

FLIP REPORT 2017

FINDINGS

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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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.

RECOMMENDATIONS

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*

KEY RECOMMENDATIONS

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*