services are carefully designed and implemented and
- continue to raise awareness throughout the profession of such consultations and developments through the centre for legal innovation projects and Law Society publications.

ENDNOTES

- 1 Philippe Doyle Gray, flip testimony (28 July 2016).
- 2 Mr Doyle Gray described a matter in which a client saved \$10,000 just by scanning documents produced under subpoena instead of photocopying. See also Caroline Hutchinson, flip testimony (20 May 2016). Ms Hutchinson, Head of Litigation, Coleman Grieg, suggested that courts should scan documents produced under subpoena and make them available as a matter of course to the judge and parties electronically.
- 3 Hutchinson above n 2.
- 4 Warwick McLean, flip testimony (20 May 2016).
- 5 Warwick Soden OAM, flip testimony (30 June 2016).
- 6 Concerns as to the use of distributed courts in too wide a range of criminal justice contexts include the exacerbation of disadvantages experienced by vulnerable groups including those with cognitive impairments or mental health issues; detracting from the immediacy and clarity of lawyer-client communications; cultural issues for Indigenous clients, and a range of additional, specific concerns.
- 7 The Hon Marilyn Warren AC, Chief Justice of Victoria, 'Embracing Technology: The Way Forward for the Courts' (Speech delivered at the Langham Hotel, Melbourne, 19 April 2015), <http://assets.justice.vic.gov.au/supreme/resources/9cae-b0e3-70d9-4052-98e6-b18af49a2b09/embracing+technology+-+the+way+forward+for+the+courts.pdf>.
- 8 Jacinta Haywood, flip testimony (29 September 2016).
- 9 Steve Agnew, flip testimony (29 September 2016) 6:35.
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- 15 Kylie Beckhouse, flip testimony (7 September 2016).
- 16 Available at <http://www.justice.nsw.gov.au/civil-justice-consultation>
- 17 Suzie Forell and Catriona Mirrlees-Black, Law and Justice Foundation, *Data insights in civil justice: NSW Civil and Administrative Tribunal Overview* (2016) 13 Table 2, [http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/NCAT_Overview_2016.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/NCAT_Overview_2016.pdf).
- 18 Ibid 23. The Law and Justice Foundation makes the point that there are problems with incompleteness of data. The authors of the report also note that "[t]he monetary value of a civil claim or order sought offers one point against which to calibrate the cost of resolving that dispute. However, many orders sought at NCAT do not concern a monetary sum but

rather have non-monetary 'value' to the parties. Also relevant is the broader social 'worth' of the appropriate resolution of these issues and having a mechanism for doing so. So while the monetary value of claims is important, it is only one of a number of factors against which the cost of the civil justice system must be considered." (footnote omitted).

- 19 Suzie Forell and Catriona Mirrlees-Black, Law and Justice Foundation, *Data Insights in civil justice: New South Wales Local Court* (2016) 22.
- 20 Ibid Figure 3.
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Flip Commission panel, 23 November 2016 (from left to right): Jodie Thurgood, Gary Ulman, Juliana Warner, Katie Hocking





CHAPTER 06
LEGAL
EDUCATION

Disruption to the practice of law naturally has ramifications for the education of current and future law students, as well as an impact on the continuing education of the profession.

The Future Committee sought to ascertain:

- the skills and areas of knowledge that were perceived as necessary for future legal practice and
- the extent to which these skills and knowledge are currently being taught, including the methods of instruction and at what level or stage they were being taught: University (core, elective, clinic), Practical Legal Training (PLT) and/or Continuing Legal Education (CLE).

The Future Committee heard from the deans of almost all New South Wales law schools, current students, recent graduates, PLT and CLE providers, and members of the profession. The skills and knowledge that were identified as being necessary for success in future legal practice are set out in the first column of the table at Figure 6.1. The extent to which these skills and knowledge are currently being taught and any identified gaps, potential opportunities for improvement and need for further research is described in the second column of the table.

More generally the perception of the Future Committee was that technology is facilitating dramatic changes in the practice of law as discussed in chapter 2. Developments such as the commoditisation of areas of legal practice raise for consideration how students can be equipped to be able to function in such a legal services market. Some legal services may disappear, others will be completely automated so that they can be provided at a fraction of the current cost, and new areas of law and practice will arise. Suggestions include that students receive training in the skills necessary to create novel ways to communicate legal information and provide legal services.

Further, it was suggested that students be familiar with using new legal technologies, such as data analytics which underlies predictive coding for discovery or online dispute resolution platforms. Students would then be able to use technology in their future careers, including being able to provide assistance to clients who may need to use or provide these services. Being at least technology-literate, and preferably having some hands-on ability with technology was a central focus of representations to the Future Committee.

There was also a strong focus on law schools and PLT producing “practice-ready” graduates who could undertake many of the elementary tasks in practice and interact with clients. There appeared to be an expectation that graduates would have not just an understanding, but an ability to employ in practice, the basics of drafting, presenting and negotiating. It was also seen as desirable that new graduates have a familiarity with basic accounting, finance concepts and how a business operates.

While a number of factors were identified as impacting legal practice and the education preparation needed for practice in the future, the information and testimony available to the Future Committee were in favour of the traditional black letter law areas of knowledge and lawyer skill sets being maintained. This followed from the critical thinking, problem solving and self-learning skills that are part of the current law degree still being crucial to success as a lawyer. There will also be many clients that will want to access a lawyer with those traditional areas of knowledge and skills, bespoke lawyering where the law is applied to a specific client’s particular problem. No existing areas of law or skills were identified as being able to be removed from the law degree, PLT or CLE. Rather the challenge appears to be how to include the skills and knowledge discussed below in a crowded curriculum.

FIGURE 6.1

SKILLS AND AREAS OF KNOWLEDGE	CURRENT STATUS
TECHNOLOGY	<ul style="list-style-type: none"> • Innovative developments in law school electives such as Law Apps courses and through extracurricular activities such as the law-based hackathon. PLT courses have also started to consider the impact of technology on legal practice. • Consideration needs to be given to whether aspects of technology need to be included in core courses (blockchain in contracts and property, electronic discovery in civil procedure) and whether new subjects such as coding for lawyers are needed. • Further consideration as to the extent to which lawyers are trained in technology is needed. It may be that all lawyers need a certain baseline of technology aptitude but otherwise it will be a matter for personal preference as to the technology skills acquired.
PRACTICE SKILLS (Interpersonal skills such as teamwork and collaboration. Professional skills such as writing and drafting skills, interview skills, presentation skills, advocacy/negotiation skills)	<ul style="list-style-type: none"> • Interpersonal skills are part of formal law school courses, including clinics, and extra-curricular activities available at universities. • Professional skills are primarily taught at the PLT stage and to a lesser degree at the university and CLE stages. Law school competitions often focus on professional skills such as mooting, client interviewing, witness preparation and negotiation. There is no uniformity in how law schools approach the teaching of practice skills. • Consideration needs to be given to how practice skills should be distributed between the various stages of legal education so as to build on and reinforce earlier stages of learning without unnecessary repetition.
BUSINESS SKILLS / BASIC ACCOUNTING AND FINANCE	<ul style="list-style-type: none"> • Taught to some extent in PLT and CLE. • Largely seems to be an area that is seen as outside legal education in Australia. At the university level this seems to follow from the ubiquity of business degrees being available as part of a double degree or prior to undertaking law, if of interest to the student. • Business skills are necessary for almost all areas of legal practice, whether it be a private firm, or employment in corporate, government or not-for-profit entities.

SKILLS AND AREAS OF KNOWLEDGE

CURRENT STATUS

PROJECT MANAGEMENT

- Despite legal work in the form of litigation or transactions being forms of projects that require management, this skill appears not be subject to any formal teaching.
- Students may be required to develop project management skills as part of extra-curricular activities, such as law review editors, and practitioners may obtain relevant skills through experience but consideration needs to be given to including formal training at one or more levels of legal education.

INTERNATIONALISATION AND CROSS-BORDER PRACTICE OF LAW

- International law has become a core course at many law schools. International law and comparative law are the subject of numerous electives. The study of international law and comparative law is often reinforced through competitions (eg Philip C. Jessup International Law Moot Court Competition, Willem C. Vis International Commercial Arbitration Moot, ICC International Commercial Mediation Competition) and exchange programs.
- Further research is needed on whether courses focussing on the cross-border practice of law such as cross-border transactions and disputes are needed and the appropriate stage for such courses.

INTERDISCIPLINARY EXPERIENCE

(interaction with clients and another profession/occupation)

- The exposure of law students to other disciplines or areas of knowledge is usually a result of undertaking a non-law degree prior to their law studies or as part of a double degree.
- Law students are typically exposed to clients through undertaking clinics for credit towards their degree or as volunteers in community legal centres, internships and part-time employment.
- Further research is needed on whether formal methods of education, such as clinics, that involve law students interacting with other professionals or occupations exist or should be offered so as to promote interdisciplinary collaboration to prepare them for practice.

RESILIENCE, FLEXIBILITY AND ABILITY TO ADAPT TO CHANGE

- The frequency and degree of change that the legal profession has started to be exposed to and which is expected to continue suggests that law students and practitioners could benefit from education dealing with managing change and developing resilience.
- Further research is needed on what forms of education currently exist at each stage of legal education.



WHAT IS A HACKATHON?

A hackathon is a short but intense collaboration between people with a variety of skills, usually including computer programmers or developers and subject matter experts, which aim to solve a particular problem. Law-based hackathons will address legal problems and require experts in the relevant area of law and/or legal practice. The hackathon usually begins with presentations on the problem to be solved and ends with teams presenting their solutions.

Examples:

JusticeHack (Sydney, 18-20 July 2016) — held at UNSW Law School. Law and computer science students sought to address access to justice issues for the Refugee Advice and Case Work Service (RACS).

Breaking Law (Melbourne, 5-7 August 2016) — held at Melbourne Law School. Students who had studied finance, law, marketing, programming or web design sought to solve corporate legal challenges.

Disrupting Law (Brisbane, 5-7 August 2016) — held at Queensland University of Technology. Students with law, technical, business and design backgrounds sought to find new ways to do traditional legal tasks.



WHAT ARE LAW APPS COURSES?

Georgetown University Law Center in Washington runs an elective course where teams of students are assigned to work with legal services organisations and, using software packages, build an application which will assist in access to justice. The course culminates in the Iron Tech Lawyer contest where the applications are judged by a panel of external experts. An explanation of the course is provided at <https://www.youtube.com/watch?v=ipVpjtOEyA8>

This model has been adopted by some law schools in Australia. Melbourne Law School ran its Law Apps elective for the first time in Semester 2, 2015. The course requires students to design, build and release a live legal expert system that can provide legal information to non-lawyers. A similar course is planned for UTS law school in 2017.



Flip Commission in session, 23 November 2016 (from left to right): John McKenzie, Legal Services Commissioner, NSW; Flip Commission panel – Jodie Thurgood, Gary Ulman, Juliana Warner, Katie Hocking.



BEING AT LEAST TECHNOLOGY-LITERATE,
AND PREFERABLY HAVING SOME HANDS-ON
ABILITY WITH TECHNOLOGY **WAS A CENTRAL
FOCUS OF REPRESENTATIONS TO FLIP.**



CHAPTER 07

**NEW PROCESSES
AND MANAGING
CHANGE**

This is an exciting time for lawyers, with enormous potential benefits for improving wellbeing by liberating lawyers from tedious, repetitive parts of the job. Change is a constant and strategies are needed to adapt and manage change.

Why change?

There are many reasons why lawyers are engaging in innovation and change. A compelling reason to be a lawyer or law student today is the possibility of participating in change across the sector to facilitate access to justice. Lawyers provide an important service to the community and to improve the value of that service can be highly motivating. Many are drawn to the law from a desire to help others¹ and it is deeply satisfying when one's values are aligned with one's work.

Change is also good for the brain. As Professor Ian Hickie AM of the Brain and Mind Centre, University of Sydney, has written, "Our brains respond to both novelty and mental challenges." These:

*engage the brain in serious mental endeavour, driving new connections between brain cells as we set about solving problems in new ways, engaging new skills and incorporating new understandings of our complex social environment.*²

Robyn Bradey, Mental Health Consultant, told flip how in one government agency, a challenge around technology some years ago turned into an unexpectedly rewarding experience for everyone:

They couldn't get the older workers to go to the compulsory training for the new computer system, even though it was compulsory. They were finding ways to avoid it, they were digging in, they didn't see the point, it was yet another change, and so on. I'm not sure who implemented this, but they matched them up with their Gen Ys, Xs and Millennials, sent them along to do the training with them. To everybody's great surprise they passed the course; to their great surprise they passed the course, and two unexpected benefits came out of it. One was the lovely pollinisation between the generations which I think is a way to go with change.

*I think if we can get the young lawyers working more with the older lawyers to help them with their fears about the technology and to show them how it can be used; and at the same time the older lawyers can pass on practice wisdom and show the young ones that they do know a thing or two, and that tradition and that the knowledge and practice wisdom are important, that would be good. And the second bounce that nobody expected was that these guys got better at their day jobs for some months to come because they got such a boost from having learned something new, and having passed it, that they realised there still was some learning in them yet.*³

Ideally, technology and new processes will reduce the time lawyers spend rifling through paperwork or modifying Word documents and expand the time available to forge creative solutions to problems.

As Simon Lewis, lawyer and Director of Sinch Software Pty Ltd told flip, lawyers can be tremendously empowered by the right technology, including decision-support tools such as artificial intelligence or simply good quality practice management systems that unburden lawyers from managing tasks and help them focus on the job at hand.⁴ With floods of information rushing at lawyers, time out to explore the tools that can handle these volumes is a sensible investment.

Today, change is "the new black."⁵ Managing Partner at DibbsBarker, Stephen Purcell, echoed the evidence of a number of witnesses, observing that:

*The world is changing around us and if you don't change you'll be left behind, or worse still, you'll go out of business. Change is an absolute necessity.*⁶

Fear and uncertainty: the need for support

People cope with change differently, depending on many factors including how resilient they are and their recent experiences of change.

Ms Bradey told flip that ongoing changes in staffing, legislation and policy direction have left many government lawyers "change-weary". Ms Bradey pointed out that all lawyers, but particularly government lawyers, need to first be persuaded that there are good reasons for innovation. She said that lawyers in all sectors need to be supported through training and importantly, the provision of relief from billable time, to have time to learn.⁷

Lawyers in various sectors fears the loss of secure employment. As Dr George Beaton and Imme Kaschner have written:

*New ways of doing legal work often rely on a reduction in fixed costs, through only paying for work on an as-needed basis, necessitating changes in financial planning and life planning for freelance legal professionals. Law firms also face significant emotional and financial cost in restructuring internal processes in ways that cause the loss of jobs held by long-term employees.*⁸

Experts are divided as to whether the current wave of technology-based innovation will lead to more or less employment or ultimately have a neutral effect.⁹ This uncertainty alone can breed anxiety. Even where change does not threaten job security directly, individuals resist change for many reasons.

Anxiety and fear can have detrimental long-term effects and lead to depression in certain circumstances. Lawyers already have consistently high levels of depression compared with other professions.¹⁰ This means that those managing change have to take careful account of the levels of resilience and any potential mental health issues that might be prevalent among those participating in change.

Innovation is, after all, about more than just engineering new processes. It is a human endeavour that engages the emotions; indeed, it must do so if it is to succeed.¹¹ The creation of an environment that is psychologically safe¹² and moreover, inspiring, is critical to the success of change.

Safe, incremental change ... think Lego

Speaking broadly about innovative change, Professor Richard Susskind has recommended adopting what he has called a “Lego-like approach”.

Reflecting on huge UK public information technology projects, Professor Susskind observed that many projects fail because they don’t proceed incrementally. To be sure, one needs the vision, the “big picture”, but the reality of many projects is that some parts succeed and some parts do not. If a project is conceived ambitiously and thought of as a monolithic whole whereby the entire enterprise either succeeds or fails, then failure is almost inevitable,

and will relegate the initial ambition to the dustbin. Proceed instead, Professor Susskind cautioned, in a flexible and Lego-like, incremental manner.¹³

As Stephen Purcell told flip, for innovation to succeed, it has to be “okay to fail”.¹⁴

Technology alone is no answer

As Anthony Wright, Chief Executive Officer, lexvoco, told flip, most problems will not be solved by technology alone:

So often people just jump to ... ‘we can buy technology or we can make technology and it will solve this problem’. There’s a whole piece of the puzzle before that: what are the systems and processes that you’ve actually got in place now and are they working – and if they’re not working why, and what are you going to do to fix them, on a piece of paper on post-it notes, before you even look at technology to automate that process flow.

Flip asked witnesses how lawyers should evaluate existing operations and orient organisations towards efficiency and innovation.

Specialist help

Most large law firms in New South Wales have a history of working with management consultants and change professionals for strategic planning and implementation, but smaller practices are not used to engaging specialists in this way. Andrew Price, Director, Inspire Management, told flip:

*Change management is not commonly understood in the legal market but certainly we’re in a period at the moment where I think it absolutely needs to be.*¹⁵

Mr Price attributed the reluctance to engaging with change management to a number of factors, including that many firms have not yet accepted that the market is changing on the scale that it is, and that the profession is generally very busy and partners reluctant to take the time out needed to plan and implement change.¹⁶

Experienced leaders shared some high-level insights for lawyers.

- Change needs to be seen through the lens of the client. Talk to your clients and find out what they need. Ask, how can you actively assist your client to be better in their own market?¹⁷
- Position yourself for change by developing “non-legal skills” like design thinking, project management, “tech competence” and business knowledge and expertise.¹⁸
- Change needs to be led and is likely to fail unless very senior leaders within the practice are committed to it.¹⁹
- Develop and articulate a clear vision for what you are trying to create by the change.²⁰ Change is a means to an end.²¹
- A strategic plan is important but not sufficient. Leaders need to commit to and allocate resources to implementation.²²
- Ensure teams have as much transparency as possible – take staff on the journey and ensure their participation.²³
- Develop genuine collaboration and engagement around why change is important and the positive impact it will have on the organisation.²⁴
- Use a pilot to test and inspire change. A pilot allows for incremental change and has the benefit of being able to demonstrate tangible success.²⁵
- Communicate and explain successes.²⁶
- Review Key Performance Indicators and ensure that the goals of change are aligned with the incentives that are motivating people to adopt it.²⁷
- Allay fears by actively retraining people for other roles if current positions are to be made redundant. Don't hire new staff yet terminate the services of existing staff without exploring redeployment.²⁸
- Change is not difficult once you understand what needs to happen²⁹ but it does take perseverance.³⁰
- View failures as opportunities to learn.³¹

Recommendations

The Committee recommends that, when crafting strategy, delivering training or drafting material to assist members with change, the Law Society bear in mind the risk of adverse mental health impacts and aim to facilitate wellbeing.

That the Law Society investigate the appropriateness of including practices and skills to promote wellbeing into existing or new mandatory units of solicitors' continuing professional development.

The Committee recommends that, through education and the dissemination of information developed by appropriately qualified and experienced experts, the Law Society help empower lawyers to make informed decisions about organisational strategies and managing change.

ENDNOTES

- 1 William D. Henderson 'Letting Go of Old Ideas' (2014) 112 Michigan Law Review 111, in a US context.
- 2 Ian Hickie, 'Lifestyle' in Tony Foley and Ian Hickie et al (eds), *Being Well in the Law: A Guide for Lawyers*, (The Law Society of New South Wales, 2016) 41, 47.
- 3 Robyn Bradey, flip testimony (19 October 2016) 2:20-3:35.
- 4 Simon Lewis, flip testimony (7 July 2016).
- 5 Stephen Purcell, flip testimony (28 October 2016).
- 6 Ibid.
- 7 Bradey above n 3.
- 8 George Beaton and Imme Kaschner, *Remaking Law Firms: Why and How* (American Bar Association, 2016) 27.
- 9 The Committee is not aware of any analyses of the legal profession in this regard. With respect to the broader economy, Brynjolfsson and McAfee are sceptical of the idea technological advances result in broad job creation (unless there is policy intervention at a government level); see *The Second Machine Age* (WW Norton & Co, 2014) ch 11;

Four Corners has cited the predicted loss of more than 5 million jobs in Australia in the next 15 years: 'Future Proof', Australian Broadcasting Corporation, 4 July 2016, <http://www.abc.net.au/4corners/stories/2016/07/04/4491818.htm>. See also Daniel Susskind and Richard Susskind, *The Future of the Professions* (Oxford University Press, 2016) 290–295, who comment that there will be large-scale “*technological unemployment in the professions*” but that it will unfold over decades not years.

- 10 The Hon Justice Marshall, 'Depression: An Issue of Study in the Law', Keynote address, National Wellness for Law Forum, Australian National University College of Law, 6 February 2015, <http://www.fedcourt.gov.au/digital-law-library/judges-speeches/speeches-former-judges/justice-marshall/marshall-j-201502>; Foley and Hickie et al, above n 2, p 7.
- 11 Ed Hess, 'Here's Why Emotions are the Secret Sauce of Innovation' *Forbes* (online), 17 January 2017, <http://www.forbes.com/sites/darden/2017/01/17/the-secret-sauce-of-innovation-emotions/#541796a86ade>.
- 12 *Ibid.*
- 13 Professor Richard Susskind, 'The Role of Technology on the Legislative Process' (Palace of Westminster, 11 January 2017), <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/news-parliament-2015/susskind-evidence/>.
- 14 Purcell above n 5.

- 15 Andrew Price, flip testimony (19 October 2016).
- 16 *Ibid.*
- 17 Purcell above n 5, speaking here in the context of private practice. See also Peter Connor, flip testimony (19 October 2016), who gave evidence from the perspective of inhouse practitioners.
- 18 Connor above n 17.
- 19 Andrew Price, Katie Hocking, Jodi Proudlock, Stephen Purcell, flip testimony (19 October 2016).
- 20 Purcell above n 5.
- 21 Connor above n 17.
- 22 Price above n 15.
- 23 Katie Hocking, flip testimony (19 October 2016).
- 24 Purcell above n 5. See also Bradey above n 3.
- 25 Hocking above n 23.
- 26 *Ibid.*
- 27 *Ibid.*
- 28 *Ibid.*
- 29 Price above n 15.
- 30 Melissa Lyon, flip testimony (28 July 2016).
- 31 Jodi Proudlock, flip testimony (19 October 2016). See also Purcell above n 5.



Malcolm Heath, Legal Risk Manager, Lawcover



THE CREATION OF AN ENVIRONMENT
THAT IS PSYCHOLOGICALLY SAFE AND
**MOREOVER, INSPIRING, IS CRITICAL
TO THE SUCCESS OF CHANGE.**



CHAPTER 08
DIVERSITY

Across the profession there are many excellent initiatives under way that are designed to reduce relative disadvantage within the profession.

Lawyers continue to be held back from full participation due to a variety of factors including gender, disability, family status, faith and cultural identity. The profession does not yet mirror the diversity of the Australian community.

A key challenge for the future will be to ensure that innovation and diversity are mutually reinforcing. Experts gave evidence to flip as to how unconscious bias can cause unequal pay. Flip also considered a number of successful initiatives promoting inclusivity and heard a variety of perspectives on the effects of temporary or flexible employment.

The business case for diversity

The evidence is clear that better decisions are made by organisations that are inclusive and diverse¹ and the business world is taking action. The Australian Institute of Company Directors, for example, is calling for all boards to ensure that 30 per cent of their directors are women, urging S&P/ASX200 companies to meet the target by the end of 2018.² Managing Partner of the Clifford Chance Sydney Office, and member of the Law Society's Diversity and Inclusion Committee, Diana Chang, told flip that Clifford Chance has adopted a 30 per cent goal for women partners, which it has achieved in Australia.³ Ms Chang told flip that:

The way we can assist clients in complex situations is [by] having diverse views. That can come from coming from a different cultural background or experience. ... We find that our clients consider, as we do, that diversity and inclusion is very important. ... The business case for inclusion and diversity is, to me, a 'no-brainer'. We are already seeing studies that shows it has a positive impact on improving business performance.

Ms Chang explained that championing LGBTI diversity and all diverse aspects of society through initiatives of the firm helps to create opportunities to collaborate with clients in new ways. Wesley Lalich, Senior Associate and a founding member of Minter Ellison's PRiME network⁴ explained how Minter Ellison benefits from diversity as follows:

The importance of diversity in the workplace is that it encourages people to be themselves at work, so you get more out of them. ... Employees who are more comfortable being themselves in the workplace are going to be mentally more 'at' the workplace, and you're also less likely to lose good talent if people feel comfortable at the workplace.⁵

Disadvantage in the profession

Alongside growing acceptance of the business case for diversity, however, disadvantage and barriers to participation persist. People of Aboriginal and Torres Strait Islander descent comprise approximately 3 per cent of the Australian population,⁶ yet as at October 2015, just 425 solicitors in New South Wales (or just 1.5 per cent of the profession) identified as Indigenous Australians.⁷

In 2014, the Workplace Gender Equality Agency measured the gender pay gap for lawyers to be at 36 per cent, 10 per cent higher than the private sector average.⁸ Recent figures show that there are significantly more male principals than women principals (72.8 per cent compared with 27.2 per cent).⁹ Just under 22 per cent of all barristers in New South Wales are women and there are only 40 female Senior Counsel in the State compared to 357 men.¹⁰

Australians with an Asian background make up 10 per cent of the population, but just 3 per cent of law firm partners, fewer than 2 per cent of barristers and comprise 1 per cent of the Australian judiciary.¹¹

Important initiatives

Numerous networks and societies have become important contributors to the profession, such as the Women Lawyers Association, the Muslim Legal Network, the Asian Australian Lawyers Association, the Russian-Speaking Lawyers' Association Australia, and more. These organisations support their members in various ways, hosting networking events, undertaking research and contributing to government policy and public debate.

Diversity is also fostered through many individual initiatives within practices in New South Wales, like Minter Ellison's PRiME, mentioned previously, as well as the introduction of flexible work policies, significant parental leave benefits, mentoring programs, targeted internships, cultural diversity training and more recently, unconscious bias training.

Unconscious bias has become an area of intervention with the growing awareness that covert judgments made in the workplace can result in unfairness and undermine the most laudable policies and even anti-discrimination legislation. Flip heard insights from Professor Robert Wood, Director, Centre for Ethical Leadership, as to how unconscious bias can be detected and corrected, in legal practices:¹²

[W]omen have for the last 30 years been 50 per cent of [law] graduates and for approximately that length of time they've also been about 50 per cent of the incoming graduates into the law firms, but they make up considerably less at the more senior levels, so this is an asset that is being lost to the profession ... I think there are several reasons why women aren't progressing through to the senior ranks... One of the reasons is the legacy of the past. The whole power structure is against women; ... people believe the system is fair and if you believe the system is fair you don't see any

reason to change that. ... Unconscious bias is partly a product of these institutionalised factors, the culture and the deep commitment to the status quo. ... I think the big issue is [unconscious bias in] work allocation. If people are getting the right work allocated and developing over time, and I also think if an individual, be it a female or somebody from LGBTI background, is getting the right work allocated and a sense of progressive mastery, it makes them quite resilient to many other attitudes. If you're not getting that, and you've got negative attitudes about your fit then it's more difficult. People who are being successful and feel like they are progressing are just much more resilient than people who feel like they are being sidelined.

Profession-wide programs support initiatives within individual organisations designed to promote diversity. In 2012-2013, the Law Council of Australia commissioned important research into the position of women in the law,¹³ as a result of which the Council recommended a series of targeted recruitment, re-engagement and retention strategies, to help practices of various sizes and types encourage women at particular stages of their careers into practice.

The New South Wales Bar Association Diversity and Equality Committee¹⁴ and the Law Society Diversity and Inclusion Committee¹⁵ also conduct important ongoing work, and the Law Society's Advancement of Women in the Profession program¹⁶ launched a Charter¹⁷ in October 2016 to which 125 law practices have already become signatories. The Law Society has also developed an Indigenous Reconciliation Strategic Plan 2016-2019¹⁸ which provides a framework for the work of the Indigenous Issues Committee and articulates broad-ranging objectives for the profession and the Society which complement the Society's Strategic Plan.

“People who are being successful and feel like they are progressing are just much more resilient than people who feel like they are being sidelined.” PROFESSOR ROBERT WOOD

Diversity and Innovation

NEW IDEAS

Just as there is an intuitive connection between good business outcomes and diversity so, too, is there a natural synergy between innovation and diversity. Research points to diverse membership of teams as being a key element to the success of innovation.¹⁹ In this sense, diversity relates to perspective as well as the visible or more readily discernible attributes of team members such as those discussed above. For example, people external to an existing team can bring a fresh point of view;²⁰ diversity in this second sense helps account for the success of collaborations such as hackathons.

Last year, Hive Legal, an innovator proud of the diversity of its team, won the Australasian Award for Employee Health and Wellbeing.²¹ The firm uses technology to facilitate remote working and does not use time recording. Lawyers are engaged on an as-needs basis to match client demand. According to Business Development Manager Melissa Lyon, the firm's contemporary practices:

[have] really assisted us in terms of creating a very diverse team. The flexibility that it gives means that we've been able to entice people back into the law who have had other endeavours that they've embarked on ... the flexibility has meant that [a particular lawyer] can practice as well as balancing other things she has in her life.

Freelance and casual lawyers

In the US, 40 per cent of the workforce “works freelance via new models like Airtasker, Airbnb and Uber.”²² Over the course of flip commission hearings, while numerous witnesses discussed their use of “panels” of freelance lawyers,²³ flip did not hear from any individual solicitors who were themselves engaged in this way. The level of satisfaction with the flexible arrangements on offer is not known, so the degree to which flexibility is being or could be exploited, is not at all clear. The Committee is of the view that the relationship between flexibility (in the sense of the engagement casual employees and freelance lawyers) and innovation is not necessarily straightforward, as discussed below.

FINANCIAL PRESSURES

Solicitor Adam Johnston, Consultant with ADJ Consultancy Services, advised flip that:

Every piece of employment I've had has been temporary or contract, which makes it very irregular. Yes, there is opportunity to do pro bono work but pro bono is only useful so long you can afford it; by its very nature it doesn't generate an income.

In his evidence to flip, Law Society Councillor Doug Humphreys OAM²⁴ noted that project-based funding for government departments has facilitated a shift to temporary, contract-based work for lawyers. He noted that it is common in government for highly experienced people to be employed on temporary contracts, as well as for graduate solicitors.

“[There is] a natural synergy between innovation and diversity.”

Women lawyers across the profession are more than twice as likely to be working part-time at some stage in their career than are men.²⁵ For women as well as for other members of the profession whose labour on balance is not as well remunerated, flexible employment may mean working one's own hours and perhaps choosing to work less.

WIN-WIN?

As mentioned in chapter 3, there are sound reasons for principals to reduce what are viewed as fixed costs, such as labour costs. As Katie Hocking, General Manager, Operations and Process Improvement, Stockland pointed out, flexibility allows an organisation to scale up and down as the work requires, which may be preferable to hiring widely and having to let people go when the market turns.²⁶

The desire to foster innovation while balancing the interests of employers and employees has prompted discussions in the wider community about the risks of precarious employment, sparking debate about merits of the universal payment²⁷ and improved paid parental leave. But while it is broadly acknowledged that “[o]ur adult children don’t have full-time jobs any more”,²⁸ there is no consensus as to whether this development reflects an emerging “precarariat” – an exploited class – or on the contrary, the enlightened values of millennials. One writer maintains that young people have “reconsidered the concept of success”, arguing that:

*The point is that people now don't want prosperity and stability – all they want is flexible schedules and financial and geographical independence.*²⁹

THE IMPORTANCE OF FLEXIBLE WORK PRACTICES

Flexibility is a cornerstone of many strategies to improve women's participation in the workforce,³⁰ particularly on return to work after parental leave. More broadly, flexible work practices are a range of workplace policies designed to genuinely accommodate the important role of caring that is a feature of many women's lives, which can cause pay differentials to grow when women are forced to leave inflexible workplaces altogether to care for family members.

The new environment of innovation and heightened competition among firms within the profession appears to be resulting in the greater availability of flexible work. While this is a potential boon for women, the Committee believes the pay and conditions associated with such work should be considered before the trend is endorsed wholeheartedly as a step toward greater diversity.

Recommendation

The Committee recommends that the Law Society:

- continue to support initiatives throughout the profession designed to promote diversity and inclusion
- monitor the evolving relationship between flexibility and innovation and observe its impacts on groups who are presently at a relative disadvantage within the profession.

ENDNOTES

- 1 See recent research reported in Thomson Reuters, *Making the business case for diversity* (26 September 2016), <https://blogs.thomsonreuters.com/answeron/business-case-for-diversity/>.
- 2 See Australian Institute of Company Directors, *30% by 2018*, <http://www.companydirectors.com.au/director-resource-centre/governance-and-director-issues/board-diversity/30-per-cent-by-2018>.
- 3 Diana Chang, flip testimony (19 October 2016).
- 4 Pride Respect and Inclusion at MinterEllison. See MinterEllison, *Diversity and Inclusion at MinterEllison*, <http://graduates.minterellison.com/stories/diversity-and-inclusion-minterellison>.
- 5 Wesley Lalich, flip testimony (28 October 2016).

- 6 Note that the most recent census data available from the Australian Bureau of Statistics is from the 2011 census. One can reasonably assume that this percentage has since grown.
- 7 Urbis, *2015 Profile of the Solicitors of NSW: Final Report* (2016), <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1149382.pdf>.
- 8 As reported in Leanne Mezrani, 'Law's disappointing gender report card', *Lawyers Weekly*, 27 November 2014, <http://www.lawyersweekly.com.au/news/15901-law-s-disappointing-gender-report-card>.
- 9 Urbis above n 7. See also The Law Society of New South Wales, *Advancement of Women*, <https://www.lawsociety.com.au/ForSolicitors/AdvancementofWomen/index.htm> for further statistics on gender and the profession.
- 10 New South Wales Bar Association, Statistics, <http://www.nswbar.asn.au/the-bar-association/statistics>.
- 11 Asian Australian Lawyers Association Inc, *Cultural Diversity Report 2015*, <http://www.aala.org.au/cultural-diversity-report-2015>.
- 12 Professor Robert Wood, flip testimony (28 October 2016).
- 13 Law Council of Australia, *National Attrition and Re-engagement*, at <http://www.lawcouncil.asn.au/lawcouncil/lca-divisions?id=324>.
- 14 New South Wales Bar Association, *Diversity and Equality*, <http://www.nswbar.asn.au/for-members/equal-opportunity>.
- 15 The Law Society of New South Wales, *Diversity and Inclusion Committee*, <https://www.lawsociety.com.au/ForSolicitors/AdvancementofWomen/Committee/index.htm>.
- 16 The Law Society of New South Wales above n 9.
- 17 <https://www.lawsociety.com.au/ForSolicitors/AdvancementofWomen/Charter/index.htm>. See also The Law Society of New South Wales, 'Law Society launches equity and opportunity charter' (Media Release, 25 October 2016), <https://www.lawsociety.com.au/about/news/1206274>.
- 18 <http://www.lawsociety.com.au/about/organisation/ReconciliationActionPlan/>.
- 19 Stefano Tasselli, University of Rotterdam MOOC, The key elements of team success, <https://www.coursera.org/learn/innovation-management/lecture/UCuBB/8-2-the-key-elements-of-team-success>. However, diversity of background, age, ethnicity and other attributes are not enough on their own. Diversity of perspectives can decrease effectiveness if not properly managed and diverse teams will need to be prompted to see issues from others' perspectives: see Amanda Imber, *The Creativity Formula* (Liminal Press, 2009). See also *Inventium, Search: diversity – Who is in your innovation brainstorming team?*, <http://www.inventium.com.au/?s=diversity>.
- 20 Imber above n 19. See also *Inventium* above n 19.
- 21 Australasian Lawyer, 'Australasian Law Awards: winners revealed', *Australasian Lawyer* (online), 20 May 2016, <http://www.australasianlawyer.com.au/news/australasian-law-awards-winners-revealed-216357.aspx>.
- 22 Nick Abrahams, citing a speech given by Catherine Livingstone AO to the National Press Club of Australia on 29 April 2015: *Digital Disruption in Australia: A Guide for Entrepreneurs, Investors and Corporates* (New Path Leaders, 2015) 7.
- 23 These included Redenbach Legal, LAWyal and Hive Legal.
- 24 Doug Humphreys, flip testimony (13 May 2016).
- 25 Urbis above n 7.
- 26 Katie Hocking, flip testimony (19 October 2016).
- 27 Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies* (WW Norton & Co, 2016). See also Crispin Hull, 'Scrap welfare and pay everyone, even the jobless, a living wage' *The Canberra Times* (online), 9 December 2016, <http://www.canberratimes.com.au/comment/scrap-welfare-and-pay-everyone-even-the-jobless-a-living-wage-20161208-gt6ob8.html>.
- 28 Jenna Price, 'Could cutting back paid work mean your kids have paid jobs?' *The Canberra Times* (online), 12 December 2016, <http://www.canberratimes.com.au/comment/will-less-paid-work-mean-more-jobs-20161212-gt97eq.html>.
- 29 Bright Side, 'Why young people don't buy cars and apartments anymore' *Bright Side* <https://brightside.me/inspiration-psychology/why-young-people-dont-buy-cars-and-apartments-anymore-238710/>.
- 30 See, eg, The Law Society of New South Wales, *Flexible Working: A more flexible, more diverse profession at all levels* (2012), <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/671890.pdf>.

The background of the page is a photograph of two men in silhouette, standing on a high-rise building's glass floor. They are leaning forward, looking out at a dense urban skyline of skyscrapers under a bright sky. The scene is captured from a low angle, looking up at the men and the buildings. A large, semi-transparent orange rectangle is overlaid on the lower right portion of the image, containing the chapter title.

CHAPTER 09
GLOBALISATION

Legal services and the legal profession are evolving in the context of increased connectivity. The spread of networks means that change can happen very quickly. Trade and people cross borders more frequently than ever before, raising questions about how we solve disputes and undertake law reform to adapt appropriately to changing behaviours.

Information systems have empowered lawyers and made us vulnerable in new ways. We know that technology can develop quietly only to disrupt markets not just in one jurisdiction but suddenly, across the globe. Cyber security is a pressing challenge for a profession that offers trust and confidentiality. For lawyers to remain advisers of choice, it will be critical to engage with global trends in various fields of practice.

What is globalisation?

On one view, globalisation denotes connectedness between groups or cultures – a quality that is not strictly new. Notable exchanges of ideas happened on our continent, and between this continent and others, many hundreds if not thousands of years ago. At that time, they took place over years or decades. What is new about globalisation when considered from this perspective, is that ideas, or small bits of data, can now move through unstructured networks wherever they need to go, moving very quickly across time and space, and disrupting today's knowledge hierarchies (as the professions are sometimes termed).¹

Globalisation can also have certain ideological overtones. One might be *for* or *against* globalisation in the sense of being in favour of free trade, or conversely, nostalgic for a more familiar past. We have seen the effects of these polarities in the UK and in the US in the past twelve months.

From the perspective of comparative transnational business and consumer law,² globalisation can be seen as the “adjustment of existing legal practices and systems” to address the sorts of issues that arise when people and services and goods cross borders, together with associated legal implications. These implications include transaction planning and dispute resolution and raise questions of the skills that practitioners need, and how law reform should be conducted.

Technology crossing borders

CYBER SECURITY

As globalisation intensifies, in the sense of the mobility of data, it is becoming apparent that cyber security is a both a threat for lawyers to manage, and an opportunity, and that better education about risk management is needed.

Risks set to increase qualitatively

Professor Roger Bradbury, Research Leader, Cyberspace Program, National Security College, ANU told flip that the one of the most significant discernible trends today is the emerging “internet of things”, representing not merely billions of people talking to each other online as we do today, but a qualitative shift to hundreds and possibly thousands of billions (trillions) of machines interacting independently with machines online, without human intervention. This shift magnifies the “attack surface” of cyberspace, increasing the risks of security breaches accordingly.³

Professor Bradbury told flip:

The most important thing to bear in mind is that the game is not settling. We haven't reached an equilibrium after a very rocky and rapid start ... we're actually just at the beginning of a process. ... So some of the verities that were hard-won over the last 10 or 15 years are now going to be challenged anew. The second thing ... about these changes is that they are not what scientists (like me) would call linear. They are non-linear, they are 'step-change' changes in the sense that they are very jerky and they are often very rapid, and the situation changes from something that we seem to understand to something that is novel and very different, very quickly.

Education

The National Security College, ANU, has recently conducted surveys to determine the levels of awareness of cyber risk and preparedness to deal with cyber threats among mid-sized businesses and public sector agencies around Australia.⁴ The results show that very low levels of respondents (29 per cent) said they would report a cyber attack to authorities even if client data were compromised. Dr Tim Legrand, who led the research, concluded that cyber risk management is not embedded in management structures and poor or limited knowledge of risks prevails.⁵ Lawyers have a chance to lead the way.

In late 2016, the Law Council of Australia launched a series of resources for lawyers including checklists and toolkits for training to manage the risk of cyber breaches. The resource, called Cyber Precedent, is freely available online at lawcouncil.asn.au/lawcouncil/cyber-precedent-tools.

Opportunities

It is true that “we can never give a 100 per cent guarantee that we are cyber secure”⁶: the methods of cyber criminals are constantly evolving, on a monthly if not weekly basis. However, as Professor Bradbury told flip, there are new opportunities for lawyers here, to help explain the legal implications of these teeming and mutating threats.

Many large corporations have superior cyber management systems, and it may be that inhouse legal teams can transfer knowledge to their external law firm partners,⁷ and throughout the profession, of their experiences of evolving challenges and successful risk mitigation strategies, from reporting and monitoring, to cultural change and training.

BLOCKCHAIN

Blockchain is a type of ledger that operates online; it is the name of the technology that supports the cryptocurrency, Bitcoin. Blockchain is one of a number of “distributed ledger” technologies.

Authority is distributed across the network

Blockchain is known as a “distributed” ledger because individual electronic records or entries on the ledger are made and maintained by individuals who participate on a network – they are distributed across the network. With them, authority is also distributed. This is the product of a basic principle of the blockchain, namely that participating individuals all across the network can, when asked, verify a record of an event as accurate (according to a series of protocols), and if sufficient numbers of people (anonymous to one another⁸), acknowledge that the event in question occurred, it enters the blockchain as a verified record. Allens points out in the firm’s helpful introductory paper, “Blockchain Reaction”, that the appeal of the technology “lies in its ability to offer an accurate and authoritative record of events, without the need for intermediaries or centralised authorities.”⁹

Developments

Since the technology was first conceived it has evolved significantly. There are public and private blockchains, banks have invested in developing them and the ASX is building a blockchain to give effect to close to real-time settlements and drastically reduced costs.¹⁰ So-called “smart contracts” or coded transactions are evolving and legal and regulatory issues have emerged.

Toward Global Standards

As part of a three-year global project, Standards Australia has won a bid to run the secretariat and lead a consultative process to develop global standards for blockchain. This would be an important step forward for the technology as the standards are to cover privacy, security, smart contracts, auditing, interoperability, and investigate use cases to initially roll out standards where the risks have been assessed to be low.¹¹

Like many emerging technologies, it is impossible to predict the impact that blockchain will have, but many signs point to its transformative effect on a number of industries, with potential implications for lawyers’ work across a variety of practice areas.¹²

Transnational disputes

PRACTITIONERS' SKILLS

The globalisation of commerce and an increase in people travelling and working abroad have produced an increase in the number of disputes that involve companies based in different countries. Consequently, as Andrew Bell SC told flip, practitioners today need at least a rudimentary knowledge of when and how private international law applies.¹³

From a procedural perspective, this means understanding:

- when an Australian court has jurisdiction over a foreign defendant
- how to enforce a foreign judgment in Australia or an Australian judgment overseas and
- how to gather evidence abroad.

As to substantive law, practitioners need to be familiar with choice of law rules. With increasing frequency, lawyers are required to ascertain the content of foreign law, which can require negotiating a civil law system, and perhaps a foreign language.

Mr Bell SC urged flip to consider that while every practitioner need not be an expert, lawyers should have a basic knowledge of the relevant principles that apply in view of the porous character of national borders and the frequency of these disputes.

LAW REFORM

When defining globalisation, Professor Luke Nottage, University of Sydney, observed that when Australian law is faced with how to interact with laws of other jurisdictions – to adjust to the management of increased movement across borders and handle the disputes that occur – questions of law reform arise.¹⁴ He observed that the role of the Australian Law Reform Commission (ALRC) could be extremely useful here, if it were issued with appropriate references.

Professor Nottage detailed a series of practices that can lead to unnecessary complexity in his area of transnational business and consumer law. These included an occasional tendency in Australia to interpret borrowed provisions inconsistently with the manner in which they operate in other jurisdictions (such as the “development risks” defence to strict product liability, borrowed in 1992 from the European Union), and a tendency of legislators to amend parts of borrowed provisions, or to import only parts of the whole, creating uncertainty (sometimes unexpectedly) because of these departures from the terms of otherwise familiar provisions.¹⁵ He suggested that this could be related to our broader legislative reform processes, insofar as the more sustained, careful, comparative-based and policy-based law reform that is a product of ALRC inquiries is not being undertaken but rather, reforms are more commonly being led by line ministries.

“The appeal of [blockchain] ‘lies in its ability to offer an accurate and authoritative record of events, without the need for intermediaries or centralised authorities.’”

Recommendations

The Committee recommends that the Law Society, through the centre for legal innovation projects:

- develop strategies to increase solicitors' aptitude for cyber management
- investigate and engage with key issues surrounding the development of blockchain technology.

The Committee recommends that the Law Society include in continuing legal education offerings regular short courses that cover practical topics on private international law.

The Committee recommends that the Law Society write to the Attorney General to seek that the Australian Law Reform Commission be asked to identify any domestic laws that hamper Australian courts and arbitrators being able to efficiently and effectively deal with cross-border disputes and to suggest reforms.

ENDNOTES

- 1 David Abrahams, flip testimony (19 October 2016).
- 2 Professor Luke Nottage, flip testimony (16 November 2016).
- 3 Professor Roger Bradbury, flip testimony (16 November 2016).
- 4 Dr Tim Legrand, Australian National University, *Weakest links: cyber governance and the threat to mid-size enterprises* (2016), <http://nsc.anu.edu.au/news-events/news-20161102>.
- 5 Tim Legrand, speech to Sydney launch of *Weakest Links* report, 2 November 2016.
- 6 The Hon Dan Tehan MP, Minister Assisting the Prime Minister on Cyber Security, speech to Sydney launch of *Weakest Links* report, 2 November 2016.

- 7 Bradbury above n 3.
- 8 While anonymity holds true for public Blockchain, private Blockchains are owned by legal persons and the participants are known: see Allens Linklaters, *Blockchain Reaction* (2016) 7, allens.com.au/blockchain.
- 9 Ibid 8.
- 10 James Eyers, 'ASX builds blockchain for Australian equities', *The Sydney Morning Herald* (online), 22 January 2016, <http://www.smh.com.au/business/banking-and-finance/asx-builds-blockchain-for-australian-equities-20160121-gmbic0.html>.
- 11 Varant Meguerditchian, flip testimony (16 November 2016).
- 12 Dennis Kennedy and Gwynne Monahan, 'Lawyers Get Ready, There's a Blockchain coming', *Law Practice Today* (online), 13 January 2017, http://www.lawpracticetoday.org/article/lawyers-blockchain/?utm_source=January17&utm_medium=email&utm_campaign=January17LPTemail.
- 13 Interview with Andrew Bell SC, 16 November 2016.
- 14 Nottage above n 2.
- 15 Examples include the paraphrased "good faith" provisions in the unfair terms controls under the Australian Consumer Law amendments in 2010, otherwise borrowed from the European Union, and the addition of glosses to UNCITRAL's international arbitration instruments. Further, the accident reporting obligations under the Australian Consumer Law are an example of the importation of part of a provision.



IT IS IMPOSSIBLE TO PREDICT THE
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CHAPTER 10

**THE REGULATION
OF THE LEGAL
PROFESSION**

New South Wales has fashioned a flexible regulatory framework, based on broad principles not prescription. The scheme is a harbinger of uniform national regulation. Will current provisions allow innovation to flourish into the future?

The Future Committee was interested to understand:

- what, if any, regulatory barriers are holding back innovation and
- what, if any, additional safeguards should be put in place to protect clients, the consumers of legal services.

Several themes emerged.

It must be conceded that taken as a whole, the legal profession has been relatively slow to innovate. This much is clear when one considers travel and finance, to name just two industries where timely services are routinely provided online to clients.

Testimony from the witnesses who appeared before the flip Commission, however, strongly indicated that the regulatory framework in New South Wales is one in which innovation is beginning to flourish. This was apparent from the range of law firm types that have emerged and which seem to be enjoying success. Examples include Keypoint Law, lexvoco, LegalVision, lawlab, Allens Accelerate, Clarence’s chambers for lawyers, Lyn Lucas’ “Online Divorce Lawyer” practice, hybrid technology company/law firms and many more.

Uniform Law

The adoption by Victoria and New South Wales in 2014 of the *Legal Professional Uniform Law 2014* (Uniform Law) coincides with a number of trends outlined in this report, including a rise in cross-border disputes and the emergence of NewLaw practices. It is also a time when Commonwealth statutory powers have been consolidated, dominating in areas as varied as employment law and anti-terrorism. In turn, issues that directly impact on solicitors’ roles and duties, such as Tranche 2 of the Anti-Money Laundering and

Counter-Terrorism Financing regime,¹ have emerged in the national arena, warranting a coordinated, national response. Uniformity in the terms of provisions that define solicitors’ duties would fortify the capacity of the profession to respond assertively to onerous regulation, or regulation inconsistent with proper roles and fundamental duties.

Uniform Law is a potential enabler of innovative “virtual” and online law firms. These practices typically view Australian clients as a national market, a perspective that until recently has been the privilege of national and international firms that were better able to meet the costs of complying with licensing regimes that varied between states and territories. The adoption of a Uniform Law for the profession can help reduce barriers to entry for NewLaw practices actively working across domestic boundaries. Consumers also stand to benefit from uniformity, removing the confusion that can arise when, for example, costs disclosure provisions and processes for third-party assessment of costs vary maddeningly from jurisdiction to jurisdiction.

In this sense, the adoption of the Uniform Law is consistent with accounts that hold New South Wales to be “in the vanguard for legal services deregulation”.² Indeed, one managing partner suggested that for flip to ask whether regulation was “holding back innovation” was to pose the question the wrong way around.³

Innovation and the terms of competition

However, opinions vary. For Lachlan McKnight, lawyer and Chief Executive Officer of LegalVision, for example, law firms like his are competing with low-cost providers who escape regulation by denying that they are providing legal services, placing solicitors, who bear the economic cost of full compliance, at a competitive disadvantage. Mr McKnight told flip that “[t]he legal profession is basically a closed shop trying to prevent competition”. He warned that as a result of globalisation, low-cost, overseas providers would seek out and engage with Australian clients, and soon make the rules of our “closed shop” superfluous.⁴

A number of issues here merit closer examination. Subject to a few discrete exceptions in the Uniform Law, the provision of legal services is indeed the sole province of licensed legal practitioners (the “closed

shop”). This is not for lawyers’ own sakes, although that is a common enough perception. Instead, it is a policy lever to help ensure the highest standards of service and the independence of the profession, from the state and from clients themselves. Let us assume that cost of service is at the root of the objection to the existence of the “closed shop” – or in other words, a selflicensing and relatively highly regulated profession. The assumption underlying the critique is that if one were to remove or to loosen regulation, cost would come down. Leaving aside the extent to which this is accurate, surely it is critical to inquire whether there would be a loss of value, and other risks for the consumer?

In reality, unregulated, low-cost providers have already entered the market. Flip learned that a contract from LegalZoom purchased online for US\$29.95 turned up in a brief to counsel not long ago.⁵ There are websites owned by Australian firms – not law firms – which are platforms for the purchase of digital “legal documents”, quickly and cheaply.

Given the hitherto slow pace of innovation in legal services, especially with respect to the take-up of technology, a degree of consumer frustration, and engagement with cheap and readily available online services, is understandable. However, the risks to consumers could be significant. To take commoditised “legal documents” as an example, the specific risk is that a document purchased over the internet proves not to be fit for purpose and the consumer’s rights are adversely affected, potentially with serious consequences. The provider may be outside of the jurisdiction and may not have insurance to meet any consequential claim against it; unlike lawyers, they are not obliged to carry professional indemnity insurance.

Strategies and risks

Commoditised, or unbundled, services can promote access to justice by helping a broader stratum of society meet its legal needs; at the same time, lower-cost, high-volume work and limited scope retainers raise ethical and regulatory issues for lawyers which need to be addressed. The Committee recommends that the Law Society undertake further research to fully investigate potential ways to resolve this tension.⁶ Among the possible solutions to examine are that protection for solicitors who provide commoditised or unbundled services⁷ be made unambiguous by statutory amendment,⁸ as

foreshadowed in chapter 1. In addition, there could be a requirement that providers of so-called standard electronic documents, such as confidentiality deeds or contracts, be explicitly constrained by statute to do so only where the technology has been designed by and is delivered to the consumer under the supervision of a licensed legal practitioner, to be held strictly accountable under current law. Alternatively, providers of products currently marketed as electronic legal documents but not as legal services could be tolerated (and new legislative exceptions carved out for legal certainty), only where notice to the consumer were mandated: notice that required the consumer to acknowledge that the product did not constitute legal advice, was not produced by a legal practitioner and that legal advice could be sought from a licensed practitioner on the topic at hand. The Committee is of the view that the potential risks of technology-enabled, mass-produced assistance need to be carefully and urgently studied, given not only the nature of the risks but also the scale of the potential benefits to prospective clients.

Litigation and market forces

One of the advantages of being a jurisdiction numerically smaller than some similar economies is that we can learn lessons from others, and potentially leapfrog over some common problems. Canada, similar to Australia in many ways, has seen the emergence of low-cost legal providers on a much larger scale than in Australia, albeit not on a scale comparable to the US. These providers rely heavily on technology and paralegals and indeed some even operate in Walmarts across Canada. Asked how Canadian regulators have dealt with this phenomenon, Fred Headon, Chair of the Canadian Bar Association’s Futures Initiative (2013-4) and Assistant General Counsel, Air Canada, told flip that many such providers have started to bring lawyers back into their service models. In a different regulatory context, various US regulators had in recent years failed to demonstrate in court proceedings that non-lawyers providing certain services amounted to legal advice and not merely legal information; the weight of legal precedent now favours the unregulated entities providing such services. However, having lost the court challenges, the pendulum has subsequently swung toward bringing in the lawyers: the accountability and assurance of quality that comes with the advice of a qualified and licensed legal practitioner have been sought out as the market in these services has begun to mature.

Yet can the market be relied upon to self-correct? Cheap, quick solutions are always fit-for-purpose – until they are not. At present, the legal regulators – the Legal Services Commissioner and Law Society – have no power to hold vendors accountable when things go wrong if the service is deemed not to be a legal service. Assuming for a moment that providing legal documents online does not constitute a “legal service” under the Uniform Law (which is far from clear), buyers are left to seek redress under the general Australian Consumer Law, a regime that operates independently of the specialised regulatory framework that governs the legal profession.

A DIFFERENT MODEL

As Co-Director of Creative Consequences, Tahlia Gordon, told Flip, under a model that is to be introduced, the Nova Scotia Barristers’ Society will regulate “the delivery of legal services”, defined by reference to work performed by “legal entities” including non-lawyers working under the supervision of lawyers. The model does not distinguish between the provision of legal information and legal advice, and legal services may be delivered by legal entities in combination with other services, so long as all delivered services are subject to the same ethical and professional standards as are required for legal services. The model is still being developed; however it appears that when poor quality service is provided by a non-lawyer, the Nova Scotia Barristers’ Society will be accorded the authority to seek injunctive relief where the legal services delivered by an individual or organisation that is not a lawyer or legal entity causes actual harm or where there is a demonstrable risk of actual harm to the public by the unregulated individual or entity. Licensed lawyers continue to face disciplinary penalties for professional misconduct for infractions, including being barred from practice, and paralegals would be licensed and similarly subject to regulatory sanction.

CONSEQUENCES

Flip heard from many New South Wales lawyers and a number of clients that solicitors are increasingly being approached by clients after online documents have failed to achieve their desired aim. It may well be that this will see a growth in contentious work or simply a new point of engagement for solicitors and clients, as clients become more aware of legal rights and such documents become increasingly available. Flip is unaware how many, if any, complaints have been lodged with Fair Trading and to date has only been apprised of the pitfalls of these documents anecdotally.

As Lachlan McKnight remarked, consumers will “go with who has got the best product, who’s going to promise the quickest turnaround time, who’s going to provide the best price – whether you’re a law firm or not.” It is important that the regulatory touch continue to be light but judicious, serve the interests of the public, and foster innovation. As important as regulation is, it is not the only tool available to address accountability and reliability, nor speed or cost of service. Law firms of the future will need to be sustainable as businesses and not just cost-effective for the consumer. A closer examination of the current market in legal services is needed with a view to evaluating the consumer impact of legal information and online documents. More importantly, however, the Committee recommends the facilitation of an entrepreneurial spirit among lawyers, the creation of guides to doing business in a competitive market, support for lawyers to adapt to change as set out in chapter 7 and a concerted effort over the long term to educate the public as to the value of the advice of a qualified legal practitioner.

“Cheap, quick solutions are always fit-for-purpose – until they are not.”

Recommendations

The Committee recommends that the Law Society:

- research the efficacy of online legal documents including by analysing complaints made by consumers
- investigate bringing legal information within the regulatory fold
- actively raise awareness among members of the public of the value of legal advice
- draft guidance for lawyers to operate as entrepreneurs and businesses and
- continue to investigate ways to reduce the impacts of regulatory barriers, to assist solicitors.

ENDNOTES

- 1 See Law Council of Australia, *Anti-money laundering guide for legal practitioners* (2016), https://www.lawcouncil.asn.au/lawcouncil/images/LCA_AML_Guide_for_Legal_Practitioners-_updated.pdf.
- 2 George Beaton and Imme Kaschner, *Remaking Law Firms: Why and How* (American Bar Association, 2016) 30.
- 3 Stephen Purcell, flip testimony (28 October 2016).
- 4 Lachlan McKnight, flip testimony (28 July 2016).
- 5 Philippe Doyle Gray, flip testimony (28 July 2016).
- 6 See also Suzie Forell and Catriona Mirrlees-Black, The Law and Justice Foundation of New South Wales, *Data insights in civil justice: NSW Civil and Administrative Tribunal Overview* (2016) 8, [http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/NCAT_Overview_2016.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/NCAT_Overview_2016.pdf). The Law and Justice Foundation has recommended that the New South Wales Civil and Administrative Tribunal (NCAT) consider “exploring and/or tracking the types of legal (or non-legal) help that parties receive” in the context of NCAT proceedings, bearing in mind the increasing incidence of unbundled legal assistance.
- 7 There is no prohibition against conducting work pursuant to a limited scope retainer under the Uniform Law, but there are risks to lawyers that need to be carefully navigated. These

include the risk of unwittingly performing work outside of the scope of the retainer and the risk of giving mistaken advice because the lawyer’s instructions have been insufficient. The so-called “penumbral” common law duty of care could also require a court to look beyond the terms of a retainer in assessing the adequacy of the representation: *Provident Capital Ltd v Papa* (2013) 84 NSWLR 231. In some circumstances, particularly where the “full disclosure” provisions (that is, where s 174(1) of the Uniform Law may apply), solicitors’ conduct appears to have to meet a particularly high threshold. This is because s 174(3) of the Uniform Law requires the solicitor to take “all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter”. See also the discussion in John Fleming and Frances Moffitt, ‘The Costs of Not Communicating’ (2016) *Law Society Journal* 92.

- 8 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System (ALRC Report 98)* (2000) 402, <http://www.alrc.gov.au/report-89>. The Australian Law Reform Commission noted suggestions made in the US in the 1990s in the context of family law services that civil immunity be provided to lawyers where they ‘provide limited scope discrete task representation’, citing F. Mosten, ‘Unbundling of legal services and the family lawyer’ (1994) *Family Law Quarterly* 421, 433. In January 2017 the Solicitors Regulation Authority for England and Wales has flagged an intention to publish guidance on unbundling, and The Law Society of England and Wales published a revised practice note on 4 April 2016: see John Hyde, ‘SRA keen to lift barriers to solicitors offering unbundling’, *The Law Society Gazette* (online), 1 February 2017, <https://www.lawgazette.co.uk/news/sra-keen-to-lift-barriers-to-solicitors-offering-unbundling/5059645.article>. See also The Law Society of England and Wales, *Unbundling civil legal services* (4 April 2016), <http://www.lawsociety.org.uk/support-services/advice/practice-notes/unbundling-civil-legal-services/>.

LIST OF COMMITTEE MEMBERS

APPENDIX A

GARY ULMAN (CHAIR) (EXECUTIVE),
2016 PRESIDENT,
THE LAW SOCIETY OF NEW SOUTH WALES

PAULINE WRIGHT (DEPUTY CHAIR) (EXECUTIVE),
2017 PRESIDENT,
THE LAW SOCIETY OF NEW SOUTH WALES

LANA NADJ (EXECUTIVE),
STRATEGIC POLICY LAWYER,
THE LAW SOCIETY OF NEW SOUTH WALES

CLAIRE BIBBY
SENIOR VICE PRESIDENT AND GENERAL COUNSEL,
BROOKFIELD PROPERTIES

DARRYL BROWNE
COUNCILLOR, THE LAW SOCIETY OF NEW SOUTH WALES;
PRINCIPAL, BROWNE LINKENBAGH LEGAL SERVICES

CHRIS D'AETH
EXECUTIVE DIRECTOR AND PRINCIPAL REGISTRAR,
THE SUPREME COURT OF NEW SOUTH WALES

JUSTIN DOWD
PAST PRESIDENT AND COUNCILLOR,
THE LAW SOCIETY OF NEW SOUTH WALES;
PARTNER, WATTS MCCRAY LAWYERS

ELIZABETH ESPINOSA
COUNCILLOR, THE LAW SOCIETY OF NEW SOUTH WALES;
GENERAL COUNSEL, SUTHERLAND SHIRE COUNCIL

JANE GLOWREY
COUNCILLOR, THE LAW SOCIETY OF NEW SOUTH WALES;
PARTNER AND SOLICITOR, GLOWREYS

KATIE HOCKING
GENERAL MANAGER – OPERATIONS AND PROCESS
IMPROVEMENT, STOCKLAND PROPERTY GROUP

ROSHAN KUMARAGAMAGE
LEGAL TECHNOLOGY SOLUTIONS MANAGER,
CORRS CHAMBERS WESTGARTH

MICHAEL LEGG
ASSOCIATE PROFESSOR, FACULTY OF LAW,
UNIVERSITY OF NEW SOUTH WALES

DAVID PORTER
COUNCILLOR, THE LAW SOCIETY OF NEW SOUTH WALES;
ASSOCIATE, ARMSTRONG LEGAL

EDWARD SANTOW
HUMAN RIGHTS COMMISSIONER,
AUSTRALIAN HUMAN RIGHTS COMMISSION

BENJAMIN STACK
CHIEF EXECUTIVE OFFICER, STACKS LAW GROUP

JODIE THURGOOD
COUNCILLOR, THE LAW SOCIETY OF NEW SOUTH WALES;
ASSOCIATE DIRECTOR, STACKS LAW FIRM,
PORT MACQUARIE

MICHAEL TIDBALL
CHIEF EXECUTIVE OFFICER,
THE LAW SOCIETY OF NEW SOUTH WALES

JULIANA WARNER
COUNCILLOR, THE LAW SOCIETY OF NEW SOUTH WALES;
MANAGING PARTNER, SYDNEY,
HERBERT SMITH FREEHILLS

ELIAS YAMINE
COUNCILLOR (2016), THE LAW SOCIETY OF NEW SOUTH
WALES; SENIOR ASSOCIATE, BARTIER PERRY

FUTURE COMMITTEE TERMS OF REFERENCE

APPENDIX B

1. The Council of The Law Society of New South Wales (Council) has resolved to investigate certain developments that will affect the future of the legal profession and are already affecting the delivery of legal services today. These developments are set out in paragraph 4, below.
2. A Future Committee has been formed to work with an executive to constitute a commission of inquiry charged with investigating the nature, scope and implications of these developments. In so doing, the commission of inquiry will also assess the existence of any deleterious implications for the rule of law, and any opportunities to enhance the rule of law, such as through improved access to justice, including legal advice.
3. The commission of inquiry will report to the Council by 16 March 2016 with recommendations for action.
4. In particular, the commission of inquiry will investigate:
 - 4.1. heightened client expectations (expressed, for example, through pressure for fixed fee services)
 - 4.2. technological innovation and systems design which impact on the practice of law, the community and business systems
 - 4.3. the inexorable globalisation of legal practice and the consequential emergence of global law firms and a single Australian legal services market
 - 4.4. changing legal practice structures
 - 4.5. the impact of government funding decisions on the courts, Legal Aid NSW, the community legal sector, prosecutorial agencies and other government-funded legal infrastructure
 - 4.6. the skills needed to equip future law graduates for careers in law
 - 4.7. the increased segmentation and diversity of the profession
 - 4.8. changes to areas of work which were previously the exclusive domain of lawyers
 - 4.9. non-lawyers taking up work that has traditionally been done exclusively by lawyers
 - 4.10. an overall increase in compliance requirements within Australia, in terms of regulation specific to the legal profession and also in areas such as workplace safety, taxation, environment and planning
 - 4.11. a changing emphasis on legal policy and legislation with the emergence of new paradigms such as in the areas of national security legislation and privacy laws.
5. The key tasks of the Future Committee are to constitute the commission in session and to provide leadership as to the progress and ultimate recommendations of the commission.
6. With support from the executive, members of the Committee will constitute the commission in session. The commission in session will encourage select individuals qualified by practical experience or scholarship (witnesses) to orally present their insights into one or more of the developments under review. Where appropriate, the commission in session will ask questions of witnesses to further inform itself.
7. The Committee will contribute to planning the overall direction of the work of the commission by undertaking tasks including:
 - 7.1. recommending individuals to be invited as witnesses
 - 7.2. reading and analysing literature relevant to the developments under review
 - 7.3. contributing to the creation of a bibliography of past and present inquiries and reports
 - 7.4. suggesting content for the commission webpage
 - 7.5. providing input into the report of the commission
 - 7.6. settling the recommendations of the commission to Council.

FLIP COMMISSION HEARINGS: TOPICS AND DATES

- Drivers of change (Part 1): clients' needs and expectations – 13 May 2016 and 20 May 2016
- Drivers of change (Part 2): technology – 20 June 2016 and 30 June 2016
- New ways of working – 7 July 2016 and 28 July 2016
- Legal education, information systems and training – 22 August 2016 and 29 August 2016
- Community needs, courts and funding – 7 September 2016 and 29 September 2016
- Diversity, new processes and managing change – 19 October 2016 and 28 October 2016
- Globalisation – 16 November 2016
- Regulation – 23 November 2016

LIST OF WITNESSES

ABRAHAMS, DAVID	Principal Consultant, OI Organise Internet	19 October 2016
ADAMS, PROFESSOR MICHAEL	Dean of Law, Western Sydney University	29 August 2016
AGIUS, ADRIAN	Law student, University of New South Wales	22 August 2016
AGNEW, STEVE	Executive Director of Operations, The Federal Circuit Court of Australia	29 September 2016
ARGY, PHILIP	Chair, Legal Technology Committee, The Law Society of New South Wales	20 June 2016
ARRAGE, NASSIM	Chair, Community Legal Centres New South Wales	13 May 2016
BEATON, DR GEORGE	Partner, beaton	7 July 2016
BECKHOUSE, KYLIE	Director, Legal Services, Family Law, Legal Aid NSW (2016); currently Acting Deputy Chief Executive Officer, Legal Aid NSW	7 September 2016
DE BEER, PROFESSOR JEREMY	Professor, Faculty of Law, University of Ottawa	16 November 2016
BOOTLE, RICHARD	Financial Director – Solicitor, lawlab	20 June 2016
BOUCHER, DALE	Commissioner for Uniform Legal Services Regulation	23 November 2016
BRADBURY, PROFESSOR ROGER	Research Leader, Cyberspace Program, National Security College, Australian National University	16 November 2016
BRADEY, ROBYN	Mental Health Consultant, RB Counselling & Consultancy Services	19 October 2016
BRENTON, CONNIE	Senior Director, Legal Operations, NetApp (US)	20 May 2016
CAMPBELL, HELEN	Executive Officer, Women's Legal Service NSW	7 September 2016
CHAMBERLAIN, SCOTT	Principal, Chamberlains Law Firm	22 August 2016
CHANG, DIANA	Managing Partner, Clifford Chance, Sydney	19 October 2016
CHAPMAN, LEONIE	Principal Lawyer and Director, LAWyal Solicitors	30 June 2016
CHRISTIE, JAN	President, Continuing Legal Education Association of Australasia; Senior Manager, Learning and Organisational Development, Henry Davis York	29 August 2016

CODY, ASSOCIATE PROFESSOR ANNA	Director, Kingsford Legal Centre, University of New South Wales	29 August 2016
CONNOR, PETER	Chief Executive Officer, Alternatively Legal	19 October 2016
COOREY, CHARLES	Partner, Gilbert + Tobin	7 July 2016
DAY, IAN	Chief Executive Officer, Council on the Ageing NSW	20 May 2016
DILANCHIAN, NORIC	Managing Partner, Dilanchian Lawyers	20 June 2016
DOYLE GRAY, PHILIPPE	Barrister, 8 Wentworth	28 July 2016
EDWARDS, TORI	Manager, Self Representation Service and MOSAIC Project, Justice Connect	7 September 2016
ENRIGHT, CHRISTOPHER	Solicitor and Barrister (ACT)	7 September 2016
FOORD, ANNE-MARIE	Manager, Professional Standards, The Law Society of New South Wales	23 November 2016
GORDON, TAHLIA	Co-Director, Creative Consequences Pty Ltd	23 November 2016
GRACE, KATHERINE	General Counsel and Company Secretary, Stockland Property Group	13 May 2016
GRANT OAM, BILL	Chief Executive Officer, Legal Aid NSW (2001 – 2007; 2011 – 2016)	29 September 2016
GRAZIANO, SAM	Manager, Strategic Partnerships, Suncorp	20 May 2016
GREENLEAF, PROFESSOR GRAHAM	Co-Director, AustLII	20 May 2016
HAYWOOD, JACINTA	Executive Officer, Chief Magistrate's Office, Local Court of New South Wales	29 September 2016
HEADON, FRED	Chair, Legal Futures Initiative, Canadian Bar Association; Assistant General Counsel – Labour and Employment, Air Canada	23 November 2016
HEATH, MALCOLM	Legal Risk Manager, Lawcover	13 May 2016
HENSHAW, JOHN	Solicitor and Principal, Alliance Business and Estate Planning Lawyers	20 May 2016
HITCHENS, PROFESSOR LESLEY	Dean of Law, University of Technology Sydney	22 August 2016
HOCKING, KATIE	General Manager – Operations and Process Improvement, Stockland Property Group	19 October 2016
HORTON, FABIAN	Lecturer, Practical Legal Training, College of Law	29 August 2016
HUGO-HAMMAN, RICHARD	Executive Chairman, LEAP Legal Software	30 June 2016
HUMPHREYS OAM, DOUG	Councillor and Chair, Government Lawyers Committee, The Law Society of New South Wales	13 May 2016
HUNYOR, JONATHON	Chief Executive Officer, Public Interest Advocacy Centre	7 September 2016
HUTCHINSON, CAROLINE	Principal and Head of Litigation, Coleman Greig Lawyers	20 May 2016
JOHNSTON, ADAM	Solicitor; Consultant, ADJ Consultancy Services	13 May 2016

LIST OF WITNESSES

KALDOR, THOMAS	Lawyer and Partnerships Manager (2016); Head of Growth and Innovation (2017), LegalVision	20 June 2016
KENNY, CORALIE	Councillor and Chair, Corporate Lawyers Committee, The Law Society of New South Wales	13 May 2016
LALICH, WESLEY	Senior Associate, Minter Ellison	28 October 2016
LANGEVELDT, ELIZABETH	President, Australian Law Librarians' Association (2016)	22 August 2016
LATTA, CHRIS	Chief Information Officer, Colin, Biggers & Paisley	30 June 2016
LEGG, ASSOCIATE PROFESSOR MICHAEL	Associate Professor of Law, University of New South Wales	7 July 2016
LEMERCIER, CHRISTOPHER	Director, Continuing Legal Education, University of New South Wales	29 August 2016
LEWIS, SIMON	Director, Sinch Software Pty Ltd	7 July 2016
LIMBURY, ALAN	Managing Director, Strategic Resolution	20 June 2016
LUCAS, LEOPOLD	Business Development Manager, DTI Australia	28 October 2016
LUCAS, LYN	Principal Director, Online Divorce Lawyers	13 May 2016
LYON, MELISSA	Business Development Consultant, Hive Legal	28 July 2016
MACNIVEN, DAVID	Chief Information Officer, Sutherland Shire Council	30 June 2016
MARTIN, CLAIRE	Solicitor and Head of Property, Kreisson	30 June 2016
MARTIN, PROFESSOR PAUL	Acting Head of School, Faculty of Law, University of New England	29 August 2016
MASON, VERONICA	Law graduate, University of New South Wales	22 August 2016
MCKENZIE, JOHN	Legal Services Commissioner for New South Wales	23 November 2016
MCKNIGHT, LACHLAN	Founder, LegalVision	28 July 2016
MCLEAN, WARWICK	Chief Executive Officer, Coleman Greig Lawyers	20 May 2016
MEGUERDITCHIAN, VARANT	Senior Manager, Stakeholder Engagement & Public Affairs, Standards Australia	16 November 2016
MILLER, JENNIFER	General Manager, Clarence	7 July 2016
MUNDY, DR WARREN	Former Presiding Commissioner, Productivity Commission Inquiry into Access to Justice Arrangements	29 September 2016
NAPTHALI, STUART	Senior Associate, Maddocks	20 May 2016
NORRIS, ERIC	Graduate Resourcing Advisor, Minter Ellison	29 August 2016
NOTTAGE, PROFESSOR LUKE	Professor of Comparative and Transnational Business Law, Sydney Law School, University of Sydney	16 November 2016
PALMER, CYNTHIA	Executive Coach, Cynthia Palmer Consulting	29 August 2016
PATTERSON, BETH	Chief Legal and Technology Services Officer, Allens	30 June 2016

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PRICE, ANDREW	Director, Inspire Management	19 October 2016
PRIDEAUX, JONATHAN	Director, Legal Technology Services, Clayton Utz	30 June 2016
PRITCHARD, GARRY	Partner, Emil Ford Lawyers	20 June 2016
PROUDLOCK, JODI	Strategy and Operations Manager, Swaab Attorneys	28 October 2016
PURCELL, STEPHEN	Managing Partner, DibbsBarker	28 October 2016
QUINLAN, PROFESSOR MICHAEL	Dean of Law, Sydney, University of Notre Dame Australia	22 August 2016
REDENBACH, KEITH	Principal, Redenbach Legal	7 July 2016
REYNOLDS, PROFESSOR ROQUE	Dean of Law, Thomas More Law School, Australian Catholic University	22 August 2016
RICHARDSON, STEVEN	Director, Silqware Pty Ltd	30 June 2016
RILEY, PROFESSOR JOELLEN	Dean of Law, The University of Sydney	29 August 2016
SCANLON, NATALIE	President, North & North West Law Society; Director, Countrywide Legal & Business Services	28 July 2016
SCARLETT OAM RFD, STEPHEN	Former Judge, The Federal Circuit Court of Australia; Mediator and Arbitrator, Waratah Chambers	7 September 2016
SHANNON, DAVID	Executive Legal Counsel, Commonwealth Bank of Australia	20 May 2016
SINDLER, MICHELLE	Independent Arbitrator and Mediator	16 November 2016
SMITH, GAVIN	Partner, Allens	28 July 2016
SODEN OAM, WARWICK	Principal Registrar and Chief Executive Officer, The Federal Court of Australia	30 June 2016
SOURDIN, PROFESSOR TANIA	Dean of Law, University of Newcastle	29 August 2016
STACK, BENJAMIN	Chief Executive Officer, Stacks Law Group	28 July 2016
SWINBURNE, JACQUI	Acting Chief Executive Officer, Redfern Legal Centre	7 September 2016
WAGSTAFF, JANET	Director, LawAccess NSW, New South Wales Department of Justice	7 September 2016
WALKER, STEVEN	Vice President and South Pacific Counsel, Hewlett Packard Enterprise	20 June 2016
WELSH, RICK	Coordinator, The Shed, Men's Health Information and Resource Centre, Western Sydney University	13 May 2016
WEN, JENNIFER	Graduate Services Coordinator, The Law Society of New South Wales	22 August 2016
WESTERVELD, PETER	Head of Technology and Innovation, Norton Rose Fulbright	20 June 2016
WESTON, EMMA	Chief Executive Officer, Full Profile	29 September 2016
WHEELER, ANDREW	Partner, PwC Legal	28 July 2016
WILLIAMS AO, PROFESSOR GEORGE	Dean of Law, University of New South Wales	22 August 2016

WILLIAMS, GORDON	Partner, Minter Ellison	28 October 2016
WOOD, PROFESSOR ROBERT	Director, Centre for Ethical Leadership; Professor, Australian Graduate School of Management, University of New South Wales	28 October 2016
WOOLRYCH, DOMINIC	Head of Legal, LawPath	13 May 2016
WRIGHT, ANTHONY	Director, Iexvoco	28 July 2016

OTHER CONTRIBUTORS


BARKER, EMERITUS PROFESSOR DAVID	Emeritus Professor, University of Technology Sydney	Written submissions dated 14 October 2016
COLEMAN, DAVID	Solicitor, Lawyers and Legal Services Sydney Pty Limited	Written submissions dated 22 September 2016
CREATIVE CONSEQUENCES PTY LTD	Tahlia Gordon and Steve Marks, Directors	Written submissions dated 14 October 2016
GRIGG, RUSSELL	Practice Director, Blue Sky Lawyers	Written submissions dated 13 October 2016
KELSO, ASHLEY	Solicitor, Kelso Lawyers	Written submissions dated 30 October 2016
KOFMAN, MARINA	Dispute Resolution Case Manager, Australian Centre for International Commercial Arbitration and Australian Disputes Centre	Written submissions dated 17 October 2016

ANDREW BELL SC	Barrister
ESTHER BOGAART	Acting Assistant Secretary, Legal Assistance Branch, Attorney-General Assistant Secretary, Attorney-General's Department (Cth)
JESSICA MANSOUR	Change and Communication Professional
JOHN AHERN	Chief Executive Officer, InfoTrack
BRENDAN SMART	General Manager Sales, InfoTrack
WARREN KALINKO	Chief Executive Officer, Keypoint Law
NATHAN POLITO	Director, Dispute Resolution Technology, Modron
CHRISTOPHER WHITELAW	Founder and Chief Executive Officer, CDMC National
ANNEMARIE LUMSDEN	Director Crime, Legal Aid NSW
AIDEEN MCGARRIGLE	Manager Legal Policy, Legal Aid NSW

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FUTHER READING

- Abrahams, Nick, *Digital Disruption in Australia: A Guide for Entrepreneurs, Investors and Corporates* (New Path Leaders, 2015)
- Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No. 89 (Commonwealth of Australia, 2000) alrc.gov.au/report-89
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- Miller, Katie, *Disruption, Innovation and Change: The Future of the Legal Profession* (Law Institute of Victoria, 2015)
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- Susskind, Richard and Daniel Susskind, *The Future of the Professions: How Technology will Transform the Work of Human Experts* (Oxford University Press, 2015)



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THE FUTURE OF LAW
AND INNOVATION IN
THE PROFESSION



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