flipstream

THE LAW SOCIETY OF NSW
IN COLLABORATION WITH UNSW LAW

CHANGE LEADERSHIP
FOR LAWYERS

Dr Justine Rogers
Dr Felicity Bell

WHAT IS FLIP STREAM?

A strategic alliance between the Law Society of NSW and UNSW Law aims to tackle the challenges of technological change and its impact on lawyers, law and the legal system.

In 2016 the Law Society of NSW established the Future Committee and, in turn, the Future of Law and Innovation in the Profession (FLIP) Commission of Inquiry. In March 2017, the inquiry culminated in the Law Society's ground-breaking FLIP Report, which discusses the future of the legal industry in the digital age.

The Report recognised the legal profession is undergoing change at a pace never before experienced and in unforeseen ways. This change has major ramifications for not just the legal profession, but for clients and society more generally, particularly in relation to access to justice.

In November 2017, the Law Society entered into a strategic alliance with University of New South Wales (UNSW) Law to generate a stream of research to consider and respond to the issues raised by the FLIP Report, such as legal technology, clients' needs and expectations, new ways of working, community needs and legal education, artificial intelligence and the practice of law and technological solutions to facilitate improved access to justice.

This dedicated research stream will also tackle some of the increasingly complex challenges presented by digital and other technological transformations and its impact on lawyers, law and the legal system.

This strategic alliance, forged between a world-class university, UNSW, and the Law Society is a milestone of progress for both institutions and for the entire legal profession.

Our organisations are meeting the challenges and opportunities presented by technology and innovation in our operating environment head on, driven by a shared mission:

To help equip Australian lawyers with the tools they need to confront the future with confidence and ease.

Each year the FLIP Stream, as it has become known, will undertake research into an annual topic that will then be disseminated through the academy, the profession and society. In 2018 the annual topic was Artificial Intelligence and the Legal Profession, led by Professor Michael Legg and Dr Felicity Bell. The 2019 topic on Change Management is led by Dr Justine Rogers. The FLIP Stream will also engage in and respond to other areas of research and law reform.

The Law Society is encouraged and excited by this alliance, knowing that our members and the people we serve will be the ultimate benefactors.

CHANGE LEADERSHIP FOR LAWYERS

Dr Justine Rogers

Dr Felicity Bell

CONTENTS

INTRODUCTION

The cross-cutting theme of the New South Wales Law Society's (2017) Future of Law and Innovation in the Profession (*flip*) Report was change: change that has occurred in the profession and change on the horizon. Change 'comes in many shapes and sizes', sometimes 'incremental and hardly noticed', but sometimes 'large and dramatic.'[1] Some change is externally-imposed, while some is initiated and developed by individuals and their organisations. Usually these interact. Right now, terms such as 'disruptive innovation', 'LegalTech' and 'Uberisation' are readily applied to law. In this context, organisations and practitioners need to know how to lead and manage change, and yet lawyers typically do not have these skills and have traditionally tended to resist change.

For organisations to be successful, they need to change. They need to 'generate new ideas, grow, renew, and change; this requires the capacity to quickly respond to novel problems or situations in the environment.'[2] They need to 'question fundamental assumptions'[3] about how things are done (and thought about). They need to engage in continuous learning and improvement.[4]

This requires change leadership. Change leadership means asking 'why' questions, having a guiding vision, passion, and integrity, motivating and supporting the 'followers' or 'change recipients' (employees, colleagues), being data-driven, open, relational and adaptable, and preparing wider structures and cultures for change.[5]

Yet, lawyers usually do not learn theories of change or the leadership skills needed to understand and effectively execute change programs. Certain law firms are bringing in change consultants or employing permanent 'change' staff, either former lawyers and/or professional managers. Nonetheless, this trend is new and by no means typical across the profession.

Topic two of the *flip* program, the research collaboration between the Law Society and UNSW Law, is, therefore, *change leadership and management for a dynamic legal profession*. As part of this research, the authors conducted an interview study with change leaders across the legal sector. This primer presents some of this research. Its objective is to empower practitioners by giving them an in-depth understanding of who lawyers are as 'change recipients', and providing a framework and set of strategies to set their own visions for change and to pursue them effectively.

---

1 Bernard Burnes, 'Emergent Change and Planned Change – Competitors or Allies? The Case of XYZ Construction' (2004) 24(9) International Journal of Operations & Production Management 886, 886.

2 Ann Gilley, Pamela Dixon and Jerry W Gilley, 'Characteristics of leadership effectiveness: Implementing change and driving innovation in organisations' (2008) 19(2) Human Resource Development Quarterly 153, 156.

3 Ibid 154.

4 Ibid 156.

5 For discussion and sources, see below nn 46-59 and accompanying text: What is Change Leadership?

LAWYERS AND CHANGE: WHO ARE WE TRYING TO LEAD?

Organisational change is 'difficult to accomplish'[6] and frequently fails.[7] But change initiatives typically fail not because of the innovation itself but because of resistance among the 'change recipients' and wider cultural factors within the organisation and profession. Resistance to change is often cited as the 'distinguishing feature' of a failed change initiative,[8] and/or for related, unintended consequences, such as workers leaving. In Van Dijk and Van Dick's (2009) study of two mergers among four branches of a national Australian law firm, they found poor communication, lack of continuity, unequal treatment of the members of the respective merger firms and strong resistance. Together, these linked to poor change outcomes.[9]

It is therefore necessary to reflect on who the target group is and how that group, and specifically lawyers, react to change. Research does indicate that lawyers are more than likely to resist change initiatives. Our interviewees pointed out that this sort of research is now some five or ten years old – today's lawyers are at least primed for and accepting of innovation, if not highly engaged in it. However, they also said that change resistance was almost inevitable and so understanding lawyers' typical attitudes towards change is important.

Resistance to change can occur at any stage in the change process, but in this section we provide evidence from the research that indicates that lawyers' typical 'pre-change' characteristics make change more difficult for them than other groups before change has even taken place. Looking at such areas as defence, healthcare, business or higher education, as well as the legal profession, the research shows that, along with specific demographic, personal and work status variables,[10] the main characteristics of 'change recipients' that predict a *positive* reaction to change are: an internal locus of control (or a belief that one is able to determine one's own fate); jobs with high decision latitude; high levels of self-efficacy; optimistic outlook; tolerance for ambiguity; low neuroticism and high conscientiousness; openness to experience; and an active and autonomous orientation.[11]

The personality traits that correlate to a *negative* reaction to change, even when those changes might be beneficial are: routine seeking; reluctance to give up old habits; emotional reaction to change – reluctance to lose control, change is stressful and confronting; short-term focus and an intolerance to the adjustment period involved in change; and cognitive rigidity. Routine seeking assesses the degree to which individuals value and attempt to create stable and lasting routines in their lives. Emotional reaction gets at how individuals act when faced with externally-imposed changes, for instance happy and excited or stressed and anxious. Short-term focus is about whether individuals fixate on the short-term difficulties that accompany most change programs or they focus on the potential long-term benefits of change. Finally, cognitive rigidity is indicated by 'a tendency to tenaciously hold on to one's views'.[12] These studies show a strong correlation between personality and reaction to change, especially affective and behavioural resistance.[13]

---

6 Burnes, 'Emergent Change and Planned Change' (n 1) 886.

7 According to a Boston Consulting Group study, some 75% of change initiatives fall short of their targets., available at www.bcg.com/publications/2014/people-organization-transformation-imperative-change.aspx.

8 Chapter 4 on Resistance to Change, in Diane Waddell, Andrew Creed, Thomas G Cummings and Christopher Worley (eds), Organisational Change: Development and Transformation (Cengage, 2016) 99.

9 Rebecca Van Dijk and Rolf Van Dick, 'Navigating Organizational Change: Change Leaders, Employee Resistance and Work-based Identities' (2009) 9(2) Journal of Change Management 143.

10 Shaul Oreg, Maria Vakola, and Achilles Armenakis, 'Change recipients' reactions to organizational change: A 60-year review of quantitative studies' (2011) 47(4) The Journal of Applied Behavioral Science 461-524, 481–2.

11 Ibid 487.

12 Shaul Oreg, 'Resistance to Change: developing an individual differences measure' (2003) 88(4) Journal of Applied Psychology 680, 681–2.

13 Ibid.

Several studies indicate that lawyers' typical characteristics and contexts might be less-than-favourable to change. In the current political and business environments that have subjected lawyers to increased competition and regulation,[14] lawyers today may not hold a strong belief (real and perceived) that they are able to determine their own fate. This may be especially true of corporate lawyers, a number of whom have been found to believe that they cannot disagree with their 'sovereign client'[15] for fear of losing business.[16]

Foster et al's US study of 1800 large-firm lawyers compared to 48 000 'highly educated' managers and professionals in other industries showed that lawyers as a group are marked out as excitable (tense and overly critical), cautious (reluctant to take risks and make decisions) and leisurely (resistant to authority).[17] They also tend to be above average in scepticism (doubting the motivations of others) and urgency.[18] Salomon, in his interview study of 25 managing partners, consultants to law firms, people that coach lawyers, and others with experience in the legal industry, reported interviewees observing a change proposal being presented to lawyers. After endless questions and cynical remarks, even those lawyers who were initially favourable withdrew support. Interviewees described scepticism 'spreading out like an oil slick over the audience'.[19] In Richard's study of over 1000 lawyers, mostly in senior management positions in law firms and corporate law departments,[20] scepticism was consistently the highest scoring personality trait.[21]

Salomon suggests that some of this scepticism may be rooted in lawyers' practice experience:[22] for example, lawyers who work in mergers and acquisitions and litigation learn from experience that external changes can undermine the profitability of a transaction or case. They are quite reluctant then to initiate change within their own environments.[23] Some research revealed the biggest (and growing) impediment to change in law firms to be the partners themselves.[24] Salomon's interviewees said that people start

---

14 J. Rogers, D Kingsford Smith and J Chellew, 'The Large Professional Service Firm: A New Force in the Regulative Bargain' (2017) 40 University of New South Wales Law Journal 218, 226.

15 A Sturdy, 'Customer Care in a Consumer Society: Smiling and Sometimes Meaning It?' (1998) 5 Organization 27, 30.

16 M Salomon, 'Lawyer Personality and Resistance to Change' (Master's Thesis, INSEAD, 2014).

17 J Foster et al, Understanding Lawyers: Why We Do the Things We Do: Results from the Hogan Assessment Project of Lawyer Personality, Hogan Assessment Systems and Hildebrandt Baker Robbins (2010) at https://www.advancedpeoplestrategies.co.uk/media/1169/whitepaper-understanding-lawyers.pdf;

18 D L Rhode, 'What Lawyers Lack: Leadership' (2011) 9 University of St Thomas Law Journal 471, 475; S Daicoff, 'A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46 American University Law Review 1337, 1349, 1390–91.

19 Salomon (n 16) 50. One interviewee, a law firm leader, reported that, due to this type of scepticism, he minimised internal discussions on change proposals and went ahead and implemented the change that he had in mind with the support of a small group of allies. If the reaction was positive, he made the change more permanent; if the reaction was negative, he was flexible and reversed the change: Ibid.

20 The Caliper Profile is a self-report psychological test used as a work-related recruitment and development tool. The personality component consists of 22 scales: Accommodation, Aggressiveness, Assertiveness, Cautiousness, Ego-drive, Ego-strength, Empathy, Energy, External structure, Flexibility, Gregariousness, Idea Orientation, Level-headedness, Openness, Risk-taking, Self-structure, Sensitivity, Skepticism, Sociability, Stress Tolerance, Thoroughness, and Urgency: British Psychological Society, Caliper Profile (Caliper Predictor): Summary of Test Review (2018) at https://ptc.bps.org.uk/test-review/caliper-profile-caliper-predictor-0.

21 L Richard, 'Herding Cats: The Lawyer Personality Revealed' (2002) 29(11) Report to Legal Management 1, 2.

22 Salomon (n 16) 53.

23 Ibid.

24 Altman Weil polled Managing Partners and Chairs at 801 US law firms with 50 or more lawyers, and received completed surveys from 398 firms (50 per cent), including 45 per cent of the 500 largest US law firms and 52 per cent of the 'AmLaw 200': Altman Weil, '2018 Law Firms in Transition Survey' (2018) xv at http://www.altmanweil.com//dir_docs/resource/45F5B3DD-5889-4BA3-9D05-C8F86CDB8223_document.pdf., 15.

expressing what Oreg and others have called 'cognitive resistance':[25] 'what is the hidden agenda behind the change process?' and 'how would it affect my position?'[26]

Another key finding about lawyers' personalities is their strong pessimism. Seligman argues, for example, that law rewards people who have a tendency towards negative thinking.[27] Lawyers also score high on urgency, which is characterised by impatience, immediacy and a desire for economy in everything – ranging from conversations to case management and relationships.[28] Within their pressurised environments and in part due to the stressful and public nature of their roles, lawyers are more likely to suffer from significant psychological distress,[29] which makes resistance to change even more likely.

These generalised lawyer attributes all suggest a degree of emotional instability, short-term focus and rigidity in thinking[30] which at the very least represent a barrier to communicating the case for change, and probably and typically mean poor reception to change.

25 Shaul Oreg, 'Personality, context, and resistance to organizational change' (2006) 15(1) European Journal of Work and Organizational Psychology 73 S. K. Piderit, 'Rethinking Resistance and Recognizing Ambivalence: A Multidimensional View of Attitudes toward an Organizational Change' (2000) 25 Academy of Management Review 783.

26 Salomon (n 16) 54.

27 Foster et al (n17); M. E. P. Seligman, P R Verkuil and T H Kang, 'Why Lawyers Are Unhappy' (2001) 23 Cardozo Law Review 33, 40–1.

28 Richard (n 21) 5; Foster et al (n 17) 7.

29 See, for example, N Kelk et al, 'Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers', Monograph 2009-1, Brain and Mind Research Institute and Tristan Jepson Memorial Foundation (January 2009); Law Council of Australia, National Attrition and Re-engagement Study (NARS) Report (February 2014); C. Kendall, Report on Psychological Distress and Depression in the Legal Profession, (Law Society of Western Australia, 2011).

30 Oreg, 'Developing an Individual Differences Measure' (n 12).

THINKING ABOUT ORGANISATIONAL CHANGE: FLUX AND TRANSFORMATION

Before discussing the process of change in organisations, it's useful to think about the forms of change and the contexts in which change takes place (and how these relate). In change management literature, there are, broadly and briefly speaking, two different lenses through which to view change: change as controlled (and therefore managed); and change as a response to environmental factors (and therefore something to be adapted to).

In *Making Sense of Change Management* (2008), Esther Cameron and Mike Green summarise the different metaphors for understanding change in organisations. Organisations can be thought of as:

- machines
- political systems
- organisms
- flux and transformation.[31]

Here, we focus on the final metaphor – flux and transformation – as best fitting with the goals and context of *flip*.

In a transformational model, the 'initial spark of change is an emerging topic', already noticed by those in the organisation, and change is tackled by someone with 'authority to act' who takes initiative to open official discussion. In the flux and transformation view, the organisation is part of its environment: for us, the law firm is part of the wider landscape of legal services and indeed the social and professional world. This means that 'managers can nudge and shape progress, but cannot ever be in control of change'.[32]

This view can be thought of as an 'emergent approach' to change. Tensions naturally bring about new ways of doing things, and order will emerge out of chaos, but organisational life is not governed by rules of cause and effect.[33] Change is a natural process – so the issue is not to manage it but how to participate in it and adapt.[34]

PLANNED AND EMERGENT CHANGE MODELS:

The emergent approach can be contrasted with an almost wholly opposing model for implementing change, a planned model.[35] Associated with Kurt Lewin in the 1940s, it aligns more with the first two metaphors above (machine; political system). Though more recent approaches have moved away from it, Lewin's work continues to underlie many accounts of change.[36] He argued that a successful change project involved three steps: unfreezing, or upsetting equilibrium to enable new behaviour; moving through a trial and error process; and refreezing so as to prevent regression.[37]

---

31 Esther Cameron and Mike Green, Making Sense of Change Management: A Complete Guide to the Models Tools and Techniques of Organizational Change (KoganPage, 3rd ed, 2012), 109.

32 Ibid 117.

33 Ibid.

34 Stacey and Shaw's 'complex responsive processes' models: R D Stacey, Complex Responsive Processes in Organizations: learning and knowledge creation (Routledge, 2001) and P Shaw, Changing Conversations in Organizations (Routledge 2002); cited by Cameron and Green (n 31) 145.

35 J Van der Voet, S Groeneveld and B S Kuipers, 'Talking the talk or walking the walk? The leadership of planned and emergent change in a public organization' (2014) 14 Journal of Change Management 171, 174.

36 Bernard Burnes, 'Kurt Lewin and the Planned Approach to Change: A Re-appraisal' (2004) 41(6) Journal of Management Studies 977, 986; citing C Hendry, 'Understanding and Creating Whole Organizational Change Through Learning Theory' (1996) 48(5) Human Relations 621, 624.

37 Ibid 985−86, citing K Lewin, 'Frontiers in Group Dynamics' in D Cartwright (Ed) Field Theory in Social Science (Social Science Paperbacks, 1947); T G Cummings and E F Huse, Organization Development and Change (West Publishing, 4th ed, 1989).

A planned approach sees organisations as 'stable entities', capable of setting change goals in advance and moving toward them. As indicated, the emergent approach instead sees organisations as subject and adapting to their environments; the process of change is 'open-ended, often bottom-up' adaptation.[38] Another difference in emphasis is on the role of leaders, which we discuss below. In an emergent approach, leaders are critical, but more for 'sense making' and 'redirection'; in a planned approach, leaders are 'heroes' who drive change.[39]

It's also argued that really, both or multiple approaches to change are needed. One case study examined management of change in a construction company which needed changes in behaviour, culture and structure to remain viable and competitive in a hostile environment.[40] Emergent change was used (via a series of smaller, localised change initiatives) to fundamentally reconstruct the company's culture. Planned change was used for a quick, effective and definitive overhaul of the company's structure. The study concluded that the mix of both was crucial to the flourishing of the company.[41]

Three more alternatives to the planned approach:

Three more approaches illustrate the diversity of ways of thinking about change:

The **Culture Excellence** approach advocates replacing 'command-and-control style' management with an integrated system, reconfigured to 'build internal and external synergies', where management fosters 'a spirit of innovation, experimentation and entrepreneurship'.[42] This approach conflicts with Lewin's because it sees the world as ambiguous, necessitating flexibility. Change will only succeed through 'organic, bottom-up … day-to-day actions of all in the organization.'[43]

A **Processual** approach rejects 'recipe-driven' change strategies and looks instead to the ways that individuals, groups, organisations and ultimately society are interrelated.[44] Change must be seen as a process occurring across hierarchies.

The **Competence-Led** approach is where an organisation sets a path for development based on identification and pursuit of defined competencies (sets of behaviours/skills/knowledge that demonstrate how to do a job well). The organisation must critically evaluate its own performance, identify its unique strengths, and 'review, rethink, rebuild and implement' changes.[45]

We return, below, to the idea of flux and transformation when we consider in some detail the process of organisational change. We focus on models which emphasise the connections between humans and organisations.

---

38 Van der Voet, Groeneveld and Kuipers (n 35) 173.

39 Ibid 174. See further below see below nn 46-59 and accompanying text: What is Change Leadership?

40 Burnes, 'Emergent Change and Planned Change' (n 1)

41 Ibid 898–99.

42 Burnes, 'Kurt Lewin' (n 36) 988.

43 Ibid.

44 Andrew M Pettigrew, 'Longitudinal Field Research on Change: Theory and Practice' (1990) 3(1) Organizational Science 267; Andrew M Pettigrew 'Studying Strategic Choice and Strategic Change' (1990) 11(1) Organizational Studies 6. See also Patrick Dawson, Organizational Change: A Processual Approach (1994, London: Paul Chapman Publishing).

45 Terri Mottershead and Sandee Magliozzi, 'Can Competencies Drive Change in the Legal Profession?' (2013) 11 University of St Thomas Law Journal 51.

WHAT IS CHANGE LEADERSHIP?

There are several elements of change leadership. According to Bennis, leaders have 'a guiding vision; passion; and integrity' as their 'three basic ingredients'.[46] Kotter agrees that leaders set a vision, prepare organisations for change, and help their members 'cope as they struggle through it'.[47] In Bass's concept of 'transformational leadership', the leader raises 'the followers' sense of purpose and levels of motivation', aligns the aims of the followers with the leader, and raises their confidence and self-expectations.[48] It requires 'charisma; inspiration, intellectual stimulation; individualized consideration'.[49]

Gilley, Dixon and Gilley argue that leadership is linked to the ability to enact transformational change: leadership can overcome barriers including resistance to change and the organisation's inability to enact change initiatives.[50] Leadership can also be crucial for creativity, itself an underlying tenet of innovation. Leaders 'influence the culture and environment by focusing on different ways of thinking, as well as ways of "being" or taking action'.[51]

One strand in the leadership literature distinguishes between *leadership* and *management*. Adopting a short-range view, managers administer. They focus on systems and structures, relying on control, to maintain the status quo.[52] Leaders, by contrast, are innovators. They adopt a long-range perspective, are driven by 'why' questions, and seek to challenge how things are.[53]

Meanwhile, in line with these broader developments in theory, from planned to emergent, and mechanical to flux, there has been a shift away from, or at least reworking of, this model of leadership – centred on a single, 'visionary' leader who inspires trust and leads change – to a more adaptive, connective and relationship-focused style.[54] Adaptive leaders 'scan the environment' and draw attention to the contextual challenges for organisations (including broader social and cultural challenges). They push their employees/colleagues outside their comfort zones and then motivate and support workers through the change[55] – one of our interviewees called them, 'the guide along the side'. The idea is not to protect workers from 'bad news' but to allow them to experience it, thus giving full meaning to the leadership efforts.[56] Lipman-Blumen emphasises the need to find meaning and make multiple connections over the need to have a unifying vision. Connective leaders 'perceive connections among diverse people, ideas and institutions even when the parties themselves do not'.[57] Leaders should help others make connections, develop common purpose and build commitment.

Cameron and Green conclude that for 21st century organisations, the 'visionary leadership' style is less relevant.[58] Organisations are now increasingly less bureaucratic, more managerial, with less interdependence between workers; they are more data driven, more performance-focused at lower levels; they are externally oriented, responsive, 'open and candid' rather than political and they are more risk tolerant. The style of leadership that suits change in these organisations therefore looks more to environmental change, to relationships between people within/outside the organisation, and to broader meaning and purpose across levels of the organisation.[59]

---

46 Cameron and Green (n 31) 157, citing W Bennis, On Becoming a Leader (Addison-Wesley, 1994).

47 Ibid 158, citing John P Kotter, Leading Change (Harvard Business School, 1996).

48 Ibid 161, citing A Bryman, Charisma and Leadership in Organizations (Sage, 1992).

49 Ibid.

50 Gilley, Dixon and Gilley (n 2) 155.

51 Ibid 156.

52 Ibid.

53 Ibid 157.

54 Cameron and Green (n 31) 163–4.

55 Ibid.

56 Ibid.

57 Ibid 164, citing Jean Lipman-Blumen, 'The Age of Connective Leadership' in F Hesselbein and R Johnston (eds) On Leading Change (Jossey-Bass, 2002) 89-101.

58 Ibid 167.

59 Ibid.

Leadership typologies

Goleman (2001) studied over 3800 executives around the world, looking for the links between 'emotional intelligence and business results'.[60] He identified a number of different, 'relationship-oriented' leadership styles, from coercive and authoritative to democratic and coaching, finding that, in practice, these leadership styles are like 'golf clubs' – used in different situations, as needed, to best fit the context.[61]

Meanwhile, Cameron and Green's (2008) empirical research led to a categorisation of leadership styles. Their five types are:

1. ***The Edgy Catalyser:*** focuses on creating discomfort to catalyse change.
2. ***The Visionary Motivator***: focuses on engagement and buy-in to energize people.
3. ***The Measured Connector***: focuses on sense of purpose and connectivity across the organization to help change to emerge.
4. ***The Tenacious Implementer***: focuses on projects, plans, deadlines and progress to achieve results.
5. ***The Thoughtful Architect***: focuses on frameworks, designs and complex fit between strategies and concepts to ensure that ideas provide a sound basis for change.

Like Goleman, Cameron and Green wished to see how leadership qualities, or combinations of qualities, matched up to and were most successful in particular contexts. The 16 contexts they considered were: restructuring; crisis; technology led change; process re-engineering; merger, acquisition or takeover; working with partners and stakeholders; improving supply-chain management; growing a new enterprise; unhappy workforce; new product or service to be designed and launched; new legislation to be implemented; tighter compliance; critical project; complex whole organisational change; cultural change; working towards 5 year strategy.

In the end, though some categories are less useful in certain contexts (for example, an 'edgy catalyser' is less successful as a leader when attempting to work with partners and stakeholders; a 'visionary motivator' is less successful working toward tighter compliance or legislation implementation), they find generally that all styles are applicable to some extent across contexts – suggesting that leadership requires something of each.

Nonetheless, contexts most relevant most to lawyers undergoing 'flip change' might be:

'Technology led change', for which the most favoured leadership qualities were (in order):

- 'tenacious implementer'
- 'thoughtful architect'
- 'measured connector'

'Cultural change', for which the most favoured leadership qualities were (in order):[62]

- 'visionary motivator' (by a significant margin)
- 'measured connector'
- 'thoughtful architect'

---

60 Ibid 175, citing Daniel Goleman (2000) 'Leadership that Gets Results' 78(2) Harvard Business Review 78-90.
61 Ibid 174-175.
62 Cameron and Green (n 31) 183.

THE CONTEXT FOR CHANGE

Whether or not lawyers like or are 'good at' change, they have been through a lot of it. We sketch out some of this landscape of change to give us a wide view of where lawyers' organisations are located – namely in the midst of changing client expectations and technological advance[63] but having already come to terms with multiple seismic shifts. Indeed, some commentators claim that change in legal organisations is largely the result of external forces – primarily because law as a discipline is not research and development focused.[64] This review also suggests where further change will occur, and therefore prompts us to consider the types of strategies that will be needed and desirable.

GROWTH

The starting point for thinking about change in the legal market is growth. Growth of the profession, and especially of large and very large firms, has been the key factor driving organisational change. The number of lawyers and the size of firms have grown around the world, though the diversity of enterprises in which lawyers work has grown too. Australia has over 75 000 practising solicitors with 43 per cent licensed in New South Wales[65] – an increase of over 30 per cent since 2011.

Small and sole practice firms still remain the majority, with nearly 70 per cent of lawyers located in these.[66] In NSW, over 80 per cent of these are sole practitioners or firms with one partner.[67]

However, from the 1990s on, Australia saw the rise of the 'mega-firm'.[68] Seeking economies of scale, the ability to provide a range of specialised services, national (or international) coverage, competition with other professional service providers, especially to retain their large corporate clients,[69] a system of affiliations became one of mergers and national partnerships.[70]

Recent years have seen multiple large firm mergers and growth[71] (some due to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry).[72] The largest firms in Australia (the Big 8) exhibited the highest growth in 2017-18.[73] This financial year also saw significant partner 'churn' (lateral movement), and increasing globalisation, the growth of NewLaw firms and LegalTech companies, as well as the continued focus of the Big Four accounting firms on the legal space'.[74] Some larger firms are also diversifying by acquiring non-legal services (e.g. IT consulting).[75] Many businesses have also been growing their own corporate legal departments, with both the corpo-

---

63 The Law Society of NSW, The Flip Report 2017, 12.

64 John Flood and Lachlan Robb, 'Professions and Expertise: How Machine Learning and Blockchain are Redesigning the Landscape of Professional Knowledge and Organization' (2019) 73 University of Miami Law Review 443, 471.

65 Law Society of NSW, National Profile of Solicitors 2018 (Urbis, 17 July 2019) 2.

66 Ibid 3.

67 Ibid 27.

68 Eg David Weisbrot, 'The Changing Face of Australian Legal Practice' (1986) 58(4) The Australian Quarterly 426, 434.

69 Ibid 434.

70 Bruce E Aronson, 'Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better – An International Comparison' (2007) 40 Vanderbilt Journal of Transnational Law 763 (naming Clayton Utz, Mallesons Stephen Jacques, Allens Arthur Robinson, Freehills, Minter Ellison and Blake Dawson Waldron).

71 There were 19 mergers in 2017-18: Melbourne Law School and Thomson Reuters, 'Australia: State of the Legal Market' (Report 2018) 8.

72 https://financialservices.royalcommission.gov.au/Pages/default.aspx

73 Melbourne Law School and Thomson Reuters (n 71).

74 Ibid 10.

75 Eric Chin, Graeme Grovum and Matthew Grace, State of Legal Innovation in the Australian Market (AlphaCreates, 2019) 8.

rate and government legal sectors growing by over 60 per cent between 2011-2018.[76] In NSW, one fifth of all solicitors work in corporate legal departments.[77]

Consultants AlphaCreates have suggested that there is plenty of unmet legal need in Australia, in both the personal legal services market and the business side. They note that '[t]he B2B [business-to-business] segment for legal services is the 2.2 million strong business population in the Australian market, 94% of which are small businesses that are too small to have a legal department or in-house lawyer'.[78]

ORGANISATIONAL CONTEXT

Growth has affected organisational context in multiple ways, both structural and cultural. Here, we outline some key changes: specialisation, the decline of reputational capital, changes to partnership, and the adoption of new structures and indeed, new ways of practising law. There have also been changes to the division of work in terms of what tasks are done by lawyers, by non-lawyer support staff or paralegals, by outsourced labour, or by technology.[79] Growth invariably leads to specialisation. Indeed, it's argued that specialisation in 'novel areas' will be a key means for lawyers to 'excel' in the face of technological disruption.[80]

Structural changes interact with cultural ones. For example, there have also been changes in perceptions and goals around partnership, with increasing non-equity partners, lawyers who are not seeking partnership,[81] and (as discussed below) firms or legal service providers which lack a partnership structure altogether.[82] These have generally followed and reinforced the decline of the partnership structure and the 'tournament of influence'[83] (the phrase coined in 1991 to describe the cut-throat competition for equity partnership).[84] This is for multiple reasons: changes in personnel goals such as increasing numbers of women and 'millennials' in the profession being key, as more lawyers are not seeking (or not able to seek) partnership.[85] Other factors include abandonment of 'lockstep' or age graded equality among lawyers, replaced with systems of 'differentiated compensation and hierarchy'; more time needed to make partnership; declining loyalty to the firm, which encourages more lateral movement (of both lawyers and clients); and preference for new practice models without partnership structures and salaries.[86] Henderson predicts that 'many Big Law brand names will survive', but foresees internal changes: fewer owners/partners who are more financially invested; or 'an employee-owned company in which each lawyer is carefully vetted at hiring and is expected to think and behave like an owner'.[87]

---

76 National Profile (n 65) 23.

77 National Profile (n 65) 22.

78 Chin, Grovum and Grace (n 75) 5.

79 John S Dzienkowski, 'The Future of Big Law: Alternative Legal Service Providers to Corporate Clients' (2014) 82(6) Fordham Law Review 2995, 3015.

80 John O McGinnis and Russell G Pearce, 'The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services' (2014) 82(6) Fordham Law Review 3041, 3055.

81 S Samuelson, 'The Organizational Structure of Law Firms: Lessons from Management Theory' (1990) 51 Ohio State Law Journal 643, 671, citing R Nelson, Partners with Power: The Social Transformation of the Large Law Firm (1988).

82 Dzienkowski (n 79) 3005 (discussing Clearspire, an MDP).

83 Marc Galanter and William Henderson, 'The Elastic Tournament: A Second Transformation of the Big Law Firm' (2008) 60 Stanford Law Review 1867, 1868–69.

84 Marc Galanter and Thomas Palay, Tournament of Lawyers: The Transformation of the Big Law Firm (University of Chicago Press, 1991).

85 Anne Daly, Don Fleming, and Phil Lewis (2007) 'Changes in Solicitors' Firms and Work 1990-2004' 204 Ethos: Official Publication of the Law Society of the Australian Capital Territory 27

86 Dzienkowski (n 79) 3021.

87 William D Henderson, 'From Big Law to Lean Law' (2014) 38 International Review of Law and Economics 5, 16.

Ultimately, Henderson thinks, 'we will witness a new era in which reputational capital – based on some variation of better, faster, cheaper – is built up rather than spent down.'[88]

Structural Changes and New Law

The legal landscape is changing with the growth of new kinds of structure. New types of firm model offer (among other things) an alternative to the 'rainmaking race' (which many lawyers 'hate' and 'are not good at'): the founders do the rainmaking; the lawyers do the lawyering.[89]

NSW has long been an innovator in terms of structures other than partnership for law firms, beginning in the late 80s with the first moves to incorporated legal practices (ILPs).[90] Now well established, by 2014, there were over 1200 of them, comprising roughly 30 per cent of legal practices in the State.[91] In 2019, there were over 2800, or over 40 per cent.[92] 'New Law' does not necessarily refer to ILPs or multi-disciplinary practices (MDPs) but rather encapsulates both the structural and qualitative or cultural differences in the firm's organisation.[93]

There is increasing discussion in the US of so-called 'Big Law alternatives', sought out by clients primarily for cost savings.[94] These 'New Law' practices are often promoted as attracting lawyers with 'large firm experience and pedigrees' (implying quality of practice)[95] and as offering superior working conditions for lawyers, even if without the 'Big Law' remuneration. Commentator Mark Cohen argues that growth in 'alternative' legal services providers is being driven by consumer demand for 'augmented expertise, efficiency, value and measurable results'.[96]

Drawing on US examples, Dzienkowski identifies four common structural features of these alternative firms:[97]

Differences in delivery of legal work: The overarching difference is that there is no assumption that clients need a 'full service' firm to do every aspect of a transaction. Instead, the first step is to think about how the matter could be broken down: its main constituent parts. Non-legal work is likely done elsewhere.[98]

Reduction of overheads and costs: Overheads are responsible for significant growth in legal costs since the early 2000s. Alternative firms might use technology, client resources, and fewer salaried lawyers, to cut these costs.[99]

Billing innovations: While some retain the hourly billing structure, others offer fixed fees or other 'value-based' billing. Dzienkowski emphasises that all the alternative firms emphasise transparency in

---

88 Ibid 16.

89 Joan C Williams, Aaron Platt and Jessica Lee, 'Disruptive Innovation: New Models of Legal Practice' (2015) 67(1) Hastings Law Journal 1, 19.

90 Steven Mark and Georgina Cowdroy, 'Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales' (2004) 22(4) Penn State International Law Review 671, 676.

91 Louise Lark Hill, 'Alternative Business Structures for Lawyers and Law Firms: A View from the Global Legal Services Market' (2017) 18 Oregon Review of International Law 135, 151.

92 (2800 divided by number of firms in 2018, 6678).

93 Williams, Platt and Lee look at five types of what they term 'New Models' of legal practice: Law and Business Companies, Secondment Firms, Law Firm Accordion Companies, Virtual Firms and Innovative Law Firms: (n 49) 6.

94 Susan Daicoff, 'The Future of the Legal Profession' (2011) 37(1) Monash University Law Review 7, 14.

95 Williams, Platt and Lee (n 49) 10.

96 Mark A Cohen, 'There Is Nothing "Alternative" About New Model Providers – Especially the Big Four', 3 December 2018, Forbes, <https://www.forbes.com/sites/markcohen1/2018/12/03/there-is-nothing-alternative-about-new-model-providers-especially-the-big-four/#53938b646f5a>.

97 Dzienkowski (n 79). He examines six different US entities that have grown in the last few years.

98 Ibid 3015.

99 Ibid 3017.

billing and staffing; clients know the lawyers and costs structures being used.[100] Reduction of overheads such as decentralised work settings reduce costs, with a focus on value for money.

Lawyer compensation and tenure: None of the firms (in Dzienkowski's survey) hire first-year associates. All focus on experienced lawyers.[101] They may focus on hiring lawyers who need minimal or no supervision and have their own valuable connections with clients. A partnership model is rejected: they pay salaries or percentage-based compensation to lawyers. They may have an 'eat what you kill' structure, where there is no guaranteed salary but lawyers keep what they earn, with the firm keeping a smaller proportion, or fee.[102]

These features are also found in Australian New Law enterprises, as lawyers and firms seek to innovate for competitive reasons. At present, New Law entities (or New Law arms of existing firms) in Australia tend to be quite small – most have fewer than 20 Australian lawyers employed. They span (with some overlap) legal process outsourcing firms,[103] secondment firms,[104] fixed-fee firms[105] and virtual firms.[106] Some are off-shoots of international firms, such as Keypoint Law, which follows Keystone in the UK, others are purely Australian, such as Helix Legal, a building and construction MDP based in Queensland. Quite a number entered the market only recently.[107] Corporate legal departments have also shown themselves willing to use New Law offerings in place of more venerable and established firms.[108]

WORKFORCE

In job decision-making, younger workers increasingly rate work-life balance and flexibility over money.[109] Large firms are 'plagued by the "flexibility stigma": part-time lawyers are seen as less committed', and receive less work and less opportunity, or else their schedules 'creep…back toward full-time' without offering the benefits of full-time work. This proposition is unattractive; young lawyers will leave firms.[110]

It has been suggested that it is primarily women, who now comprise more than fifty percent of Australian solicitors,[111] who are 'largely responsible for the (limited) extent to which law firms have implemented policies to alleviate conflicts between the demands of work and family'.[112] It is likely that high numbers of female solicitors in government and corporate legal settings also reflect the policies of those workplaces. In NSW, for instance, nearly half of female corporate lawyers surveyed identified a desire for better work-life balance (and associated conditions) as a factor prompting their move in-house.[113] Men are also increasingly seeking more family time.

100 Ibid 3020.

101 Ibid 3021.

102 Williams, Platt and Lee (n 89) 27.

103 Elevate Legal, CPA Global, UnitedLex.

104 Flex (affiliate: Minter Ellison), Lexvoco, Lawyers on Demand, Bespoke, JacMac+, Orbit (affiliate: Corrs Chambers Westgarth), Vario (affiliate: Pinsent Masons), Peerpoint (affiliate: Allen & Overy), Plexus.

105 Eg, Hive Legal, Helix Legal, Keypoint Law, Law Squared, LAWyal, Legalite, Marque Lawyers, Nest Legal, Nexus, Progressive Legal and SprintLaw.

106 LegalVision (though it does have physical offices which clients can attend), 23Legal.

107 Melbourne Law School and Thomson Reuters (n 71) 16.

108 Chin, Grovum and Grace (n 75) 5.

109 Williams, Platt and Lee (n 89) 22.

110 Ibid 13.

111 National Profile (n 65) 1.

112 Fiona Kay and Elizabeth Gorman, 'Women in the Legal Profession' (2008) 4 Annual Review of Law and Social Science 299, 323.

113 Law Society of NSW, Inside In-House Legal Teams (2013) 23.

Millennials

Millennial is the term popularly given to people of the generation born between 1981 and 1996 (now aged between 23 and 38). 'Some authors argue that the demands of younger millennials will force changes upon the profession, to the extent change has not already occurred. Millennials reportedly seek diversity, flexibility, collaboration, relationships and mentoring, civic values, multitasking, and innovation;[114] they 'think institutions are irrelevant' and have a 'reliance on and proficiency with technology'.[115] Millennials generally place greater emphasis on work-life balance than previous generations,[116] and have high expectations of their work.[117]

Others, though, are sceptical about the influence of millennials. Galanter and Henderson think that the partnership tournament will continue to diminish in importance, but will be replaced by a corporatised focus on profit.[118] They argue though that there are still plenty of new lawyers who will accept prestige and high pay over any alternative rewards and thereby reinforce the existing structure.[119] Meanwhile, firms may operate (more) like corporations, shifting the internal emphasis to client management, and making promotions based on management and teamwork skills rather than promotions based on 'credentials' (e.g. qualifications) and biases (e.g. gender, ethnicity).[120]

These changes that have occurred up to now may suggest, as the *Flip Report* noted, that some lawyers already have a feeling of change weariness.[121] But they also give some guidance as to the types of change that lawyers and law firms may wish to pursue.

Business clients are increasingly savvy about costs, willing to 'shop around' and to try 'New Law' providers. Many larger firms are seeking to diversify and in some instances, trial new means of working as a way of remaining competitive. For the majority of lawyers, in small firms, there are also potential opportunities to be found in new ways of doing things – even if small changes, such as remote working, new methods of billing, or technological uplift. Often technological change is a focus, but technology may or may not be involved: innovation may be around many different things. A diverse workforce brings learning opportunities for everyone, with research indicating that teams make better decisions than individuals, and diverse teams make better decisions still.[122]

---

114 Galanter and Henderson (n 83).
115 Daicoff (n 18) 29.
116 Williams, Platt and Lee (n 89) 17.
117 Daicoff (n 18) 30.
118 Galanter and Henderson (n 83).
119 Ibid 1925.
120 Ibid 1927.
121 Flip Report (n 63) 83.
122 Erik Larson, 'New Research: Diversity + Inclusion = Better Decision Making at Work', Forbes, 21 September 2017.

MAKING CHANGE HAPPEN

We now turn to our model of change, which steps through each stage of organisational change, with the steps gleaned from the literature and our interview findings. These stages are: contemplation; preparation; implementation; and maintaining and evaluating change.

We recognise that different change programs, emergent to planned, will require and allow for more or less well-defined and controlled stages.

CONTEMPLATION STAGE

There must be a reason for change. This might sound obvious, but in the current environment, law firms might be tempted to start change projects just because everyone else seems to be; one change leader spoke about the dangers of 'FOMO' (fear of missing out). Without a clear sense of the problem, from your clients and your lawyers, the solution or change will not 'stick'. Most of our interviewees emphasized this – especially the idea of jumping to a tech product, the 'solution', without carefully thinking through the problem. For example:

> *'Understand the problem you're trying to solve, I can't stress that enough. If you're not clear on what you're doing, the outcomes that you produce or you implement will probably not be successful, they won't stick. So, if I think about an example here, we implemented a technology just before I landed, and there was really no change management. That technology is not being used today because the lawyers don't like it. They don't know what's in it for them, they find it frustrating.'*

Waddell et al talk about diagnosis. Organisation members must collaborate, including with outside consultants if necessary, to carefully locate information so as to ground plans in analysis. They explain:

> Diagnosis may be aimed at uncovering the causes of specific problems or directed at assessing the overall functioning of the organisation or department to discover areas for future development. Diagnosis provides a systematic understanding of organisations so that appropriate interventions may be developed for solving problems and enhancing effectiveness.[123]

Diagnosis involves not only looking inside the organisation to determine how a 'culture of innovation' and an organisational 'narrative' may be lacking and can be fostered, but also looking outside the organisation (and even the industry) to understand similar processes of change in other industries, and the options for change implementation that exist.[124]

PREPARATION STAGE

Preparation is essential and involves several related elements.

Once the problem has been properly diagnosed, it is necessary to design the change initiative itself. A key first step is asking to what extent the proposed change fits the needs of the organisation.[125] This recognises that the initiative must still be linked to a broader organisational goal: does the change align with organisational strategy?

A difficulty is that law firms do not always have clearly set goals or entity-wide strategies or values. They often focus on incremental, rather than high, growth. Henderson argues that for 'the large majority of Big Law, the emphasis on large, short-term, distributed profits has placed a substantial stranglehold on

---

123 Waddell et al (n 8) 136.
124 Ibid 136-7.
125 Ibid 156 (their 'step two').

innovation'.[126] Likewise, one interviewee said:

> *'When I look at the time horizon of planning in a lot of these law firms, I do see three to six months. So, it tells me that part of the problem is there's no long-term planning. … But if you've got a law firm that doesn't have long-range planning because it doesn't have managerial capability to do that, then you're going to be in a three to six to twelve month horizon, which most of them are. And that's because they've been set up like that because they're partnerships and they do annual drawings. And there's no future value in the capital of the company… [They say] "We should do more in legal tech". Of course, we should, but if people don't have a long-term horizon, it's not going to happen.'*

Meanwhile, Kotter's (1995) famous eight steps that leaders need to take during processes of change include those that needed to be carefully pre-planned. The first three steps − establishing a sense of urgency, creating a guiding coalition, and developing vision and strategy – all need action from leaders.[127]

1.   *Establish a sense of urgency:*

Moving on this first step requires shaking things up, through creating dissatisfaction with the status quo or making people ready for change.[128] Cameron and Green refer to this as 'pushing up the urgency level' and 'creating a crisis by exposing issues'. They advocate using data – for instance, about client or employee dissatisfaction – to generate this sense of urgency but also to encourage honest and forthright discussion.[129] Waddell et al summarise three steps:

- 'Sensitise organisations to pressures for change', including external or environmental pressures (changing markets, globalisation, technology) and internal pressures (costs, productivity, absenteeism etc.). Organisations tend to 'set thresholds of awareness too high, thus neglecting pressures for change until they reach disastrous levels'. To avoid this, leaders need to 'surround themselves with devil's advocates', and organisations need to look outside themselves to see how others are situating their business.[130]
- 'Reveal discrepancies between current and desired states' – showing how different the 'vision' is from the present. This relies on a successful 'diagnosis' stage.[131]
- 'Convey credible positive expectations' – set organisation up to expect success.[132]

Waddell et al also observe that 'people and organisations need to experience deep levels of hurt before they will seriously undertake meaningful change.'[133] There is a deftness, then, in ensuring the organisation is responding quickly to its environment before damage occurs, and also allowing change recipients to encounter difficulty so that change is a real, practical necessity.

2.   *Create a guiding coalition:*

Thinking about and designing multiple leadership roles (or 'community of leaders') can be 'useful for kicking off and sustaining change'.[134] It is critical that the change leadership community 'should include people who have the power to mobilise resources to promote change, the respect of existing leadership

---

126 Henderson (n 87) 11.

127 John P Kotter, 'Leading change: Why transformation efforts fail' (1995) Harvard Business Review 59-67, 61.

128 Waddell et al (n 8) 162-63.

129 Cameron and Green (n 31) 187, citing Kotter's steps (n 128).

130 Waddell et al (n 8) 162-3.

131 Ibid 163.

132 Ibid.

133 Ibid 162.

134 Cameron and Green (n 31) 174.

and advocates of change, and the interpersonal and political skills to guide the change process.'[135] There are a variety of structures that can be implemented in transition.[136] Successful leadership needn't come from the top, but rather dispersed from within an organisation.[137] Four important roles for a successful change process are: sponsors, implementers, advocates and agents.[138]

- **Sponsors** have authority to make change happen and control of resources – and require visions for change, goals, and measurable outcomes.
- **Implementers** report to sponsors and give feedback on how the change is going – they must listen, enquire and clarify with sponsor the visions and goals for the change.
- **Change Agents** facilitate change – they help sponsors and implementers stay aligned, and must do the work on the ground (gathering data, educating, advising, facilitating).
- **Advocates** have an idea about how change can happen and must get the sponsor's support to succeed.[139]

However structured, it is important to include enough main line managers, enough relevant expertise, enough people with good credibility and reputation in the organization and enough ability to lead. Avoid big egos and 'snakes' (who engender distrust). Talk a lot together in order to build trust and, as we now turn to, design a common goal.

3.   *Developing a vision and strategy:*

Leaders need to create a vision, one which 'describes the desired future, toward which change is directed', to give direction and energy to change efforts and implementation, and to rationalise the need for change. Vision building is a messy, difficult and emotionally charged exercise. Take time to do the process properly and expect it to take months. It is never achieved in a single meeting.

The change vision must be manageable and possible, while still being aspirational and 'alluring'.[140] It should describe the 'desired future', set a clear 'mission', and 'valued outcomes'.[141] The vision should be 'emotionally powerful to organisation members' to motivate them to change. This can involve linking the vision to past and present, providing realistic context and perspective.[142]

At this point, strategising should occur, including activity and commitment planning.

Activity planning involves 'making a road map for change, citing specific activities and events that must occur if the transition is to be successful'. This can include supplementing broader 'visions' with achievable, clearer and more detailed 'midpoint goals', to make 'more concrete and manageable steps and benchmarks for change'.[143]

Commitment planning involves 'identifying key people and groups whose commitment is needed for change to occur and deciding how to gain their support … specific plans for identifying key stakeholders and obtaining their commitment to change need to be made early in the change process'.[144] Those within the leadership community should identify stakeholders within and outside the organisation that have interests in the change and gain their support, thus motivating a 'critical mass for change'.[145]

---

135 Waddell et al (n 8) 169.
136 Ibid.
137 Cameron and Green (n 31) 169, citing Peter Senge et al (1999) 'The Dance of Change: the challenges to sustaining momentum in learning organizations' 38(5) Performance Improvement 38.5 (1999): 55-58.
138 Ibid 171, citing Mary Beth O'Neill, Executive Coaching with Backbone and Heart: A systems approach to engaging leaders with their challenges (John Wiley & Sons, 2011).
139 Ibid 172-73.
140 Waddell et al (n 8) 163.
141 Ibid 164.
142 Ibid 165.
143 Ibid 167-69.
144 Ibid 169.
145 Ibid 167-8.

IMPLEMENTATION STAGE

The implementation stage involves numerous activities, including (and often communicating) those that have been planned for, as detailed above. But managing and then sustaining the 'transition' then requires special activities.

Communication

An overarching and ongoing activity is communication. Communication is vital: 'without a clear strategy and well-defined key messages, effective management of change is unlikely'.[146] Saunders (1999) gives eleven recommendations for communicating during a change initiative:

1. Specify the nature of change
2. Explain why
3. Explain the scope of the change
4. Develop a graphic representation of the change initiative that employees can understand
5. Predict negative aspects of implementation
6. Explain the criteria for success and how it will be measured
7. Explain how people will be rewarded for success
8. Repeat, repeat, and repeat the purpose of change and actions planned
9. Use a diverse set of communication styles that are appropriate for employees
10. Make communication a two-way proposition
11. Be a model for the change initiative.[147]

Kotter advises that simple communication is best. He recommends using metaphor and analogy. Researching successful leaders, Gardner concluded that those 'who had really made a difference … all appeared to have a central story or message'.[148] Stories are powerful, as they give context and background, 'but also help the followers to picture the future'.[149] Leaders must embody the narrative and connect with the needs of the recipients.

Our change leaders also talked about the importance of a 'change journey' and crafting a story around that journey, a story that needs to be communicated regularly. One said:

> '[The] programs that I've worked on that have not gone so well, in most cases, you can come back to the communications, that it wasn't enough, or it wasn't detailed enough, or it didn't happen soon enough.'

For lawyers, a qualitative, story-telling approach might work best where supplemented by quantitative data. One interviewee said to make sure that a benchmark is communicated to the change recipients – for example, 'how much time is this innovation going to save lawyers?'.

Creativity is necessary to ensure that many different forms of communication are used to repeat the message, as Kotter advised. These need to be reworked according to what change means at each level: the whole organisation, then smaller groups (teams), then individuals. Gardner emphasised the need to embody one's message without being phony or disingenuous.[150] As one interviewee explained:

> 'Lawyers are very smart people. Don't think you can come in here and hoodwink them, because you won't. They'll see right though it eventually.'

---

146 Ibid 107.
147 R Saunders, 'Communicating change' (1999) 8(1) Harvard Management Communication Letter, 35–36.
148 Cameron and Green (n 31) 162; citing Howard Gardner, Leading Minds: an anatomy of leadership (HarperCollins, 1996).
149 Ibid.
150 Ibid.

Using change management buzzwords, meaningless ones, won't work with lawyers. Interviewees also talked about the need to account for time expected for the transition (better to overestimate) and the potential for initial negative impact of change on productivity.

Getting Feedback

There needs to be a clear structure for getting feedback and our interviewees said that this needs to be direct, not via intermediaries. One interviewee said that those responsible for the change must be approachable – make clear that you will give 'anybody airtime':

> '[O]ne of things that I tell them, and I tell them often, is that "The changes that we're implementing, you may not agree with, you may have different views. I will give anybody airtime. You can come and talk to me and raise things with me, you can give me suggestions, I will give you that opportunity and I will be engaged. That doesn't mean, though, that I'm going to go with what you're asking me to do. I may say, 'Nope, we're going to continue down the path'. But I at least will give you the opportunity to air it".'

Change leaders need to be ready to deal with the emotional impacts of people not wanting to follow their ideas or adopt their innovation. Dealing with detractors can be challenging because, as one change leader said, we tend to take negative feedback personally. But it's most important to understand where detractors are coming from both to help them get on side or to help improve the innovation, including if necessary to pivot. This change leader recommended sitting down 'over coffee' to get to the bottom of resistance in a more casual way, which is less threatening for both parties. As we return to in the conclusion, she also talked about the importance of empathy – over, for instance, citing 'change' theories and frameworks.

Those who have tested out the change initiative and given feedback on it need to see that this feedback has been used to improve the innovation (or else told why it hasn't been used), as another said.

> '[W]e went through the process of [identifying] pain points. And that was actually interesting, because I think it created quite a bit of excitement within the lawyers that actually, they might have some control in the way in which they manage some of these pain points, and that there might actually potentially be solutions that could ease these pain points. Because … these are issues that frustrate them on a day to day basis. So if you can tackle those particular issues, you're far more able to get them on the journey quite quickly.'

Ideally, people come to their own realisation that change is needed. One interviewee indicated that this realisation, among a firm's leadership, is the only way that change will occur. Some interviewees conveyed the idea that at some point, you have to stop seeking full consensus and to simply assume that the unwilling will eventually 'come along too':

> 'I think if you go into a change program with a mindset that you're going to shift everyone's behaviour [immediately]… then you're destined to fail'

Finally, as one interviewee stressed, 'action' or the act of putting the innovation into place is critical – if all talk and no action, 'very easily lose hearts and minds' for change projects.

> 'We often are quite ambitious with these internal transformation things. And if the lawyers who are doing the day to day work feel like there's a lot of talk and not a lot of action, particularly if you're relying on a certain user testing group, it all moves, and it's, like, a lot of groundwork to get a new group. Then, you can very easily lose the hearts and minds for these types of projects.'

MAINTAINING AND EVALUATING CHANGE

After initial excitement and activity have died down, sustained support is needed to reinforce change and prevent regression. The change initiative also needs to be reviewed to ensure momentum is maintained or perhaps that the change initiative is improved or replaced altogether. There are a number of important activities when it comes to maintenance:[151]

Properly resourcing and rewarding the change

Resources are both financial and human. These include 'training, consultation, data collection and feedback and special meetings', and a 'separate change budget' may be needed to cover the significant management costs associated with change.[152] Those tasked with enacting change may need ongoing support, if there is any ongoing tension between them and the other leaders or those affected by change. Rewarding lawyers in a concrete way for their work on innovative projects was also a recurring theme of interviews – whether this was through billing credits or other means. Lawyers are time poor, and without structural incentives, will lack the space and freedom to engage in creativity and innovation.

Developing and supporting new competencies, skills and behaviours

If particular behaviours are needed for the change to be successful or achieve longevity, then those behaviours must be supported. In this context too, employees need 'multiple learning opportunities, such as traditional training programs, on-the-job counselling and coaching and experiential simulations, covering both technical and social skills'.[153] Supporting behaviour might also be 'through informal recognition, encouragement and praise'. Goal-setting, and making early successes 'identifiable', also reinforces the positive aspects of change:[154]

> '[Get] some quick wins on the board as well. I think that is the best way to actually start the change process … You know, if people can actually see it.'

Staying the course

Finally, but perhaps most importantly, the organisation must be prepared for the time-lag between change implementation and beneficial results. This can mean an interim 'decline in performance, productivity or satisfaction as change is implemented'.[155] The additional cost of change programs can impact financial performance.

As explained above, lawyers tend to be sceptical, risk averse and focus on the short-term effects of change, including possible financial costs. Typically then, major change will never seem like a good idea as it's likely to have only or predominantly long-term benefits. This also reinforces the importance of ensuring that implementation of change is actually necessary – if managers and employees see a process of constant and unnecessary change (a 'flavour-of-the-month' attitude to change) they may become cynical (or more cynical than they already were).

If the contemplative and planning work by the change leadership has been done, what is required then is 'patience and trust in the diagnosis and intervention design work'.[156]

---

151 Waddell et al (n 8) 113-15.
152 Ibid 113.
153 Ibid 114.
154 Ibid 114.
155 Ibid 114-15.
156 Ibid.

Evaluation

The change leadership community should evaluate both the change initiative and the process of implementation itself. The latter should be reviewed during implementation (for any refinements that can be fed back into the process) and at the end. For this purpose, one of the change leaders discussed the importance of the retrospective meeting:

> *'This is where at the end of a project, or a phase in a project, you get the different team members, stakeholders, involved, and you go through what worked well and what didn't work well, and make sure you're capturing those learnings and any actions flowing from them, and applying them back into the next phase or the next project.'*

At the end of a process, we often feel too burned out and tired to want to think about analysing it all again. But this is the time to capitalise on what has been learned rather than letting that experience slip away.

The purpose of measuring the change initiative is to assess the overall impact of the intervention (rather than just whether the implementation itself succeeded), and this can take longer to complete.[157] For both types of feedback, it is important to choose the right variables and to design good measures.[158] The more congruence between the specific change and broader organisational strategy and philosophy, as well as other changes taking place, the more likely it is that there will be commitment and diffusion across the organisation.[159]

Waddell et al note five indicators to determine whether an intervention is 'persistent':

1. ***Knowledge***: how well organisation members know the behaviours associated with the intervention;
2. ***Performance***: to what degree intervention behaviours are actually being performed (extent or frequency of performance);
3. ***Preferences***: to what degree organisation members privately accept the organisation's changes (as opposed to a group pressure to accept) – which can be measured by member attitudes in questionnaires etc.;
4. ***Normative consensus***: to what degree organisation members agree that the changes were appropriate – how much the changes have become part of the normative structure of the organisation
5. ***Value consensus***: to what degree members believe the changes reflect the organisation's underlying values.[160]

---

157 Ibid 173.
158 Ibid 174.
159 Ibid 178.
160 Ibid 182.

CONCLUSION: A CHANGE-READY CULTURE

The goal of a change project is, on a wider scale, to make the entire organisational culture more change-ready. Our interviewees said that cultural change at the organisational level must accompany, and be a goal of, any change project:

> *'I noticed that quite often big technology projects go wrong. But they don't go wrong because of the technology, they go wrong because of organisational and change factors.'*

The goal is an organisation in which lawyers are interested in, and ready and rewarded for innovation (of course, only innovation that addresses real problems!).

We conclude with six characteristics of the change initiatives themselves that affect the success of wider cultural change:

Have specific goals

You need to have precise and specific goals attached to how people's behaviour should change. Ill-defined or imprecise targets for 'productivity' or 'quality' are less likely to be durable, more difficult to evaluate, and challenging to adequately acknowledge or reward.[161]

Design goals that work on multiple levels

Try to lay out a full program which sets out changes and targets ahead of time, and on multiple levels.[162]

Think about the level of change target

If interventions are targeted at individual groups or departments within organisations, they are less likely to be capable of diffusion across the organisation as a whole (though group subcultures can exist and maintain distinct identities). At the same time, while broader targets (e.g. 'whole organisation') can facilitate shared beliefs and institutionalisation, they can also be too divisive for this to work.[163]

Think about external, internal and ongoing support

External support (an outside consultant) can provide expertise on organisational design and train members to implement it.[164] Internal support (a manager or other leader) can help members relate to other groups within the organisation, resolve conflicts, and legitimise change activities. People who have the authority and power to 'initiate, allocate and legitimise resources for the intervention', and their continued support, are critical.[165]

Interviewees emphasised the need for everyone in the organisation to take responsibility for, and be involved in, change.

> *'Change is practised in collaboration; the change people can't be on the side doing their thing; everyone is responsible for change.'*

This might mean enlisting 'change agents' as well: specific individuals who can promote change within their team.

---

161 Ibid 179
162 Ibid.
163 Ibid.
164 Ibid 180.
165 Ibid.

Maximize lawyers' strengths, build capacities and mindsets

In a legal context, it's important to plan for lawyers' typical qualities, which include, as mentioned, a heightened awareness of risk and perfectionism. Some interviewees said to use lawyers' strengths: lawyers are good at identifying risks and they are solutions-focused so you can get them involved in a change process. But it is important to help develop new skillsets and mindsets, those needed: to lead change, to cope with change (growth mindset), and to use the new product or intervention and others like it (for example, general tech literacy).

Be human

Having set out here several formal theories of change leadership and having provided a distinct change framework, it is worth closing with a reminder of the human dimensions of change. Several interviewees reminded us of the importance of respecting the change recipients' knowledge, autonomy, and need for empathy. In terms reflective of the relational leader, one interviewee gave the following advice:

> *'Don't come in as a specialist saying, "This is the best way to do legal tech" [or whatever it is you're introducing], that would be a disaster. What you want is more and more of what they know coming out [from the conversation]. And the reason that's important is it allows implementation to happen. Because if people have come up with the idea themselves, and they're now directing resources to make their thing happen, they believe in it. It's not like me saying to the managing partner, "Get some document automation, apparently it's the thing. Get some AI, apparently it's the thing." What you want is that people come up with it themselves. And then once they come up with it, they'll make stuff happen.'*

Finally, having drawn on research and interview findings saying that lawyers are not fit for change, as mentioned in the introduction, this research is not up-to-the minute current and our change leaders were clear that it did not give the full picture. As one of our interviewees commented, '*things were like that 10 years ago but not now*'. The image of the staid lawyer doing the same thing as his or her forbears doesn't completely match up to the current situation or to the aspirations of new lawyers. Lawyers are ready for change, but they need good leadership and organisational cultures to get there.

REFERENCES

Altman Weil, '2018 Law Firms in Transition Survey' (2018), available at <http://www.altmanweil.com//dir_docs/resource/45F5B3DD-5889-4BA3-9D05-C8F86CDB8223_document.pdf>

Bruce E Aronson, 'Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better – An International Comparison' (2007) 40 *Vanderbilt Journal of Transnational Law* 763

W Bennis, *On Becoming a Leader* (Addison-Wesley, 1994)

A Bryman, *Charisma and Leadership in Organizations* (Sage, 1992)

Bernard Burnes, 'Kurt Lewin and the Planned Approach to Change: A Re-appraisal' (2004) 41(6) *Journal of Management Studies* 977

Bernard Burnes, 'Emergent Change and Planned Change – Competitors or Allies? The Case of XYZ Construction' (2004) 24(9) *International Journal of Operations & Production Management* 886

Esther Cameron and Mike Green, *Making Sense of Change Management: A Complete Guide to the Models Tools and Techniques of Organizational Change* (KoganPage, 3rd ed, 2012)

Eric Chin, Graeme Grovum and Matthew Grace, *State of Legal Innovation in the Australian Market* (AlphaCreates, 2019)

Mark A Cohen, 'There Is Nothing "Alternative" About New Model Providers − Especially the Big Four', 3 December 2018, Forbes

T G Cummings and E F Huse, *Organization Development and Change* (West Publishing, 4th ed, 1989)

Susan Daicoff, 'A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46 *American University Law Review* 1337

Susan Daicoff, 'The Future of the Legal Profession' (2011) 37(1) *Monash University Law Review* 7

Anne Daly, Don Fleming, and Phil Lewis (2007) 'Changes in Solicitors' Firms and Work 1990-2004' 204 *Ethos: Official Publication of the Law Society of the Australian Capital Territory* 27

Patrick Dawson, *Organizational Change: A Processual Approach* (1994, London: Paul Chapman Publishing)

John S Dzienkowski, 'The Future of Big Law: Alternative Legal Service Providers to Corporate Clients' (2014) 82(6) *Fordham Law Review* 2995

J Foster et al, 'Understanding Lawyers: Why We Do the Things We Do: Results from the Hogan Assessment Project of Lawyer Personality' (White Paper, Hogan Assessment Systems and Hildebrandt Baker Robbins, 2010)

John Flood and Lachlan Robb, 'Professions and Expertise: How Machine Learning and Blockchain are Redesigning the Landscape of Professional Knowledge and Organization' (2019) 73 *University of Miami Law Review* 443

Marc Galanter and William Henderson, 'The Elastic Tournament: A Second Transformation of the Big Law Firm' (2008) 60 *Stanford Law Review* 1867

Howard Gardner, *Leading Minds: an anatomy of leadership* (HarperCollins, 1996)

Ann Gilley, Pamela Dixon and Jerry W Gilley, 'Characteristics of leadership effectiveness: Implementing change and driving innovation in organisations' (2008) 19(2) *Human Resource Development Quarterly* 153

Daniel Goleman, 'Leadership that Gets Results' (2000) 78(2) *Harvard Business Review* 78-90

William D Henderson, 'From Big Law to Lean Law' (2014) 38 *International Review of Law and Economics* 5

C Hendry, 'Understanding and Creating Whole Organizational Change Through Learning Theory' (1996) 48(5) *Human Relations* 621

Fiona Kay and Elizabeth Gorman, 'Women in the Legal Profession' (2008) 4 *Annual Review of Law and Social Science* 299

N. Kelk et al, 'Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers', Monograph 2009-1, Brain and Mind Research Institute and Tristan Jepson Memorial Foundation (January 2009)

C. Kendall, *Report on Psychological Distress and Depression in the Legal Profession*, (Law Society of Western Australia, 2011)

John P Kotter, *Leading Change* (Harvard Business School, 1996).

John P Kotter, 'Leading change: Why transformation efforts fail' (1995) *Harvard Business Review* 59-67

Erik Larson, 'New Research: Diversity + Inclusion = Better Decision Making at Work', *Forbes,* 21 September 2017.

Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report* (February 2014)

The Law Society of NSW, *The Flip Report 2017* (2017), available at <https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>

Law Society of NSW, *Inside In-House Legal Teams* (2013), available at <https://www.lawsociety.com.au/sites/default/files/2018-04/In%20house%20legal%20teams%20report.pdf>

Law Society of NSW, *National Profile of Solicitors 2018* (Urbis, 17 July 2019), available at< https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf>

K Lewin, 'Frontiers in Group Dynamics' in D Cartwright (ed) *Field Theory in Social Science* (Social Science Paperbacks, 1947)

Jean Lipman-Blumen, 'The Age of Connective Leadership' in F Hesselbein and R Johnston (eds) *On Leading Change* (Jossey-Bass, 2002) 89-101.

Steven Mark and Georgina Cowdroy, 'Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales' (2004) 22(4) *Penn State International Law Review* 671

John O McGinnis and Russell G Pearce, 'The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services' (2014) 82(6) *Fordham Law Review* 3041

Melbourne Law School and Thomson Reuters, *Australia: State of the Legal Market Report* (2018)

Terri Mottershead and Sandee Magliozzi, 'Can Competencies Drive Change in the Legal Profession?' (2013) 11 *University of St Thomas Law Journal* 51

R Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (University of California Press, 1988)

Mary Beth O'Neill, *Executive Coaching with Backbone and Heart: A systems approach to engaging leaders with their challenges* (John Wiley & Sons, 2011)

Shaul Oreg, 'Personality, context, and resistance to organizational change' (2006) 15(1) *European Journal of Work and Organizational Psychology* 73

Shaul Oreg, 'Resistance to Change: Developing an Individual Differences Measure' (2003) 88(4) *Journal of Applied Psychology* 680

Shaul Oreg, Maria Vakola and Achilles Armenakis, 'Change Recipients' Reactions to Organizational Change: A 60-Year Review of Quantitative Studies' (2011) 47(4) *The Journal of Applied Behavioral Science* 461

Andrew M Pettigrew, 'Longitudinal Field Research on Change: Theory and Practice' (1990) 3(1) *Organizational Science* 267

Andrew M Pettigrew 'Studying Strategic Choice and Strategic Change' (1990) 11(1) *Organizational Studies* 6

Sandy K Piderit, 'Rethinking Resistance and Recognizing Ambivalence: A Multidimensional View of Attitudes toward an Organizational Change' (2000) 25 *Academy of Management Review* 783

Deborah L Rhode, 'What Lawyers Lack: Leadership' (2011) 9 *University of St Thomas Law Journal* 471

L Richard, 'Herding Cats: The Lawyer Personality Revealed' (2002) 29(11) *Report to Legal Management* 2

Justine Rogers, Dimity Kingsford Smith and John Chellew, 'The Large Professional Service Firm: A New Force in the Regulative Bargain' (2017) 40 *University of New South Wales Law Journal* 218

M Salomon, *Lawyer Personality and Resistance to Change* (Master's Thesis, INSEAD, 2014)

S Samuelson, 'The Organizational Structure of Law Firms: Lessons from Management Theory' (1990) 51 *Ohio State Law Journal* 643

R Saunders, 'Communicating change' (1999) 8(1) *Harvard Management Communication Letter* 35.

Martin E P Seligman, Paul R Verkuil and Terry H Kang, 'Why Lawyers Are Unhappy' (2001) 23 *Cardozo Law Review* 33

Peter Senge et al (1999) 'The Dance of Change: the challenges to sustaining momentum in learning organizations' (1999) 38(5) *Performance Improvement* 55-58.

P Shaw, *Changing Conversations in Organizations* (Routledge 2002)

R D Stacey, *Complex Responsive Processes in Organizations: learning and knowledge creation* (Routledge, 2001)

Andrew Sturdy, 'Customer Care in a Consumer Society: Smiling and Sometimes Meaning It?' (1998) 5 *Organization* 27

Joris Van der Voet, Sandra Groeneveld and Ben S Kuipers, 'Talking the talk or walking the walk? The leadership of planned and emergent change in a public organization' (2014) 14 *Journal of Change Management* 171, 174.

Rebecca Van Dijk and Rolf Van Dick, 'Navigating Organizational Change: Change Leaders, Employee Resistance and Work-based Identities' (2009) 9(2) *Journal of Change Management* 143

Diane Waddell, Andrew Creed, Thomas G Cummings and Christopher Worley (eds), *Organisational Change: Development and Transformation* (Cengage, 2016)

David Weisbrot, 'The Changing Face of Australian Legal Practice' (1986) 58(4) *The Australian Quarterly* 426

Joan C Williams, Aaron Platt, Jessica Lee, 'Disruptive Innovation: New Models of Legal Practice' (2015) 67(1) *Hastings Law Journal* 1

DR JUSTINE ROGERS

Dr Justine Rogers is the Deputy Director of the NSW Law Society's Future of Law and Innovation (flip) research stream at UNSW Law. She is also a Senior Lecturer, teaching the core professional ethics course and a strand of jurisprudence (theories of law and justice). From 2013-2018, Justine was a chief investigator in an Australian Research Council Linkage grant with the Professional Standards Councils on 'professionalism' and 'professional regulation' in the 21st Century. Her recently published articles cover such themes as the role of associations in professional regulation, and the ethics of AI in professional practice. Justine completed her DPhil at the Centre for Socio-Legal Studies at the University of Oxford, which was an ethnographic study of London barristers and pupillage.

DR. FELICITY BELL

Dr Felicity Bell is a Research Fellow for the the NSW Law Society's Future of Law and Innovation (flip) research stream at UNSW Law. Felicity's primary research interests relate to the impact of new technologies, particularly artificial intelligence, on legal practice; legal professional ethics and lawyers' work, and empirical research in these areas. She is interested in identity construction, ideas of best practice and ethical obligations among lawyers. She has also researched extensively in family law and children's law and her work has been cited in judgments of the Family Court of Australia. She is the co-author, with Professor Michael Legg, of Artificial Intelligence and the Legal Profession (Hart, forthcoming 2020).

PROFESSOR MICHAEL LEGG

Michael is a Professor at UNSW Law. He is also the Director of the Law Society of New South Wales Future of Law and Innovation in the Profession (FLIP) research stream at UNSW.

Michael's research interests are in civil litigation, alternative dispute resolution and the legal profession. He has previously written on the use of technology assisted review in litigation, online dispute resolution / courts and the ramification of social media and the Internet of Things for civil litigation. In 2020 the monograph "Artificial Intelligence and the Legal Profession", co-authored with Dr Felicity Bell, will be published by Hart Publishing.

Michael was a member of the Law Society of New South Wales' Future Committee, 2016 – 2017 that conducted the Inquiry into the Future of Law and Innovation in the Profession. He was the Chair and author of the UNSW Law School's 2017 technology curriculum review which examined the ramifications of the impact of technology on the legal profession for legal education.

In 2017 he was awarded Academic of the Year at the Lawyers Weekly Australian Law Awards for his innovative teaching of technology and legal practice, especially in relation to litigation and alternative dispute resolution, and engagement with the legal profession.

flipstream

THE LAW SOCIETY OF NSW
IN COLLABORATION WITH UNSW LAW