

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 startups. 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 [here](#) on the Law Society’s website.

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.