

Innovation Committee

Report – Stage 1

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About the Committee

The legal profession is facing disruption driven by rapidly evolving technologies and new and innovative ways of packaging and providing legal services. The Queensland Law Society (QLS) Council has formed an Innovation Committee to assist members to adapt to these changes.

The Committee has three objectives:

1. To assist QLS to provide leadership to the Queensland legal profession in responding to transformative change in the profession
2. To identify the drivers of change in legal services in Queensland, including:
 - Changing client needs and expectations of costs and value
 - Legal technology and innovation culture
 - Changing role of transactional legal work
 - Challenges in developing the next generation of lawyers
3. To report on what the profession and QLS may do to:
 - respond to the drivers of change
 - enable the legal profession to cope with and manage change
 - provide a clear benefit to the public and the profession.

The Committee was established in 2019 and its membership includes:

- | | |
|-------------------------|----------------------------------------------|
| • Chloe Kopilovic | QLS Council |
| • Kate Avery | Kare Lawyers |
| • Kate Clark | Enhanced Litigation Management Solutions |
| • Richard Gardiner | HopgoodGanim |
| • Darius Hii | Chat Legal |
| • Janelle Kerrisk | Helix Legal |
| • Terri Mottershead | College of Law Centre for Legal Innovation |
| • Angus Murray | Irish Bentley |
| • Andrea Perry-Petersen | Independent Consultant - Reimagining Justice |
| • Carolyn Reid | Family Law Tool Kits |
| • Heidi Schweikert | Schweikert Harris |
| • Andrew Shute | Carter Newell Lawyers |
| • James Tan | Corney & Lind |
| • Kim Trajer | McCullough Robertson |
| • Peter Westerveld | QUT PhD Candidate |

The Committee was also assisted by Mr Russell Hinchy of the UQ Law School.

Part 1 - Putting innovation and disruption into context

Kodak invented the first digital camera in 1975, the first mega-pixel camera in 1986, and filed for bankruptcy in 2012. These diametrically opposed outcomes occurred because Kodak continued to view its core business as film and photographic chemicals, rather than investigating and adopting emerging technologies. Steven J. Sasson, the engineer who invented that first digital camera, stated:

“My prototype was big as a toaster, but the technical people loved it. But it was filmless photography, so management’s reaction was, ‘that’s cute — but don’t tell anyone about it.’”¹

The legal profession, like many industries, is facing increasingly vocal demand to change. How that change might occur is likely to be driven by the following, non-exhaustive factors:

- Changing demographics
- Changing business structures, with the availability of incorporated legal practices and new business models
- Changing client needs and expectations of value
- Globalisation and the fluidity of expertise and labour
- Legal technology
- Innovation culture and the need for business agility
- The COVID-19 pandemic, which expedited business innovation and the adoption of technology in the workforce.²

These factors are examples of ‘disruptors’, which are forces that prompt transformative change both within the practice of law and the business of law. Disruptors emerge from both internal and external influences, contributing to an accelerating cycle of continuous technological and business development.

Changing demographics

In 2018, Urbis prepared a National Profile of Solicitors on behalf of the Law Society of New South Wales.³ The Report records that there were 76,303 solicitors in Australia and Queensland accounted for 15%.⁴ The profession grew 15% between 2011 and 2014, but slowed to 7% growth between 2016 and 2018. Since 2011, the corporate counsel sector and government legal sector have experienced significant growth (+61% each), while the rate of growth in private law firms was comparatively slow (+23%).⁵

1 Claudia H Deutsch, ‘At Kodak, Some Old Things Are new Again’ The New York Times (2 May 2008) <https://www.nytimes.com/2008/05/02/technology/02kodak.html>

2 Jordan Bar Am et al, ‘Innovation in a crisis: Why it is more critical than ever’ (17 June 2020) <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/innovation-in-a-crisis-why-it-is-more-critical-than-ever?cid=other-eml-alt-mip-mck&hlkid=9aacdb23318d4146a40ef2f3916ed7d0&hctky=10363388&hdpid=e5020cc2-cda2-4474-b1e5-595494a2a52e#>

3 Urbis, ‘2018 National Profile of Solicitors’ (17 July 2019) <https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf>

4 Ibid, 5.

5 Ibid, 3.

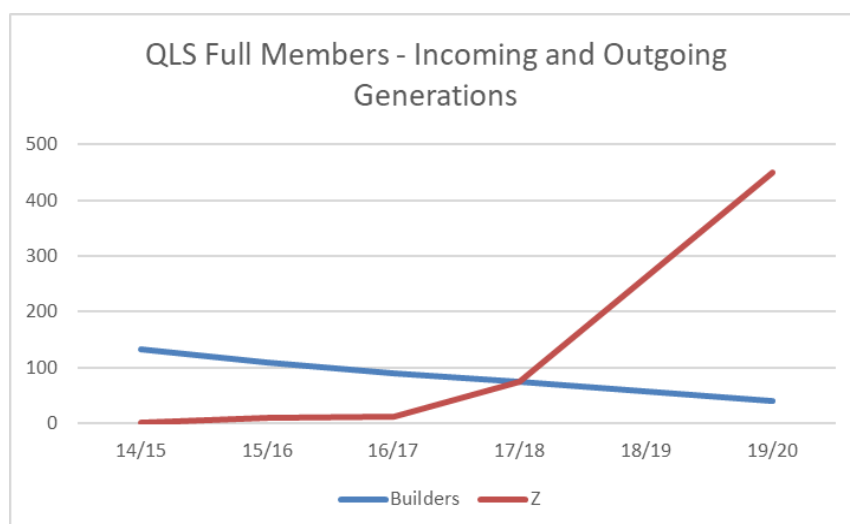
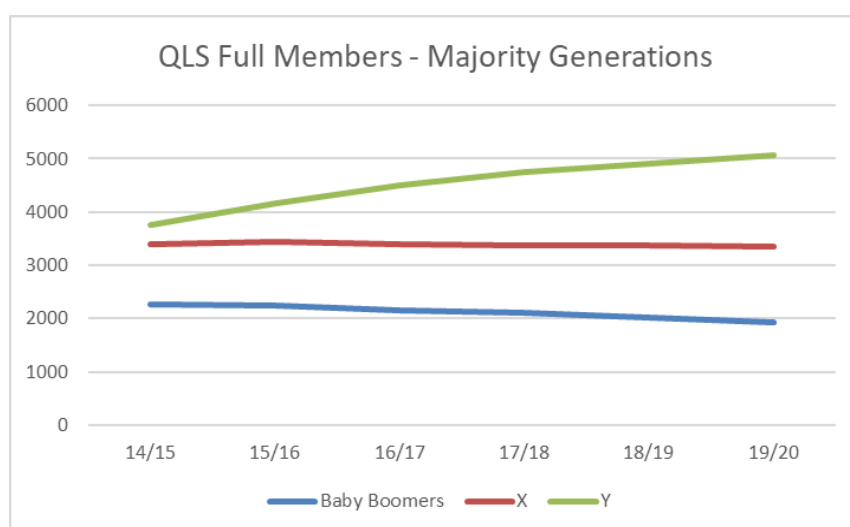
The 2018 National Profile recorded that 52% of all solicitors were female but the distribution differed depending on job function:

- in private practice 47% of solicitors were female;
- in government positions 66% of solicitors were female; and
- in corporate practices 59% of solicitors were female.⁶

The Report also found 48% of all solicitors nationally were between 25 and 39 years of age.⁷

The trends in the profession indicate a changing demographic. The number of lawyers joining private practice is plateauing and a significant number of younger female lawyers are preferring to work in government and corporate teams.

The following charts illustrate the generational⁸ change in the full members⁹ of the Queensland Law Society between 2014/15 and 2019/20.



⁶ Ibid, 24.

⁷ Ibid, 2

⁸ We have used the following generational categories and year of birth ranges: Builders 1925-1945, Baby Boomers 1946 – 1964, Gen X 1965 – 1979, Gen Y 1980 – 1994, Gen Z 1995 - 2010

⁹ Full membership is available to Australian lawyers who hold a current Practising Certificate that allows them to practise as a solicitor in Queensland. Full membership is not available to those who engage in practice as a barrister or to Australian registered foreign lawyers. QLS also offers Associate membership, Student membership and Honorary membership.

The next generation of legal practitioners and clients are ‘digital natives’. Members of this cohort are adept at navigating digital technologies and tend to preference service delivery and engagement through new forms of media (such as apps like Uber). Within the next five to ten years digital natives will comprise most of the workforce, and as this cohort becomes more prevalent, the legal profession may need to adapt to different service delivery models.

The Deloitte Millennial Survey 2020 found that Millennials and Gen Z are reporting a focus on larger societal issues, are disillusioned with large businesses, and will patronise and support companies, particularly small, local sellers that align with their values.¹⁰ According to the 2019 Legal Firm of Choice survey conducted by Momentum Intelligence, employees aged between 26 and 35 are indicating dropping levels of satisfaction with their employers and working life.¹¹

Changing business structures

An Incorporated Legal Practice (ILP) is a registered corporation that provides legal services under the supervision of a legal practitioner director. The introduction of the ILP model disrupted the legal profession by departing from the traditional structure of law firms as sole practices or partnerships, in which the sole practitioner/partners were the owners, managers and stakeholders of the firm. This creates the opportunity for new, commercial ways of conducting law as a business; for example, an ILP may have a board of directors, shareholders and external investment, and a range of business activities that are not limited to legal services.

Client needs and expectations of value

Companies utilising digital technology to meet consumer needs have reset and normalised different client expectations. Businesses such as Facebook, Google, Apple, Amazon and Uber focus on solving consumer problems and presenting convenient, immediate and accessible consumer solutions. These businesses collect and analyse data relating to consumer preferences and use this information to inform their decisions about investment in technology, their business and financial priorities and to redefine their market and value proposition. The prioritisation of consumer needs by businesses, in conjunction with greater access to information through the internet, means that consumers are now more informed about services and products and the different options available to them.

Clients expect to see value in the legal services they purchase, including by:

- engaging with legal services quickly, easily and without fuss, as they are used to consuming other services;
- receiving “user-friendly” and easy to understand advice;
- being able to anticipate and “fix” legal costs and with that has come increased transparency in how these are calculated and what they cover (e.g. through fixed fee and capped fee arrangements);
- being a part of more collaborative solutions (e.g. involving other consultants, and/or seeking holistic answers with “non-legal” components);
- the “unbundling” of legal services – particularly from in-house teams; and
- the greater use of procurement processes to engage lawyers.

Responding to changed client expectations has led to an increase in legal services, products and providers and with that, a need for legal practitioners to think about their practices differently and innovate!

¹⁰ Deloitte, ‘The Deloitte Global Millennial Survey 2019’ (2020) 21 <<https://www2.deloitte.com/global/en/pages/about-deloitte/articles/millennialsurvey.html>>

¹¹ Jerome Doraisamy, ‘Satisfaction with law firms at 5-year low’ (22 August 2019) <<https://www.lawyersweekly.com.au/biglaw/26349-satisfaction-with-law-firms-at-five-year-low>>

Legal technology

Advancements in technology facilitate and drive change in the legal industry. As artificial Intelligence ('AI') becomes increasingly sophisticated, legal technology ('LawTech' or 'Legaltech') has evolved from efficiency-focussed tools to digital labour. The way this assists, automates or augments with traditional legal practice has also changed significantly.

There is a growing Australian LawTech sector. Those businesses now have applications which can, for example:

- engage with a client, solicit information and prepare basic legal documents (<https://joseflegal.com/>);
- review a lease or basic agreement and mark up improvements by reference to a 'learnt' database of previous agreements (<https://www.contractprobe.com/>);
- answer questions about your firm, take enquiries, and book in meetings (<https://www.lawsitch.com/>);
- assist in drafting complex legal documents using artificial intelligence (<https://smarterdrafter.com.au/>);
- allow individuals to build their own liquidated damages claims in the Small Claims Division of the New South Wales Local Court (www.judgeit.com.au);
- maximise efficiency and reduce costs in law firm office plans (<http://www.officemaps.com/>);
- use AI algorithms for the provision of tailored legal information and research (www.ailira.com);
- engage freelance law clerks on demand (www.lawlancer.legal);
- provide a rating and review service for consumers looking for law firms (www.firmchecker.com.au).

Many Australian LawTech businesses are members of the Australian Legal Technology Association and their products can be explored at <https://alta.law/elements/team-member/>.

Directories of Lawtech have been developed by a number of different agencies and are available, free of charge, to assist with Lawtech purchasing decisions. These can be searched by subject area (<https://info.juro.com/tools>), geographical location (<https://legaltechnologyhub.com/>) or work type (<https://legaltechnologyhub.com/>). Other agencies, like Reynan Court, have developed a legal app store and associated platforms which provide a verified, cloud-based solution to choose and use technology best suited to the legal business (<https://reynencourt.com/>).

Innovation Culture

Innovation culture is the recognition and desire to change the legal profession to:

- meet (and exceed) new and evolving client expectations with respect to the efficiency and effectiveness of legal services and products,
- operate better and more engaging legal businesses,
- make lawyers happier in their work,
- improve wellness in the profession,
- create a more inclusive work environment,
- improve access to justice,
- provide holistic solutions to clients problems,
- meet competitive challenges from non-traditional legal services providers, and
- use technology and data based decision making to enable and support all of the above.

Innovation involves engaging in change that adds value. Innovation culture is enabled, but is not necessarily defined by, new technology solutions.

What is Innovation?

There is no universal definition of innovation in legal practice, nor universally accepted understanding of how innovation impacts the delivery of legal services and products. However, research and observation projects, such as the Legal Services Innovation Index,¹² have compiled lists that represent a useful starting point for the categories of innovation often seen in legal services. These include:

1. New Business Structures which include incorporated legal practices and multidisciplinary practices.
2. Business Model Innovation which may be designed, novel, and non-trivial changes to the key elements of a firm's business model and/or the architecture linking these elements.¹³
3. Alternative Fee Structures which may include fixed fees value-based billing.
4. Legal Project Management which may include the application of project management processes to the delivery of legal work.
5. Process Improvement and Innovation Framework which may include design thinking, process improvement and methodologies such as lean thinking or six sigma.
6. Knowledge Management which may include information management principles and governance.
7. Automation which may include expert systems, document automation or process automation.
8. Data Analytics which may include data analytics, predictive analysis or the use of decision trees.
9. Artificial Intelligence which may include machine learning or the application of computing power through algorithms to bodies of data such as e-discovery in litigation.
10. Legal Operations which may include the use of service providers to conduct discrete sub-parts of work in a legal service or bots to capture information and undertake basic functions such as drafting formulaic documents or scheduling appointments.
11. Proactive Law which may include using the law as a preventative measure for problems.
12. Blockchain which includes smart contracts and distributed ledgers.

¹² Legal Services Innovation Index <<https://www.legaltechinnovation.com/>>

¹³ Foss, Nicolai J. and Saebi, Tina (2018), 'Business models and business model innovation: Between wicked and paradigmatic problems', Long Range Planning, 51 (1), 9-21.

Part 2 - Knowledge and Skills

The Innovation Committee considered the nature of the role of the lawyer and the necessary attributes of a good lawyer. Five key questions were considered:

1. Does having a law degree make you a good lawyer? If not, what is needed? What is the knowledge and experience an effective and viable lawyer needs, beyond understanding black letter law, now and in the future?
2. What is needed in the transition from a law student to a lawyer and from a lawyer to a legal business operator? Is it more than 2 years of supervised legal practice and a PMC Course?
3. What will the legal profession need to do to manage the transition/transformation of the existing lawyer population?
4. What are the potential consequences for lawyers and firms if they ignore developing broader knowledge and experience in the current and next generation of lawyers?
5. Should legal professionals develop competence outside their main area of expertise and have the capacity to bridge hybrid skills to assess ethical considerations and work with new algorithm driven technologies such as Artificial Intelligence¹⁴ (so called hybrid professionals – also now referred to as “O shaped” lawyers)?

Knowledge and experience

The practice of private law as a business has historically been founded on the lawyer having specialist knowledge that was not available to a client and the ability to apply that knowledge to the client's problem. This model has been successful for some time but has been disrupted by the ease of access to information provided by the internet and the growth of in-house counsel departments within companies.¹⁵

For example, a Google search for “free shareholder agreement Queensland” returned about 1,010,000 results in June 2019.

Access to legal information through the internet is overwhelming. One role of a lawyer is to navigate the information available to assist clients to reach the solutions they need. The Committee considered this was the product of specialised skill and knowledge and required critical analysis skills developed through a legal education and enhanced and refined by experience.

What lawyers offer clients is complex problem solving using legal and life experience. The value legal practitioners provide their clients now and into the future is their ability to understand the client's problem from the client's perspective, solve the client's problem, refer them to other professionals where warranted, and help them achieve a particular outcome. The Committee viewed the enduring role of the legal practitioner as their capacity to solve problems by applying specialist legal knowledge and skills, and delivering those solutions to clients with emotional intelligence.

14 Armour, John and Sako, Mari (2020), ‘AI-enabled business models in legal services: From traditional law firms to next-generation law companies?’, *Journal of Professions and Organization*, 7 (1), 27-46. <https://www.law.ox.ac.uk/business-law-blog/blog/2020/01/ai-enabled-business-models-legal-services-traditional-law-firms-next>

15 Tyler J. Replegle, *The Business of Law: Evolution of the Legal Services Market*, Michigan Business & Entrepreneurial Law Review, Volume 6 | Issue 2, 2017

The Committee proposed that law firms needed to foster a diversity of experience and capabilities within their workforce to attract and retain clients and talent. The focus on building a diverse workforce, both in terms of skillsets and attributes, was seen as critical to collaborate with clients and provide human-centred services. To foster diversity, the Committee saw the need for firms to:

- engage their employees and clients more deeply,
- adopt different and more collaborative leadership thinking,
- review methods for promoting talent to encourage creativity and innovation of services,
- recruit and value employees with skills complementary to legal practitioners, and
- be engaged and proactive, rather than reactive and detached, in the profession and the community.

Does having a law degree make you a good lawyer?

The Committee considered that a law degree provides a person with basic legal knowledge and analytical reasoning skills. It is best understood as a foundation, which must be supplemented by a vocation to the law and experience, involving competent supervision and ongoing professional development.

The Committee acknowledged that the ability of universities to deliver students with experience is constrained, given course requirements and the number of students. However, it was noted that in the United States many law schools run clinics staffed by students to provide some experience of applying their learned skills to real problems. Similarly, many law students in Queensland participate in clinical legal education during their studies, volunteer at community legal centres and seek experience in paralegal and law clerk jobs within law firms.

The Committee identified a need for greater life experience in those who practice law, to allow lawyers to identify and apply creative solutions to client problems. However, there are no shortcuts to acquiring experience. As such, graduate and junior lawyers need to be mentored/guided by someone who can transfer the value of their experience to the next generation.

Beyond gaining experience, the Committee identified the following as important elements of legal education:

- Digital literacy, including knowledge of technology and its benefits and risks. Digital literacy enables lawyers to embrace opportunities to improve legal services (the Committee noted that the comment to American Bar Association Model Rule 1.1 dealing with lawyer competence requires a lawyer to keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology);¹⁶
- Development of critical and creative thinking and complex problem-solving skills which currently underpin student learning and legal analysis, but will in the future underpin legal practice impacted by technology;
- Knowledge of data analytics and forensics sufficient to enable a lawyer to identify when data underpinning a decision is clean or biased;
- Data analysis and interrogation skills, for example to enable a lawyer to analyse law firm data for use in AI platforms or electronic disclosure and for estimating costs, project planning/costing etc.;
- Project management skills including task identification, timelines, resource allocation, risk assessment and mitigation and communication skills;
- Financial business acumen, including the ability to understand basic accounts;
- Collaboration skills including mediation skills, facilitation and conciliation, working with other specialists and individuals from diverse backgrounds;
- Stakeholder engagement and relationship management skills;
- Cultural knowledge and sensitivity;
- Ability to manage online reputation and personal brand awareness;
- Ability to identify and market differentiating factors and specialty niches.

The Committee considered that greater emphasis needs to be placed on the acquisition of skills beyond 'black letter' law learning, and this learning should be delivered in the context of contemporary legal practice. Some universities now offer courses that relate to these skills.¹⁷ For example, "Law Apps" courses have become prevalent in the past few years. These courses teach students the principles of client centred service and product design in an applied way as they partner with a community legal centre or not for profit organisation to develop an app during the unit.¹⁸ Traditional legal work experience for students is also evolving; increasingly, students are participating in online internships and work experience programs, such as those offered by Forage (formerly InsideSherpa). These online internships are designed to give students the opportunity to experience practical tasks, and expose them to online service delivery platforms that are becoming more prevalent in the legal sector.

The advent of AI and new technology has led to change in legal processes and affected the legal market. There now exists an expanding market for 'hybrid' lawyers with multiple complementary areas of expertise. Pairing law with another specialisation is not new; universities have been offering combined degrees for many years. Nevertheless, innovative new technology, legal processes and practice models present unprecedented opportunities to combine specialisations, such as software engineering and law, project management and law, psychology and law, and accounting and law. Such multidisciplinary lawyers can provide more holistic legal solutions. In particular, legal professionals with software and IT qualifications are likely to be in high demand in the future as algorithm-based computer systems are increasingly adopted in the legal sector.

16 American Bar Association, 'Rule 1.1 Competence – Comment' <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/>

17 Andrewa Perry-Petersen & Michael Lacey, 'Legal Innovation: Education in Australian Law Schools' <<http://www.andreaperrypetersen.com.au/wp-content/uploads/2018/09/Legal-Innovation-Education-Sep-2018.pdf>>

18 See <https://law.unimelb.edu.au/students/jd/enrichment/pili/subjects/law-apps> and http://www.qlsproctor.com.au/wp-content/uploads/2020/06/Proctor_November_2017_WEB.pdf page 7

What is needed in the transition from law student to lawyer and from lawyer to business operator?

The Committee noted that currently many law students face challenges in securing professional employment. The Committee observed that this had led to:

- Students taking paralegal roles upon graduating or admission to gain experience and to provide a competitive advantage to enter the professional job market;
- Over-representation of experience on resumes for professional positions;
- A tendency for those with connections in the legal profession to gain more of the experiential opportunities necessary to gain professional employment.

The Committee considered the factors contributing to the difficulties faced by young lawyers and students and noted that the number of law students entering the employment market is only one driver.

One Committee member observed:

“We will see at some firms, at least in the very near future, more of these types of roles becoming undertaken by a computer program or a paralegal type role:

- document reviews
- disclosure tasks - e.g. initial reviews/comparisons of documents, entry into electronic data systems, some types of issue reviews and analysis
- preparation of “standard” agreements - such as basic shareholder agreements, employment agreements etc.

I’m sure there will be other similar things as well. The point is this - in the past these have been the types of tasks where first year graduates have ‘learned the ropes’ and got exposure to basic concepts in the section they are working in. As those kinds of changes affect more firms, there will be less of the ‘traditional’ first year graduate tasks for them to learn on. Given there is going to be less scope for graduates to learn ‘on the job’, and they aren’t really going to be equipped to do more high level work in their first year, firms will likely start thinking about the amount of graduates they take in and what roles they do. It just means that the ‘real world’ or ‘real work’ experience side of things is going to become more important for law students”.

The Committee also noted that many firms are uncertain about bearing the cost of training graduates and whether it is sustainable given the disruptions to the industry. It was observed there is a fear of applying resources to supervision and training only to have an individual leave the firm. It was noted that many young lawyers do not know what they wish to specialise in and this can cause difficulties in directing training efforts.

The Committee noted the approach taken by one employment law firm, which introduced an automated on-boarding program and a comparatively low training wage for the first six months to ensure all new employees were trained to the same standard.

The Committee noted the existence of virtual training platforms such as Forage (formerly Inside Sherpa)¹⁹ as a means of augmenting and broadening the training opportunities of students and new lawyers.

¹⁹ <https://www.theforage.com/>

One suggestion of the Committee was to consider an extended Practical Legal Training Course with an extended experiential component to assist in preparing graduate lawyers to be job-ready. It was acknowledged that, while a worthwhile pursuit, this would require national agreement amongst Admitting Authorities. The USA has models designed to transition graduates into the workforce. In particular, “legal incubators” focus on transitioning graduates to “low bono” practice and provide training modules on business development and technology.²⁰ The Chicago Bar Foundation hosts the ‘Justice Entrepreneurs Project’, which borrows principles from successful incubators to provide training, mentoring and other resources and support to participating lawyers to establish sustainable law practices that provide affordable services to low and middle income people and businesses.²¹

A renewed focus on the effectiveness of continuing professional development was announced by the Victorian Legal Services Board in its 2020 Issues Paper on CPD in Victoria.²² The Issues Paper explored issues relating to better identifying the competencies needed to be a successful legal practitioner and aligning existing CPD regulation to facilitate the promotion of true ongoing professional development.

A further opportunity was seen in mentoring and experience transfer between senior practitioners and junior lawyers:

- It would be beneficial for business models to permit all senior practitioners to mentor a junior lawyer from outside their practice area within a firm, or innovatively across firms
- Retired and exiting consultant senior practitioners are uniquely placed to pass on their experience to junior lawyers through mentorship arrangements, to their mutual benefit and the long term benefit of the profession.

The Committee also noted there is a place for “reverse mentoring.” If existing experienced staff don’t possess the required technology or data skills graduates and young lawyers, who do have those skills, could be involved in the training/mentoring of existing staff. The potential benefit to a law firm of doing so is greater than the mere acquisition of additional skills.

The Committee noted that continuing professional development requirements (particularly quality assurance) and key requirements (of which legaltech might be at least one) should be tightened for all practitioners. It was opined that the current regulatory setting was not consistent with the concept of ‘continuous lifelong learning’. In this regard, the Queensland Practice Management Course was seen as a capstone. The Committee saw there was potential for CPD requirements to be enhanced to improve the knowledge and skills of all lawyers.

²⁰ See https://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/ and <http://www.andreaperrypetersen.com.au/legal-incubators-doing-well-to-do-good-with-lawyer-and-fulbright-scholar-fred-rooney/>

²¹ <https://chicagobarfoundation.org/jep/overview/>

²² <https://lsbc.vic.gov.au/sites/default/files/2020-06/CPD%20Review%20-%20Issues%20Paper.pdf>

What will the legal profession need to do to manage the transition/transformation of the existing lawyer population?

The Committee noted a number of challenges for existing lawyers:

- Succession for practitioners is problematic in many locations;
- The market for sale of many small and suburban law firms is reportedly challenging, particularly those without up to date customer contact databases²³ and/or those who have not kept pace with the use of technology in legal practice;
- The transfer of knowledge and experience from the older generation to the younger lawyers is not promoted in the current law firm business model;
- Implementing effective change management internally in firms can be challenging;
- Disruption and change has an impact on staff generally – e.g. changes to the roles of support staff, explaining changes in the workforce and retaining staff through significant changes;
- There is an oversupply of inexperienced lawyers and an undersupply of experienced lawyers.

More specifically, the Committee noted four cohorts facing particular challenges:

- Pinnacle lawyers who are aging out of the profession: the value proposition in exiting firms, particularly smaller firms, has changed since they commenced and there are few mechanisms to get their experience transferred to junior lawyers;
- Senior Associates / mid-career lawyers: many struggle for opportunities for promotion and are largely self-educating to fill gaps in knowledge with qualifications such as Master of Legal Business courses to acquire skills;
- Junior lawyers up to 2-3 years of experience: are not needed as they once were. Some firms have highly automated transactional work systems requiring only senior associates/junior partners and paralegals;
- Early career professionals and recent graduates who have not had the opportunity to receive education in the changing areas of legal practice and who do not possess the experience to be employed at a more senior level: this group of professionals are in danger of falling between the gaps, which has been exacerbated by the recent COVID-19 pandemic. This group will largely be left to self-educate to bridge the gap but are least able to afford to do so.

It was observed that there is a tension as CPD does not push lawyers to develop new or different capabilities under current regulatory settings. The New Zealand model obliges practitioners to plan their professional development at the beginning of a year and to report upon it at the end. It was accepted that this would introduce additional compliance cost to the profession but that regulatory intervention may be required to broaden and modernise the skill base of the existing profession.

²³ Steve Tyndall, 'What is your practice worth if you were to sell it?' QLS Proctor (Article, 1 September 2019) <<https://www.qlsproctor.com.au/2019/09/what-is-your-practice-worth-if-you-were-to-sell-it/>>

What are the potential consequences for lawyers and firms if they ignore developing broader knowledge and experience in the current and next generation of lawyers?

The Committee observed that innovation is now a necessity. In particular, two issues need to be prioritised:

1. Lawyers need to innovate and deploy technology to their advantage to remain competitive and improve effectiveness. Inefficient law firms will struggle against competitors who ably deploy new technology and business models, resulting in principals facing financial pressure and change fatigue. This will have adverse mental health consequences and presents challenges for the resilience of the profession and its ongoing relevance.
2. A viable and effective law firm is the best succession plan to attract a new generation of lawyers as staff and new proprietors.

The Committee identified risks such as cyber security breaches, becoming obsolete, missing out on growth and collaboration opportunities and increased resilience pressure if a broader developmental approach was not adopted.

Recommendations - Knowledge and Skills

The Committee recommends:

1. To foster diversity of experience and capability law firms ought to:
 - adopt a position of deeper engagement of their employees and clients,
 - adopt collaborative leadership thinking,
 - develop high performing multidisciplinary teams,
 - review methods for promoting all talent (not just lawyers) to encourage creativity and innovation of services,
 - recruit and value employees with skills complementary to legal practitioners,
 - engage with and promote diversity and inclusion of their workforce,
 - be engaged and proactive in the profession and the community.
2. Legal educators ought to place a greater emphasis on the acquisition of skills beyond 'black letter' law learning, including focusing on:
 - Knowledge of the risks and benefits of technology and its application in legal practice,
 - Higher-order critical and creative thinking and complex problem-solving skills,
 - Knowledge of data forensics,
 - Project management skills,
 - Financial business acumen, including the ability to understand basic accounts,
 - Collaboration skills including mediation skills, facilitation and conciliation, working with other specialists and individuals from diverse backgrounds,
 - Stakeholder engagement and relationship management skills,
 - Diverse cultural knowledge and sensitivity,
 - Ability to manage online reputation and personal brand awareness,
 - Ability to identify and market differentiating factors and specialty niches.

3. To assist in training graduate lawyers, Legal Admissions Authorities and Practical Legal Training Course providers ought to consider extending pre-admission requirements to include an extended experiential component, potentially comprising of six months full time equivalent experience in a legal setting, and to establish a regulatory sandbox that allows and promotes experimentation and innovation in practical legal training for those providing and receiving it.
4. To facilitate experience transfer between senior practitioners and junior lawyers, law firms ought to consider establishing programs for senior practitioners, particularly consultants with significant experience, to mentor junior lawyers from outside their practice groups or outside their firms and vice versa (to promote reverse mentoring).
5. Queensland Law Society ought to consider reforming continuing professional development (CPD) to promote continuous lifelong learning focusing on specific skills needed in the profession.

Part 3 - Tools and Technology

The Innovation Committee considered the use of tools and technology in legal practice and identified three key issues:

1. What are the main challenges and considerations in selecting technology for use in legal practice?
2. Why use technology and what are the hallmarks of successful use of technology in legal practice?
3. How and when should lawyers be educated about technology? Should there be a requirement to keep up to date with the application, benefits and risks associated with technology?

Tools and Technology

Law firms have a reputation as being conservative and slow to adopt new technology. However, there are a number of firms which have made new technology a key element of their business model. The Committee observed that:

- Many firms do not have a consistent strategy for their use of technology;
- There is a tendency to see new technology as a ‘silver bullet’ for increasing efficiency and innovation;
- Many firms use outdated technologies but are reluctant to update these due to uncertainty regarding integration capabilities and the cost of new or different products; and
- There is often a misunderstanding that technology is a system to be purchased as a standalone product. This overlooks the need to provide client centred legal services/products that fit the business system of the law firm.

The Innovation Committee noted that innovation is not just about using new technology and merely adopting technology will not necessarily benefit law practices. It is the view of the Innovation Committee that the perception of technology as being the same thing as innovation must be dispelled to help firms better understand the concept of innovation and circumvent the pitfalls of poor technology adoption. The adoption of technology affords firms the opportunity to innovate their business operations and model, but realising the value of new technology often requires changes to operational and/or business models. Becoming digitally ready from a business perspective is as important as the technology adopted and this must be considered along with the needs and expectations of the firm’s clients.

The legal profession has traditionally maintained a separate identity from the rest of the corporate world. This stems from the historic and symbolic role of a legal practitioner as a professional advocate and has resulted in the legal profession adopting business practices that are contrary to many commercial practices, such as only acting after others have taken first steps (precedent based decision making), being risk adverse, viewing a law firm as separate from other types of businesses and tracking the changes in law and not the wider business marketplace.

Lawyers are often seen as “perfectionists” and this does not necessarily facilitate innovation. To thrive in the current market, law firms need a higher tolerance for novelty and innovation complemented by the desire to work with and encourage ideas from sources within the law firm, encourage the participation and engagement of clients, and continuously update and change their services/products. Innovation cannot occur if a firm waits for a new service or product to be “perfect”.

Innovation, especially technology projects designed to increase efficiency, may create tension for lawyers who see this as a threat or who gain value from the human aspect of lawyering. It also operates contrary to the preferred method of valuing a lawyer’s contribution to the provision of legal services: the billable hour.

Commercial corporations are exploring legal solutions tailored to their needs, and view technology as a means to facilitate these tailored solutions. The drive for client-centred, tailored and holistic solutions is illustrated by the growing number of in-house counsel.²⁴ To remain in demand, law firms will need to take into account the ‘needs’ and the ‘value’ that legaltech may bring to their practices and clients, and make smart investments and measured risks in implementing innovative solutions.

The slow adoption of innovation can arise from concerns of failure, risk and costs. The Innovation Committee notes that these concerns can be mitigated by:

- Keeping abreast of changes in the law and its practice, including by setting the application, benefits and risks associated with relevant technology as a key continuing professional development goal;
- Making a proper analysis of need and value of technology as a tool to enable a business outcome (such as improving business operations, increasing efficiency or enabling a new value proposition to clients);
- Diagnosing the business model and type of work undertaken by the law practice;
- Employing a client centred approach to the delivery of legal services/products (see **“Focusing on the real problem – design thinking”** below for an explanation of design thinking in legal practice); and
- Tailoring the appropriate technology to clients and the business requirements.

In the future, there is likely to be exponential growth in the number of technologies and the capability of systems for machine learning. Notable systems include:

- LexMachina,²⁵ a legal analytics platform which can predict the outcome of patent disputes more accurately than humans by using machine learning of 100,000’s of prior outcomes
- Affectiva,²⁶ a human perception artificial intelligence (AI) system which can accurately detect nuanced emotions, complex cognitive states and behaviours.

However, these technologies in and of themselves may not provide a complete solution to the ‘more for less’ expectation of consumers. Until now this has been achieved by using lower cost labour, but soon it may require the systemic use of technology to augment the work of lawyers.

What are the main challenges and considerations in selecting technology for use in legal practice?

When incorporating innovation into their operations, legal practices should consider:

- client needs and expectations, including access to technology and familiarity with its use;
- the changing legal market place and how/where their practice fits into it;
- the changing capabilities and expectations of employees (human labour), and ensuring that these are being deployed, using technology (digital labour) to provide the best quality legal services/products;
- redefining “value” so it reflects contemporary legal practice, which may require a reconsideration of using time as the sole measure of value with regard to services/product delivery;
- achieving the best experience for clients with the most client-centric solution; and
- viewing technology as a tool to assist in creating effective and efficient solutions for clients.

²⁴ Tyler J. Replogle, ‘The Business of Law: Evolution of the Legal Services Market’ (2017) 6(2) Michigan Business & Entrepreneurial Law Review.

²⁵ Lex Machina <<https://lexmachina.com/>>

²⁶ Affectiva <<https://www.affectiva.com/>>

As tailored solutions will inevitably differ between clients of different legal practice areas, the manner in which technology is utilised is key, noting that “technology cannot turn a good enterprise into a great one, nor by itself prevent a disaster”.²⁷

As we transition to a data economy, it has been said that the world’s most valuable commodity is data, not oil.²⁸ Law firms are repositories of valuable data and there is an opportunity for law firms to use this resource to provide better service, create new product offerings and to guide the decision of selecting and implementing appropriate technology to support the work of the law practice. This opportunity needs to be considered in the context professional ethics, including the obligation of confidentiality for legal practitioners and overarching schemes regulating data and privacy rights.²⁹

Business analysis is the first step in selecting technology

Prior to any technological implementation it is vital to consider the type of work that could be changed through technology. Broadly, lawyers perform three types of work:

1. Procedural work,
2. Skills and process work, and
3. Brain work requiring expertise and innovation.

Procedural work is highly repetitive and predictable, often performed in a highly transactional environment (e.g. routine conveyancing, enforcing minor debts, straightforward compensation claims, routine divorce proceedings, confidentiality agreements, and filing trade mark applications). These types of transactional matters are suited to automation as they are parameter driven, with structured formats requiring solicited input from clients through a technology platform. In this context, focus on detailed structured workflows and exception handling are key to good technological adoption.

Skills and process work is somewhat repetitive or predictable but still requires specific human expertise and legal application from a solicitor to tailor the advice to the client’s circumstances. This type of work requires a moderate degree of customisation of standard base documents or precedents (e.g. bespoke franchising arrangements, production of affidavits and pleadings in litigation or business sale agreements). These types of work can benefit from a comprehensive library of precedent material and the expertise of a practitioner with knowledge of the clients’ desired outcomes and the relevant law, assisted by AI drafting software to check drafting and suggest additional clauses.³⁰

Brain work is high level bespoke legal advice that can only performed by a highly experienced practitioner with the ability to apply the law to a client’s niche circumstances. This type of work has little repetition and calls for the creation of highly bespoke advisory materials. It often requires a relationship business model, where a high touch client experience is critical to perceptions of good service. This type of work is customised and not well suited to automation or significant replication in technological workflows. It may be supported by AI assisted research tools and basic document creation software.

Law firms considering implementing legaltech should consider how aspects of their practice fit within each of the above categories. This involves unpacking the firm’s services, and considering which aspects or services may appropriately be commodified and standardised (such as simple transactional services) and what aspects must necessarily remain bespoke (such as complex, novel and high risk matters). When considering how business practices may be reformed, law firms should first creatively consider what the best solution or situation would be regardless of feasibility, and then work backwards to discover the most pragmatic solution. Once this process is completed, firms can review the available technologies with a thorough understanding of what solution and outcomes they are seeking. This exercise will assist firms to determine what parts of their practice may benefit from legaltech, reducing the risk of an expensive misapplied technology.

²⁷ Jim Collins, *Good to Great*, p.156

²⁸ The Economist, the world’s most valuable resource is no longer oil, but data (6 May 2017) <<https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data>>

²⁹ Such as the GDPR framework applicable to persons in the European Union: <https://gdpr.eu/>

³⁰ See e.g. www.smarterdrafter.com.au, <https://www.contractprobe.com.au/>, <https://tryprose.com/>, and <https://www.donna.legal/>.

Technology needs to be tailored to a well understood client and business need and tested in order for it to serve the needs of the firm or to enable the firm to innovate and provide improved or new value propositions to their clients. It may be that differing parts of a law firm require a differing approach to technology adoption and a 'one-size-fits-all' solution could never achieve a consistent positive outcome.

The Innovation Committee has noted that there are challenges associated with the acquisition and deployment of technology in the legal sector, including:

- Decision makers in the firm may not have the necessary knowledge to ask the right questions when considering technology options;
- Small firms/sole practitioners have limited time and funds to identify and access new technology that will work for them;
- Law firms lack information and understanding of technology compatibility (i.e. if new technology is going to work with existing/legacy IT systems);
- Demonstrating a tailored minimum viable product of new legal technology can be expensive, which can also be a barrier to implementation, unless there is an immediate business case for it.

Some law firms have been slow to move away from the traditional understanding of IT departments as a service centre with a maintenance role to involving IT in selection, procurement and digital strategies to improve client experience. The Innovation Committee has noted the experience of some firms with technology has not been positive. There have been instances of IT salespeople leveraging their technological understanding against legal professionals, inducing them to purchase systems that within months of their implementation proved ineffective to meet the firm's needs. In one of these instances, a firm spent \$40,000 on a tech solution that after 3 months was determined not to be suitable for the type and style of practice of the firm.

Law firms should endeavour to:

- independently research tech solutions and develop a greater understanding of the impact and benefits of the technology, to mitigate the risk of investing the firm's time and financial resources in an inadequate tech solution;
- understand industry practices relating to "try before you buy" options;
- collaborate with other firms who have already adopted technology to gain insights from their experiences or form a 'buyer's group' to share evaluations; and
- identify and engage a credible and independent tech consultant to identify, assess and suggest viable tech solutions

Digital readiness is an area the Innovation Committee has noted could benefit from CPD material that provides information on how to use technology and how the technology works. This approach may provide an incentive for Queensland practitioners to undertake training in new areas of practice management, whilst providing information on the use of practice management software, accounting software and information on how digital competitors operate.

What are the hallmarks of successful use of technology in legal practice? Why use technology?

The use of technology by service providers is largely driven by technological disruption across all industries. The process of innovation within the firm environment is experimental and iterative, and the potential for negative outcomes and set-backs in the early stages of implementation is to be expected and welcomed. The development and successful deployment of legaltech is usually the result of an evolution in design, failing fast, failing often, and understanding there is value in the process as well as the outcome.

Innovation provides an opportunity to work collaboratively inside and outside the firm, drawing on multidisciplinary experience and feedback from clients. Not all innovative ideas will be pursued. Most firms direct their innovation efforts and available resources to resolving client pain points first. Innovation that supports continuous improvement is a process and a system, requiring inputs and outputs. It requires a dedicated person to lead, manage, monitor, assess and report on the innovation efforts.

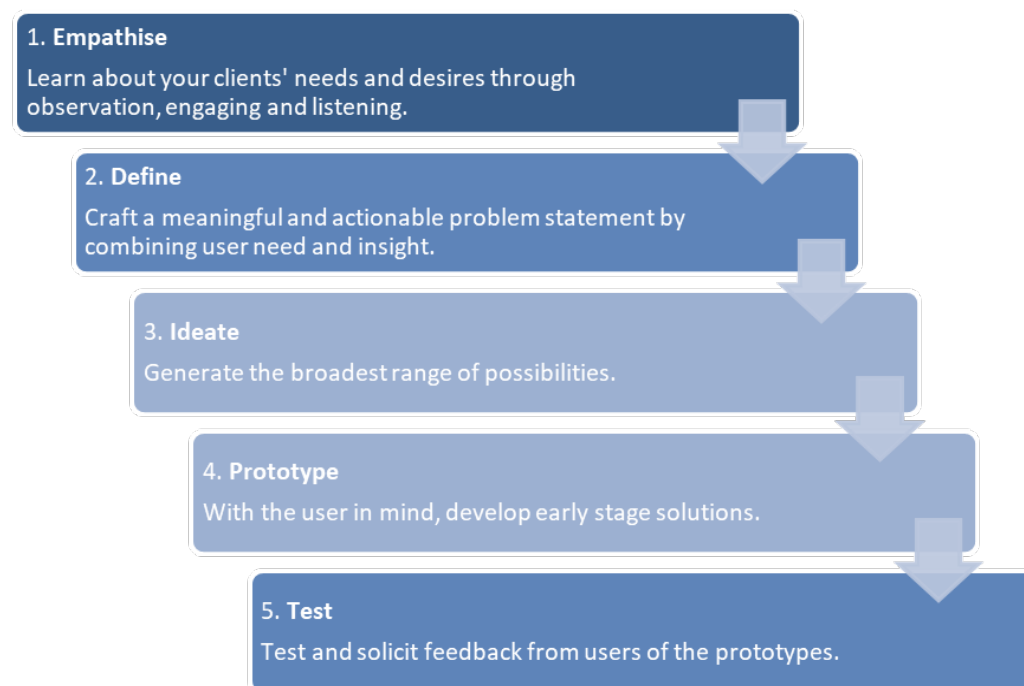
The Innovation Committee notes that contrary to media reporting, legaltech in practice is best implemented when designed to improve a law firm services/products for the benefit of their clients and not to replace practice areas and displace workers.

Effective client focussed legaltech implementation has a specific target audience or outcomes based goal. An example is Shine Justice Ltd's Claimify, which is a personal injury firm operating online intended to assist clients with Queensland motor vehicle and total and permanent disability (TPD) claims. Claimify features a self-service online interview, deep learning case prediction, an online client dashboard and incorporates claims automation.³¹ The success of the system has been attributed to clear targeting towards people who can't access a traditional legal services due to commercial considerations (such as their lower entitlement to compensation), but who are ineligible for legal aid. Whilst initially skewed towards younger and rural based claimants, the offering is being taken up by a diverse range of claimants and has been developed with a multidisciplinary team including psychologists and design experts.³² Shine Justice's case study is an example of good practice in deploying a legaltech solution to an identified problem with defined and limited scope

Focusing on the real problem – client centred design thinking

The Innovation Committee understands that the most common complaints of clients relate to communication and service delivery and not the standard of legal work. Convenience in the modern age has become a core selling point for goods and services and technology provides the tools to facilitate convenience. While technology can improve procedural work for lawyers and allow them to act more efficiently and accurately, front end customer experiences can be enhanced through technology such as client portals and dashboards.

Assessing the need and value of innovation can be expressed through the five stages of client centred service/product design thinking developed by the Stanford Institute of Design:³³



³¹ Shine Corporate Ltd, Annual Report (2019), 32.

³² Jake Gardiner, 'A model of virtual legal practice: Claimify of Queensland, Australia' (Article, August 2019) Law, Technology and Access to Justice <<https://law-tech-a2j.org/legal-market/a-model-of-virtual-legal-practice-claimify-of-queensland-australia/> and <http://www.andreaperrypetersen.com.au/how-a-multidisciplinary-team-used-machine-learning-to-make-claims-easier-for-clients/>>

³³ Introduction to Design Thinking Process Guide, <<https://dschool-old.stanford.edu/sandbox/groups/designresources/wiki/36873/attachments/74b3d/ModeGuideBOOTCAMP2010L.pdf>>

For legal service innovation, design thinking can allow law firms to identify and reflect on what their client and business needs are and review and test solutions before implementing them, with the goal being a human centred solution. For example, application of design thinking in a law practice may lead a firm to implement a process on client intake to capture what the client's expected outcome or cost of the matter may be, and then return on finalisation of the matter to determine if those initial expectations were met, exceeded or left unaddressed as a part of measuring client satisfaction and likelihood of providing positive referrals. Such a requirement may be conveniently fulfilled by a legaltech solution and will provide a law firm invaluable client satisfaction data, which can then be taken into account when practitioners are scoping out future retainers, assessing billing and delivering services.³⁴

Social media and the right content

Social media literacy is becoming more important as one in three people in the world use these platforms (with active user accounts in between 3 and 3.5 billion and growing).³⁵ It is crucial for law firms to recognise social media as the core environment for marketing and branding. Younger clients aged between 16 and 44 years, in particular, want to hire a lawyer with a social media profile. Social media is an important tool along with "word of mouth" referrals when connecting people with lawyers.

The Innovation Committee notes the challenge in creating legal content that is meaningful and engaging to a wide variety of users through social media. The practice of condensing esoteric legal materials and reasoning into a social media post is difficult.

Firms can approach social media in the same manner as other legaltech solutions: by assessing the needs of clients, assessing the value of social media, considering the business structure and tailoring social media to the parts of the businesses where it will be most effective. Social media holds two different purposes for firms to consider: client acquisition and brand building. Client acquisition is the advertising of services to draw in business whereas brand building is the use of social media to build engagement, followers and subscriber numbers, allowing the firm to become more visible in the online space.

As many people do not know if they have a legal issue in the early stages, law firms may need to either educate their audience with legal information, or promote their firm so that it is the first one individuals think about when the legal issue arises. This content could include legal information, news articles, case studies, memes or other forms of memorable and engaging content.

Before publishing anything on the internet, it would be prudent to carefully consider the *Australian Solicitors Conduct Rules 2012* with respect to any advertising or representations made by the firm or practice. Firms should also exercise astute judgement when choosing to publish something relating to the law or legal practice and ensure that any legal information published does not shift into legal advice or, in the example of a case study, provide identifying information in breach of ethical duties.

While social media and an online presence is important for a law firm, the Innovation Committee acknowledges that the greatest marketing for law firms is positive referrals and word of mouth from clients and colleagues. Using social media and online marketing can supplement the reputation of a practice, forged by the work of its legal professionals and reinforced by the quality of their service delivery, emotional intelligence and relationship building skills.

³⁴ For more information about the use of client centred design thinking in legal practice, refer the the nine episode video series from the Centre for Legal Innovation – the Design Thinking and Doing Series: <https://www.cli.collaw.com/events-and-workshops/2020/10/27/legal-design-thinking-and-doing-series>.

³⁵ Esteban Ortiz-Ospina 'the rise of social media' (Article, September 2019) Our World in Data <<https://ourworldindata.org/rise-of-social-media>; <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/>; <https://thenextweb.com/contributors/2019/01/30/digital-trends-2019-every-single-stat-you-need-to-know-about-the-internet/>; <https://blog.hootsuite.com/social-media-statistics-for-social-media-managers/>>

Should there be a requirement to keep up to date with the benefits and risks associated with relevant technology?

The impetus for lawyers to become educated about technology may come from developments such as in Canada where successful parties have had their legal costs reduced if they have not used technology in litigation. In the 2018 decision of *Cass v. 1410088 Ontario Inc.*, 2018 ONSC 6959, the judge reduced the costs awarded for factors including “if artificial intelligence sources were employed, no doubt counsel’s preparation time would have been significantly reduced.”

The Innovation Committee noted lawyers should be educated about the ethical implications of technology in law practice during their legal education and on a continuing basis during practice. The importance of this education is underscored by the fiduciary duty of a trustee managing funds to use technology to guard against cybercrime and take steps to have secure IT systems and data storage.

The Australian Solicitors Conduct Rules (**ASCR**) require in Rule 4.1.3 that Solicitors must deliver legal services competently, diligently and as promptly as reasonably possible. While not explicit, the need to become familiar with the application, risks and benefits of technology to deliver legal services as promptly as reasonably possible may be a valid interpretation of the Rule.

In 2012, the American Bar Association revised comment 8 to **ABA Model Rule 1.1**,³⁶ its competence rule, to expand the duty of competence to include an affirmative obligation to “keep abreast of changes in the law and its practice, including the risks and benefits of relevant technology.” Thirty-eight United States state jurisdictions have adopted a form of that model obligation, including a mandatory 3 CPD points requirement in Florida.³⁷

It is timely for the ASCR or its commentary to be updated to adopt a similar position to the American Bar Association Rules on maintaining competence by understanding the application, risks and benefits of relevant technology.

Recommendations – Tools and Technology

The Committee recommends:

1. The Society consider revising the ASCR and/or its commentary to adopt a similar position to the American Bar Association Rules requiring practitioners to understand the application, risks and benefits of relevant technology to meet their duty of competence.
2. The Society develop CPD and training resources to support practitioners in developing their digital literacy. For example, the Society could run events on the proper use of technology including video conferencing, accounting software, MS Teams and practice management technology.
3. The Society develop resources providing a framework to evaluate technology, including video conferencing, accounting software, MS Teams, and practice management technology. These resources could outline considerations regarding the application, benefits and issues for adoption by practices of differing sizes and focus.
4. The Society promote the value of business management, diagnostics, design thinking and creative problem solving in the management of law firms.

³⁶ American Bar Association, *Rule 1.1. Competency – Comment* <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/>

³⁷ LawSites, *Tech Competence* <<https://www.lawsitesblog.com/tech-competence>>

Part 4 - Law Practices for the Future

The legal services market is being disrupted by a new generation of clients and young lawyers with different values, expectations and skills. Appealing to clients and lawyers within this demographic requires innovative solutions extending beyond simply adopting technology. When considering how innovation may aid the evolution of a law firm practitioners should examine and evaluate the firm culture, business structure and service/product delivery.

Innovation supported by technology must be client-centric in its value proposition and service delivery. Firms considering restructuring their business should consider how to best serve their clients as well as how to improve their staff's well-being, safeguard the firm's future and increase its value.

The Innovation Committee has noted the following mechanisms as building blocks for the law practices of the future:

- Embracing client feedback and expertise to help law firms operate better and provide better services
- Effective knowledge transfer between more experienced and new solicitors and 'reverse mentoring' of experienced lawyers on new technology, diversity, inclusion and consumer attitudes
- Embracing new firm structures such as incorporated legal practices and virtual legal practices
- Flexible or hybrid working
- Gig economy, piecemeal services and unbundled legal services
- Lawyer on-demand services
- Embracing alternate billing practices such as value billing and contingency fee basis
- Greater interconnectivity with other professional services (finance, tax, social work)
- Multidisciplinary legal practices.

Retention of Lawyers

There have been reports of a significant rate of people leaving the legal profession within their first three years of practice. According to Australasian Legal Practice Management Association (**ALPMA**) surveys the top human resources issue for law firms is employee retention and staff management, with a 21% staff turnover rate for lawyers.³⁸ The Law Council of Australia's *National Attrition and Re-engagement Study (NARS) Report* notes that workforce attrition is particularly prevalent among young female lawyers.³⁹ There are a number of drivers of this trend, including:

- Long working hours and poor work-life balance;
- The accessibility of mentors to support career development;
- For women in particular, a lack of flexibility in working arrangements and opportunities for promotion and career advancement; and
- Experiences of discrimination and harassment.⁴⁰

Law firms seeking to retain talented young lawyers and slow the trend of workforce attrition within the legal profession will need to reconsider their firm culture and leadership. Retention in the profession could be promoted by exploring flexible work practices and alternative billing models to remove the pressure of billable hours that degrades the work-life balance of employees, providing mentorship to support career progression, and exploring ways to achieve gender equity in the workforce.⁴¹

³⁸ Australasian Legal Practice Management Association, HR Issues & Salary Survey <<https://www.alpma.com.au/hr-issues-salary-survey>>

³⁹ Law Council of Australia, National Attrition and Re-engagement Study (NARS) Report (Final Report, 2016) 6-7.

⁴⁰ Ibid.

⁴¹ Ibid 8.

Mentorship is particularly important in the changing technological landscape. Technological innovation means early stage tasks traditionally performed by clerks, paralegals and entry level solicitors are increasingly automated. The value of lawyers is no longer largely in their capacity to provide legal services, but rather encompasses their experience and expertise in a legal environment. Accordingly, knowledge transfer will become increasingly important for the sustainability of firms and the legal profession as more experienced solicitors will gradually retire and young lawyers enter the profession.

Ultimately, retention of young lawyers requires law firms to rethink their culture and practice models to emphasize flexibility and support, including by providing comprehensive mentorship. For women, it is particularly important that firms foster gender inclusivity, accommodate flexible work practices and provide opportunities for career progression.

Innovation and Focus – How Law Firms can be Sustainable

As clients become more technology savvy and the legal services market widens, law firms are increasingly competing with technology providers. Artificial intelligence (**AI**) software can secure clients by doing cost-effective “front end” work, removing or delaying the need to see a lawyer. To compete, law firms will need to understand their value proposition, what ‘human’ skills and services they can provide, and deploy the right combination of human and digital labour to best serve their clients.

A number of firms have set up their own legaltech and lawtech hubs to help develop and beta test new technology, and have invested in start-up ventures in legal tech.⁴² However, private technology corporations typically have the advantage of being funded through venture capitalists, a resource that lawyers cannot access.⁴³

The following list is a non-exhaustive list of tools provided by technology companies available to clients:

- Expertise automation
- Legal research automation
- Document drafting
- Natural language generation
- E-disclosure
- Contract analytics
- Predictive analytics
- Document management.

To remain competitive, the Innovation Committee believes that law firms will need to shift their attention to service delivery, both technology assisted and client-centric and emphasise lawyers’ soft skills, which cannot be emulated by software, such as judgement, empathy, creativity and adaptability.

When it comes to hiring and training of new staff, law firms will need to look for who can provide soft skills. They will also need to ensure that staff can use technology to facilitate the requests of clients who want technology used to reduce transactional workload in their matter: i.e. AI lease reviews, document generation or e-discovery.

Using innovation in this way may not be compatible with the billable hour pricing model. Law firms will need to look at different pricing structures to assign appropriate value to the soft skills and ‘human’ element they bring to legal services.

⁴² See for example, initiatives by Lander & Rogers, Mills Oakley, Dentons NextLaw Labs, Dentons Next Law Accelerator, Gilbert & Tobin and Reynan Court.

⁴³ Anthony E Davis “The Next New Normal, Law Firms After the Lock Down Ends” Clyde and Co Presentation 2020.

Innovation and Billing – How Law Firms can be Sustainable

The use of technology and analysis of law firm data will lead to better pricing forecasts and decisions by firms, and allow them to better compete with firms who don't take those steps. To do this, firms need to be able to properly capture their client and cost data, and have an effective process for analysing that data.

Value billing has begun to aid in structuring firms to provide more accessible, holistic and client centred solutions. Value billing is representative of how the billing structure of the firm impacts the work performed. The system relies on comprehensive early consultation with clients to clearly set out desired outcomes and gives the firm an incentive to unbundle and understand each legal issue, in order to appropriately cost the matter. A more detailed client acquisition process allows for the firm to begin working on behalf of the client with a greater understanding of the issues and with a more developed relationship.

The Innovation Committee heard from David Wells of the Innovim Group (formerly managing principal of Moores in Melbourne) that a new class of client prefers value billing for its transparency, and his experience was that solicitors who successfully value bill were more satisfied with the value they provided clients. Not all clients may want a value billing approach, however the Committee noted that it was important for firms to consider different ways of pricing and billing clients. This may require a firm to provide different billing approaches for different clients and different types of matters.

The story of Moore's journey in innovative business processes is presented below:

Case Study - Moores

By 2010 David Wells, then managing principal of Moores in Melbourne, had spent three years trying to get the 60 lawyers at his firm to lift average daily chargeable hours from 4.35 to 5.5. This was not successful.

David remembers that at that time, the firm was focusing on benchmarking reports and partners believed that profit per equity partner was the measure of success.

"We were modestly profitable but hourly rates did not work well for us. Our lawyers lacked self-esteem. They lacked an appreciation of the value they created for clients. There was self-editing of timesheets. Despite good results, clients were still not delighted because they were often surprised by the bill", he said.

A consultant encouraged Moores to consider what it might mean to become a Firm of the Future as a way of differentiating Moores from other law firms.

"One brave principal in estate litigation decided to do a pilot with value pricing from the end of 2010 to June 2011. This was not billing according to the value achieved but giving the matter a fixed scope and price upfront on its own terms based on the anticipated value of the work to the client."

At the August 2011 retreat, Principals resolved to try value pricing across the firm for the next 10 months, aiming to open 50% of files on a value pricing basis.

As at 30 June 2012, the firm was still operating and 60% of files had been opened on the value pricing basis. At the retreat in August 2012, Principals resolved to price exclusively for value.

But it was not all smooth sailing.

"Despite the August 2011 resolution, we had allowed willing lawyers to continue recording time. Perversely, a few chose to do this. We found this was not ideal as the reports on time lacked integrity and could not be compared to other work. It also stopped those lawyers embracing change and developing their skills pricing for value. So, in 2013, we disabled the time recording capability in the practice management system and after that point, we never looked back.

"There have been many challenges. We lost a number of team members who were not value strategists and recruited some who were. New clients loved value pricing. Some old clients were sceptical. 'If they are changing the pricing model, it must be to make things better for the

law firm. That means it will be worse for us.’

“We found that some initial prices were too high and we didn’t explain the value to the client very well. Then some lawyers panicked and priced matters low to get the work but made a loss. Over time, we recognised that ‘discount’ is a dirty word and that we had to get much better at the value conversation. We quickly discovered that our lawyers who were good at cost estimates were usually good at pricing for value after a little practice.

“Our goal was to have the client understand the value the lawyer can create for the client in the particular matter. We do this by investing time upfront with the client to find out how the client wants their matter solved. We find now that the conversation about value at the outset develops trust and confidence with our clients.

“We turned our backs on benchmarking, we narrowed our focus and we closed some practice areas where we could not build depth of expertise, despite being profitable. We wanted a deep expertise in a smaller range of areas of practice rather than a broader capability.

“We revised how we assessed and motivated our staff. We found that bonuses didn’t motivate the team in the way we wanted and so we focused our staff assessment system on nine or ten holistic competencies to get a sense of overall performance, including:

- Fees generated and debtors
- Business development and relationships with good clients
- Skill at delegating and supervising staff
- Ethical performance
- Adding to the knowledge base of the firm.

“We found that creative knowledge workers wanted autonomy, support in mastery of their art and to feel they are contributing to achievement of the purpose of the practice. The significant effort we invested in developing the ‘Why’ statement of Moores was really worthwhile.

“We succeeded in deconstructing and reconstructing the ship while sailing. Moores is now a completely different practice to what we were seven years ago. We now accept that:

- Bad clients drive out good clients
- We are not a great fit for everyone
- It is OK to say ‘No’ and to refer clients who are not the right fit for us to another lawyer.

“No longer are we risk averse.

“Business model innovation is a lot harder than installing a new piece of technology⁴⁴. But it can work if you stay the course”, he said.

The need to invest and the law firm partnership model

The traditional partnership model for a law firm has facilitated personal and collective accountability in the provision of legal services for centuries. However, the advent of alternate business structures such as incorporated legal practices has highlighted shortcomings in the traditional model. This is particularly evident in the challenges and tension of the legal partnership model and the need to invest capital to facilitate innovation.

⁴⁴ “Technology cannot turn a good enterprise into a great one, nor by itself prevent a disaster”. Jim Collins, Good to Great, p.156

Substantial examples of technology driven innovation in the legal profession take time to be implemented and require business model changes to deliver business benefits. In many instances, such as the introduction of electronic conveyancing, process efficiencies do not arise from simply grafting technology to a paper-based process. Effective innovation requires revision of business processes before the adoption of and investment in technology.

Transitioning a law firm to an innovative new operating model requires a medium to long term investment strategy, to fund the required technology and business process changes. The impetus to adopt such an investment strategy can conflict with a partnership model where profits represent partners' income. An incorporated structure which permits a separation of ownership and control may better facilitate medium to long term investment decisions.

Investing in large scale pieces of innovative technology may be challenging for sole practitioners and micro-sized firms, which do not have the scale to invest, or the time to investigate cheaper, reliable options. For these practices, collaboration and establishment of networks or the adoption of a suite of 'out-of-the-box' solutions may present a viable option.

Working Remotely

The COVID-19 experience has forced many firms to change their business practices and implement new working arrangements and new technologies (including adopting wide-scale use of Microsoft Teams or Zoom). 2020 demonstrated the capacity of law firms to adapt and innovate quickly, and has opened the door to new and different ways to communicate and collaborate.

COVID-19 lockdowns have provided law firms with the opportunity to explore innovative work from home arrangements for staff. Some firms have traditionally been cautious of work from home arrangements, however, their concerns have largely been addressed, with compulsory work from home arrangements demonstrating the capacity for firms to function effectively without all employees in the office.

Daily schedule

The Innovation Committee noted that tasks such as staff communication and overseeing workflows are different in a work from home context. Daily virtual meetings were identified as beneficial in identifying the work being performed by staff and maintaining good work relationships. For example a standard day for a remote working team could include:

- Commencement of work day – either:
 - Have a 10 minute team meeting as to the tasks/matters that each team member would address that day; or
 - Circulate an email of the tasks/matters to be addressed for the day (as well as a list of other ongoing tasks/matters);
- Actual work day;
- End of the work day – either:
 - Have a quick round up of the tasks/matters actioned as well as an update as to any urgent or unplanned matters;
 - Update the morning circulated email with tasks that were actioned.

In structuring a working day in this way it was noted that it is useful if senior lawyers offer guidance to junior lawyers as to the likely duration of certain tasks/matters, so that workloads and expectations were appropriately managed.

Separating Work from Life

The Innovation Committee noted that one risk in primarily working from home is the difficulty of separating work and life. One Committee member recalled a sole practitioner colleague who forced himself to get an office space so that he could separate work from home; the practitioner otherwise found himself gravitating

to the work computer outside the hours he would normally work.

One way to address this issue is having a separate office room (more than just a study nook), as it acts like an office space that workers can leave once the day is over.

Maintaining Confidentiality

Client confidentiality must be at the forefront of the legal practitioner's mind when working remotely. It is important to consider what family members or neighbours may overhear. It may be prudent to conduct a risk assessment considering the sensitivity of the matters being dealt with and the privacy of the place where work can be conducted.

Challenges with Mentoring from Home

Members of the Innovation Committee have observed that a greater emphasis on working from home has presented challenges to mentoring junior members of staff. The traditional model of engaging with junior staff for on the job learning through shared experiences and exposure to time with senior members of staff has been disrupted through 2020.

Members of the Committee have identified issues in better engaging with and training junior staff who work from home, including:

- The need to ensure physically safe workplaces in the home from both an ergonomic and mental health perspective;
- Issues experienced by junior staff in effectively working from home on confidential or sensitive matters for prolonged periods if they live in share house arrangements;
- A need for experienced staff to consciously change the way they engage with junior staff with calls and regular check-ins replacing impromptu conversations;
- The potential for video training sessions and regular structured learning to be developed that can be repeated and accessed at any time, such as a video library or use of a learning management system.

Part 5 - Innovation and Access to Justice

Innovation in law and technology has the potential to improve access to justice. Along with properly funded legal assistance services and pro bono programs, innovation has a role to play in assisting vulnerable clients and the underserved missing middle. There is a significant demographic of people that have not traditionally been able to access legal services in appropriate and affordable ways. Technology may provide a way for this 'missing middle' to access legal services by making it more affordable, or by facilitating different, not-for-profit business structures, such as those implemented by law firm NewWay lawyers.⁴⁵

Technology can improve access to justice by:

- a. Improving efficiency and supporting cost reductions in the legal services market. Technology can benefit community legal practices, law firms and courts by streamlining back-end processes, administration and research, reducing the costs and time associated with managing a case. For community legal centres, while future-focussed innovation will assist, as set out in the Community Legal Centres Qld Digital Strategy, appropriate technological infrastructure (such as practice management systems and websites) is a priority.
- b. Simplifying information about legal processes and issues. Technology can facilitate greater access to information to the public by providing plain English information in accessible and interactive formats. Likewise, clearer and more accessible information about available dispute resolution processes in courts and tribunals would make such processes more accessible.⁴⁶
- c. For certain matters, self-help platforms like Do Not Pay may be able to help individuals understand and action their rights independently. However, it is debatable whether technology will be able to completely replace the need for a 'human' lawyer in the foreseeable future, particularly for complex, nuanced and novel cases.

Legal technology assisting community legal centres

The legal assistance sector is always met with the challenge of demand exceeding capacity to provide service. There are many opportunities for participants in this sector to embrace technology to enhance their scalability and reach.

As an example of the benefits of technology, the Innovation Committee notes that the following innovative solutions may assist Community Legal Centres in providing services to self-represented litigants:

- Detailed and/or autonomous intake and triage of clients (e.g. Anika Legal)⁴⁷
- Online legal advice
- Unbundling services⁴⁸
- Plain language interviews and/or natural language processing for issue identification, tailored information and document generation⁴⁹
- Online court documents (preferably integrated with Courts)⁵⁰

45 See NewWay Lawyers (Web Page) <<https://www.newwaylawyers.com.au/>> and Andrea Perry-Peterson, 'Episode 29 Pioneering the non-profit law firm model with Carolyn Devries' (Podcast) <<http://www.andreaperrypetersen.com.au/pioneering-the-nonprofit-law-firm/>>

46 See e.g. the chatbot SANDI established in the Queensland Civil and Administrative Tribunal, which helps the public resolve tree and fence disputes. <<https://www.qcat.qld.gov.au/about-qcat/sandi>>

47 College of Law, Centre for Legal Innovation (Web Page) <<https://www.cli.collaw.com/clic/2020/08/10/legal-techy-tuesday-series-anika-legal-website-and-client-intake-form-virtual-demo>>

48 Examples of unbundling can be found within LawRights' Self-Representation Service <<http://www.lawright.org.au/cms/page.asp?ID=61117>> but also private practices such as Affording Justice <<http://affordingjustice.com.au/>> .

49 For example A2J Author (Web Page) <<https://www.a2jauthor.org/>> and see Andrea Perry-Peterson, 'Episode 28 How software is uniting law students, legal aid and courts with John Mayer' (Podcast) <<http://www.andreaperrypetersen.com.au/how-software-is-uniting-law-students-legal-aid-and-courts/>>

50 See Law Help Interactive <https://lawhelpinteractive.org/> and <http://www.andreaperrypetersen.com.au/usingtechtomagnifythegoodnessoflaw/>

- Online dispute resolution and mediation services⁵¹
- Trusted intermediary referral services⁵² and firm evaluation platforms like FirmChecker⁵³
- Virtual (and/or videoconferencing) call centres (this may particularly assist disabled clients or those in rural, regional or remote areas).

Justice Connect's Legal Help Gateway, which allows for online intake and triage of an individual's legal need so they can be referred to the community legal centre with the most appropriate services. Justice Connect states "time taken to process applications has dropped between 22 and 44% across programs when compared with phone-based intake."⁵⁴ Using human centred design principles, Justice Connect has developed an online referral tool and pro bono portal pilot,⁵⁵ and is working with the University of Melbourne to develop a taxonomy of legal issues that can be recognised from client's natural language.⁵⁶

Penda App is an application created by the Women's Legal Service Queensland in collaboration with Financial Rights Legal Centre and supported by Credit Union Australia.⁵⁷ The app aims to break the cycle of domestic and family violence by combining financial, personal safety and legal information with nationwide referrals. It provides practical financial advice to assist with financial safety planning, information on how to access emergency money, crisis payments and emergency housing. Penda features a number of safety measures, including an optional passcode security setting and a lock-screen game accessed by shaking the device or tapping an icon.⁵⁸

A program called "Free Legal Answers" connects people with legal problems to pro bono lawyers who provide legal advice online.⁵⁹ The program is supported by the American Bar Association in the United States and was recently piloted in Australia by Justice Connect.

Challenges

"Capacity is, and always will be, a challenge. As a key enabler of innovation, efficiency and sustainability, technology requires dedicated effort, capacity, and funding. A key challenge for CLCs is to balance this with the demands of service delivery priorities which typically take priority over longer-term digital capacity building. Hence, it is critical for the sector and its funders to recognise the need to support and fund digital capacity building initiatives 'above and beyond' existing funding allocations".⁶⁰

The Innovation Committee notes the following hurdles in regards to technology and innovation in the community legal sector:

- Funding restraints for investment in technology and limits on capacity;
- The need for human response and emotional intelligence in community work that cannot be replaced by technology;

51 In Canada, the Civil Resolution Tribunal is one of the first and most effective public online dispute resolution models – see <https://civilresolutionbc.ca/> and <http://www.andreaperrypetersen.com.au/innovating-dispute-resolution-for-the-future/>. See also Intermediation, and Australian based, commercial online dispute resolution service: <https://www.cli.collaw.com/clic/2020/07/29/legal-techy-tuesday-series-immediation-virtual-demo>

52 These may include social service and health organisations, but increasingly private referral platforms that have vetted both clients and lawyers such as legallyours.com.au can be helpful in connecting people with lawyers.

53 <https://www.cli.collaw.com/clic/2020/07/29/legal-techy-tuesday-series-firmchecker-virtual-demo>

54 <https://justiceconnect.org.au/about/our-approach/digital-innovation/gateway-project/our-intake-tool/>

55 <https://justiceconnect.org.au/wp-content/uploads/2019/06/Justice-Connect-Intake-Interim-Evaluation.pdf>

56 <https://justiceconnect.org.au/were-building-ai/>

57 <https://penda-app.com/>

58 <https://penda-app.com/2017/09/12/penda-app-now-available-for-download/> and <http://www.andreaperrypetersen.com.au/episode-41-how-to-meet-clients-needs-with-limited-resources/>

59 See <https://abafreelegalanswers.org/> and for a discussion on the ABA's approach to innovation, listen to <http://www.andreaperrypetersen.com.au/episode-45-the-pandemic-and-the-opportunity-for-reform/>

60 https://communitylegalqld.org.au/sites/default/files/downloads/pages/clcq_digital_strategy_paper_2020_v1.0.pdf

- The need for a better gateway for those seeking legal assistance services to be triaged and access the appropriate assistance at first instance;
- The need for better structure in the partnerships between law firms and CLCs;
- Clients who lack digital accessibility and/or literacy.

Opportunities for improving access to justice

In the United States, the Legal Services Corporation (LSC), the largest funder of civil legal aid for low-income Americans, announced \$4.2M in grants for technology projects last year.⁶¹ The LSC Technology Initiative Grants (TIG) program commenced in 2000 and, in 2019, awarded funds to 30 legal services organizations for technology projects that provided greater access to high-quality legal assistance and information for low-income Americans. Over its lifespan TIG has funded more than 720 technology projects.

In Australia, most grants for such activities are limited and tied to organisational funding for casework and direct service delivery. In Victoria, the Public Sector Innovation fund has financed some projects and in late 2019, the Victorian Legal Services Board & Commissioner released its list of successful applicants who met the “requirements of using technological and/or human-centred design orientated interventions to interrupt, streamline or change legal services and the justice system to improve access to justice.”⁶²

In New South Wales, an Access to Justice Innovation fund was announced in February 2019.⁶³ Similarly, the Queensland State Government announced \$10k per centre for upgrades to digital infrastructure,⁶⁴ an issue being supported by the work of Community Legal Centres Qld.⁶⁵

Despite these initiatives, more funding and resources is required to develop sustainable solutions to alleviate the access to justice crisis.

Community legal sector and private practices have developed new and innovative business arrangements, supporting community and pro bono initiatives. For example, the 2018 Rule of Law and Access to Justice Award was awarded to a project developed by Gilbert + Tobin that provided for document automation and a workflow technology platform to support asylum seeker applications. Gilbert & Tobin’s partnership with the Refugee Advice and Casework Service enabled the service to triage clients and improved the organisation’s capacity to manage a high volume of applications quickly and efficiently.⁶⁶

There are significant benefits that can accrue from a partnership approach between private law firms and community legal providers, however, these relationships need to be ongoing to have a sustainable and long-term impact. Consequently, partnerships should not be the sole approach to innovation to increase access to justice.⁶⁷ Rather, partnerships with private practices should supplement adequate government funding for investment in both back-end and client-facing technological infrastructure.

61 <https://www.lsc.gov/media-center/press-releases/2019/lsc-awards-more-4-million-technology-grants-legal-aid-organizations>

62 <https://lsbc.vic.gov.au/?p=6736>

63 <https://www.justice.nsw.gov.au/Pages/media-news/news/2019/Access-to-Justice-Innovation-Fund-applications-open.aspx>

64 <http://statements.qld.gov.au/Statement/2019/10/4/grants-awarded-to-queensland-community-legal-centres?fbclid=IwAR0QzY06lqfyK60S9p3ln160pfdNhnCqjRhciF5IZ6MANkFeXHwm6fi5so>

65 <https://communitylegalqld.org.au/policy/emerging-technologies>

66 <https://www.gtlaw.com.au/news/gt-wins-2018-ft-innovative-lawyers-asia-pacific-awards>

67 For other examples, see - lawyersweekly.com.au/sme-law/26429-how-can-you-increase-your-pro-bono-impact

Recommendations – Innovation and Access to Justice

The Innovation Committee recommends:

1. The Society lobby Government to establish a grants program for innovation and technology access to justice concepts. The program will enable community legal centres, not-for-profits and law practices to invest in technology projects which will bring significant access to justice benefits to Queensland. This funding should include allocations for ongoing maintenance, updates and proper evaluation to inform future projects.
2. Law firms with particular expertise in legal technology and innovative systems design should consider where they can form partnerships with stakeholders in the legal assistance and community legal sector to promote projects that can bring access to justice benefits to Queenslanders. The Society should consider whether it has resources to facilitate the coordination of such partnerships.
3. The Society should continue to educate the profession on unbundling, including ongoing guidance on ethical issues.
4. The Society should promote business structures and practice models that enable affordable legal services, and support such practices through offering discounted fees on practising certificates, membership and continuing professional development (**CPD**).