

LawyersWeekly

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Autumn 2020



A brave new world

How BigLaw is adapting to
a modern marketplace

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Emma Ryan
Editor
Lawyers Weekly

“2020 has fired off on all cylinders, with plenty of stories to cover and people to interview. We’ve certainly had our hands full, particularly amid COVID-19, and as always appreciate your support in helping us with our content efforts”

Hello, all – and welcome to another edition of the Lawyers Weekly magazine. 2020 has fired off on all cylinders, with plenty of stories to cover and people to interview. We’ve certainly had our hands full, particularly amid COVID-19, and as always appreciate your support in helping us with our content efforts.

We’ve certainly had our hands full and as always appreciate your support in helping us maximise our content efforts.

For this edition we start off by unpacking the new requirements law firms are about to have in recording overtime undertaken by grads and professional staff. Our new cadet journalist, Tony Zhang, has profiled several industry figures to get their take on whether we’ll see a fundamental shift in how employers manage their staff as a result. Check out the varied opinions on page 4.

Next up, senior writer Jerome Doraisamy examines the emerging roles we’re seeing in BigLaw, featuring special commentary from four people who have taken the leap into a new arena. With these new roles seemingly coming off the back of a push towards innovation, tech and project management, it’s fascinating to explore how they’re actually applied in practice. To find out more, head to page 6.

Elsewhere this edition, journalist Naomi Neilson explores two fundamental issues plaguing the profession. The first, on page 22 in our Wig & Chamber section, explores the criminal justice system and archaic sexual assault laws. Meanwhile, the second, on page 36 in our Protégé section, delves into how legal education is failing to match up to the modern legal landscape.

While difficult conversations to have (particularly the former) it’s important for the team to shine a spotlight on stories untold.

As always, feedback is both appreciated and encouraged so get in touch with the team should you have any ideas to put forward.

Thanks again for your continued support.

Best regards,

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Autumn



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Fiona Craig
founder,
Smart Women Connect

Change will be gradual

I believe the days of the “you know what you are signing up for” attitude within law firms is slowly coming to an end – at least for more junior professional staff. The increasing focus on mental health, employee wellbeing and now the issue of underpayment should mean that many firms will appraise their working arrangements. However, like most new changes in the legal industry, it won’t happen overnight. In many cases the client will always come first, no matter what the detriment to staff. My advice is that firms can actually use these changes to their advantage – if managed and implemented properly they could prove to be a very positive aspect of employer branding in the battle for the best talent.

Lawyers share their opinions about trends impacting the business of law.

This month, we asked...

Will the new requirement for law firms to record overtime by graduates and professional staff see a fundamental shift in managing staff?



Michael Byrnes
partner, Swaab



Karina Veling
general counsel, recently fought
the bushfires as a volunteer of NSW
Rural Fire Service



Mitzi Gilligan
principal, Hive Legal



May become a catalyst for change

Some law firms, particularly large law firms, can treat the time of junior lawyers as if it is a “Magic Pudding”, a seemingly infinite resource totally at their disposal. That mentality can mean there is little proper consideration as to how the time of those lawyers is best utilised. This is a paradox given that the revenue of law firms comes almost entirely from selling professional time. They should understand it is a precious, valuable resource. Instead, some firms have no compunction about allocating rudimentary administrative tasks to already overtaxed junior lawyers or not offering them sufficient support. The burden of such decisions will fall to the junior lawyers who then need to spend more time in the office to get everything done, even if it is late into the night or on a weekend.

As such, for some firms the concepts of recording hours worked (for any purpose other than billing) and recognising overtime will be a major cultural shift.



No significant changes but a beginning

I’m not convinced this will see any significant change in how legal staff are managed from a workload and wellness perspective. At best, we will likely see employers reconcile payments to ensure any overtime is appropriately compensated for.

Whilst the ruling is a good start, it’s only a beginning. For this to gain any traction, significant requirements would need to be put in place for there to be any meaningful shift - including something that stretches to all legal professionals (including partners!) and not just graduates or professional staff. Despite the new requirements, there will still be significant pressure placed on staff - if anything, such pressures may increase. These stressful demands, which in a lot of ways are a significant cause to the wellness issues we see in the legal industry, won’t change unless there is an entire review of how the legal profession works in reality.



Hopeful for continued change

Law firms will want to be diligent in implementing the steps needed to ensure they comply with their legal obligations.

A fundamental shift in how the law is practised is coming - it has been on the way for some time now driven by advances in technology as well as broader social and cultural developments. These recent changes won’t bring us to the tipping point but they are yet another factor driving the need for cultural and structural reform in law firms of all shapes and sizes. The attention that has been drawn to the work environment in some firms has given increased power to the calls for change. There are better ways in the law to attract, retain and manage staff and to design, deliver and charge for our services - but large law firms are successful, sophisticated and complex organisations for whom long-term strategic change can be very challenging.

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BigLaw 2020:

A brave new world

The emergence and substantial influence of knowledge, innovation, tech and project management positions in BigLaw firms not only up-end BigLaw workplaces as we know them – they are building a vocational marketplace befitting the modern environment



/ by Jerome Doraisamy /

The technological and competitive disruption to our industry is difficult to overstate and demands bold leadership from every law firm to stay commercially relevant,” says Gilbert + Tobin chief knowledge and innovation officer Caryn Sandler.

For a period of time, the rise of artificial intelligence was perceived by pockets of the legal community, both here and overseas, to be a threat to the long-term job security of professionals such as lawyers. Law students alike conveyed concern, which was perhaps heightened by already-present existential dread about the perceived perception of a bottleneck of jobs in legal practice post-graduation. Broader societal misunderstanding and underappreciation for the nature and scope of AI likely contributed to such an impression, as did potentially certain reporting by media outlets across the globe.

What has instead become apparent is that the advent of new technologies,

processes and – consequently – ways of creative professional thinking have opened both the lawyers of today and tomorrow to a brave new world of vocational possibilities. There is no clearer demonstration of such possibilities than the birth of new offerings and teams from the big end of town.

The creation of, and place within, BigLaw firms of teams for knowledge, innovation, legal tech and project management help create a legal professional services environment that would have been utterly foreign at the turn of the century. So often chastised as an archaic vocation steeped in tradition, the legal profession is showing its unflinching willingness to adapt and grow – thereby allowing those coming through the ranks to flourish in ways previous generations may never have been able to realise.

To unpack the various paths on which BigLaw firms are hurtling down, Lawyers Weekly spoke with Ms Sandler;

Baker McKenzie director of knowledge for Asia Pacific Anna Maloney; Allens head of legaltech product lab and innovation Penelope Barr; and King & Wood Mallesons head of legal project management Kerry Underwood.

Why are such roles being introduced?

To decipher the change, each interviewee was asked about the nature and importance of their roles, and why implementation of such positions and surrounding teams may be a must-have rather than a nice-to-have moving forward.

Ms Maloney explained that her role as director of knowledge for Bakers, in a nutshell, is about “putting tools and resources at the fingertips of our lawyers to enable them to better serve our clients”.

“The goal of everything we do is to improve client service, whether improving efficiency through the use of standard form precedents, or through the

A glowing tunnel of light arches in a dark space, leading to a bright light at the end. The arches are composed of multiple parallel lines of light, transitioning from blue at the top to yellow and orange at the bottom. The floor is a dark, textured surface, possibly a road or a path, leading towards the light. The background is a deep blue and purple gradient.

*“If you can’t offer
this adjunct
professional service,
firms simply won’t
be able to meet
client needs”*

Kerryn Underwood,
head of legal project management,
King & Wood Malletsons

introduction of an innovation such as an automated drafting tool,” she says.

Knowledge management is not necessarily new to the Asia-Pacific region, for which she is responsible, but notes that it is more developed in countries such as Australia, Hong Kong and Singapore.

“The [knowledge lawyer] role (often called [professional support lawyer]), for example, has been around for many years. There are two macro trends, however, that have driven the evolution and increased investment in KM over the last decade or so. These are, firstly, the developments in technology that have made the collection, analysis and management of knowledge much easier than it was before and, secondly, the global financial downturn, which has brought with it a much greater focus on cost management and a desire to improve efficiency. This has resulted in the evolution of a number of different kinds of [knowledge] roles over the years,” she says.

For BigLaw firms such as Bakers, there are added complexities for knowledge professionals that arise from the breadth and scale of the businesses, Ms Maloney muses.

“[Therefore] we need someone to ensure that we are continually working to improve the collection, retrieval and delivery of knowledge content across jurisdictions, practices and industry groups and that this work is properly aligned.”

Firms who fail to adapt and introduce such functions will be putting themselves at risk, she warns: “Simply put, there is a risk that firms may be left behind in a rapidly changing legal market. No clients are willing to pay for firms to “reinvent the wheel” and, frankly, who can blame them?”

On the legal project management (LPM) front, Ms Underwood says there has been a need for roles dedicated to “scoping, planning and monitoring tasks for matters which not only improve our clients’ experience but also improve the wellbeing of our lawyers and supporting staff”.

At KWM, she is charged to “work with, educate and support the practice groups at KWM in the use of LPM to improve the delivery of legal services to our clients. This involves supporting them in embedding LPM into their daily practice management and supporting them by deploying trained legal project managers that are a dedicated to specific matters”.

“The need for this sort of service has numerous drivers, one of the foremost being that our clients operate in competitive commercial environments where they are continually asked to deliver more with less.



“Technological advancements in the profession have also presented opportunities to improve efficiencies and accuracy for clients”

Caryn Sandler, chief knowledge and innovation officer, Gilbert + Tobin

We see LPM as one of the solutions to that challenge,” she outlines.

“Used effectively, LPM should be able to provide more certainty in the delivery of legal matters on time and on budget, which helps our clients succeed in the management of their organisation’s goals.”

This becomes especially essential, Ms Underwood adds, because clients are now “regularly” making requests for detailed information on the firm’s LPM practice in pitches and tenders.

“If you can’t offer this adjunct professional service, firms simply won’t be able to meet client needs,” she says.

Elsewhere, Ms Sandler is responsible – as chief knowledge and innovation officer – to bring about change at G+T “by architecting innovations in legal process, technology and capability development”.

“This will necessarily involve identifying and leveraging technology to [seek] opportunities for new ways of working

and build the capabilities of lawyers to [futureproof] their careers and be a true business partner to our clients and support them with strategic rather than strictly legal services, using the latest technology and legal innovation,” she says.

Ms Sandler’s role was introduced to “[futureproof] the firm and meet evolving client demands head-on”.

“Traditional BigLaw firms are facing increased competition from new law firms, consulting firms developing law departments and other disrupters, and must swiftly evolve their approach to practicing the law. BigLaw firms must become more efficient as clients push back on traditional hourly rates approach with increasing cost consciousness and lawyers must upskill to be ‘future-ready,’” she explains.

“Roles such as these have been introduced to the private practice environment to ensure that the firm stays ahead of technology and has a competitive advantage

Cover Story



over other law firms and consultancies offering legal services. Internally, the role could only be established if it successfully challenged the assumption that legal operations and innovation were support (overhead) functions. It repositions the role of innovation to be an integrated part of high-value legal services, with the potential to generate its own revenue.

“Technological advancements in the profession have also presented opportunities to improve efficiencies and accuracy for clients. As such, this role ensures that focus is given to embedding technologies such as AI and developing tech platforms, to improve due diligence efficiency.”

In line with the sentiments expressed by Ms Maloney and Ms Underwood, Ms Sandler highlights the inextricable place of such roles given how competition between the BigLaw space and NewLaw players and consultancy firms who have access

to global technology and scale will likely only increase.

“If you don’t quickly adapt and introduce these roles, the risk is that your talent base won’t be ready for the change that is coming. Firms need to invest now or risk not having a workforce with the right skills to compete going forward,” she theorises.

In the legal tech production space, Ms Barr refers to two pillars of responsibility in her role: “Embedding innovation from the ground up, as part of the firm’s DNA with the aim of helping lawyers (and clients) use new tools and techniques to deliver more value and sourcing, researching and generating ideas to transform and reshape our current ways of working for today and tomorrow.”

Allens created her role and refreshed the firm’s legaltech product lab, with her at its helm, she says, because the legal profession – like many other industries before it – is “undergoing a transformation”.

“Clients are increasingly curious, cost-conscious and require more transparency around value-based outcomes. In the Product Lab, we’ve got leading specialists in innovation, technology, product, design and strategy all working together to build our suite of products, including our ‘a+ solutions;” she lays out.

“Some of these products have the potential to radically change the day-to-day experience for lawyers, enabling them to engage in higher order tasks, where previously this might have required repetitive and time-consuming work.”

The new technologies being managed, including AI and machine learning, have given birth to a new element of competition within the legal marketplace, according to Ms Barr.

“Firms choosing not to embrace new ways of working may find themselves pushed to change by clients. The changes happening in the law are in response to market demands and make good business sense because they add value for clients and for the future generation lawyers,” she says.

How these roles will improve the BigLaw offering

Whilst the fear of falling behind the pack will undoubtedly serve as some level of incentive for BigLaw firms to continually evolve, the stronger and more obvious driver is the myriad benefits to be reaped from rethinking the operations and service offerings of a firm, as well as flow-on opportunities for professionals employed by said firms.

Within the BigLaw environment, there has been a “shift in the mindset” of partners and lawyers as to the real value of innovation

and related modern operational structures, Ms Sandler explains.

“Legal technology and process change has a positive commercial influence and offers an incremental service for clients. It allows the lawyers to partner with clients and add value – you become a broader strategic business partner with broader business skills,” she says.

“Upskilling lawyers in legal innovation and technology is critical. It rounds out people’s experience and allow lawyers to grow. Learning skill such as design thinking, allows for a richer and broader career experience. Our approach to innovation and using technology to increase efficiencies, allow us to have a better client offering. Clients have been attracted by our ability to equally apply legal expertise with legal tech project management.”

Part of the value espoused by Ms Sandler is that BigLaw firms will be more “relevant to clients”, Ms Maloney notes, by way of being better placed to help them grow and advance their interests.

“We will be able to provide insights, which will help them deliver and shape their business decisions and strategy. And we will be more competitive because we have harnessed the process improvements and efficiencies that an effective [knowledge] function can deliver,” she posits.

Ms Underwood supports this, flagging that the benefits to clients will be “intangible”.

This is especially true, she continues, “in the greater transparency regarding management of costs, timing and expectations when it comes to individual matters”.

“For our people, they benefit from systems and processes that are designed to monitor workloads as well as proactively manage them,” she adds.

Moreover, there is a chance – at least while the legal tech sector is still in the infancy stages – that disruption can and will lead to the creation of new business opportunities in innovation and product delivery, Ms Barr suggests.

This, she points out, will see the legal profession follow a similar imaginative path as explored by related industries, highlighting Allens’ experience on this front: “One part of what we’re doing is focusing on building our existing ‘a+ solutions’ product suite, to further meet market demand to provide technology-enabled solutions for particular client problems. Another avenue we’re exploring is partnering with [start-ups] and innovative businesses to develop solutions to improve the way lawyers work,” she says.



Evolution of such roles in the coming decade

If there's one thing we can predict for the evolving BigLaw market – in a new-age environment with increasingly unpredictable shifts in creativity and processing – is that legal service delivery will not remain stagnant in the new decade.

The trends that the legal profession has witnessed over the past 10-15 years, Ms Maloney hypothesises, will most certainly continue in the 2020s. This means that we will see further developments in technology – “especially in the field of artificial intelligence” – which will allow firms to streamline and automate more elements of legal work, she says, and also analyse the work they undertake in greater detail, she says.

Ms Maloney expects further investment in knowledge management to continue as it has flowed over the last 10 years, given that the function is “increasingly recognised for the value and efficiency” it can bring to legal practices.

“And, the roles within the [knowledge] function will continue to evolve: 10 or 20 years ago, the ‘traditional’ view of KM was a knowledge lawyer who writes precedents or delivers training, or a [librarian] who manages a physical collection of books,” she adds.

“Knowledge roles are evolving, and we now need a much broader range of skills alongside some of the traditional core competencies. As a firm, we are investing now for the future by ensuring we have the right people in the right roles doing the right things.”

LPM roles, Ms Underwood says, will be “instrumental” to how legal professionals in the BigLaw space operate moving forward, and will have a “long-term positive effect” on their work.

“Also, more active involvement with clients in the initial stages of matters, particularly through the scoping and planning of matters, will help both [firms] and the client to reach a clearer and deeper understanding of their needs and objectives. Operationally, I think we will see a greater focus on reporting on matters and overall performance metrics,” she says.

Ms Barr feels similarly about legal tech positions in the BigLaw context: “Roles like mine are key to improving working practices because the introduction of technology-enabled solutions can streamline processes and expedite results. In the new decade, lawyers and innovators will continue to work together toward a shared objective – delivering the best outcomes for clients.”

For Ms Sandler, however, the mark left

by such roles in the coming decade will be even more pronounced, proclaiming they will “revolutionise” the way that BigLaw firms operate across all areas of the business.

“Fundamentally, it will approach client work in a different way to drive efficiencies and offer an improved service. Legal service innovation teams will have the capacity and capability to provide lawyers with a non-traditional career path and a unique career experience. Legal service delivery will require more than just lawyers,” she outlines.

“The provision of law will come with a variety of skills sets across different disciplines. Our lawyers will not only be experts in law, but with training and experience in legal service innovation, they will be able to offer diversity of thought and a creative problem-solving and advisory mindset.”

Vocational offerings for the next generation

What is perhaps most interesting about the advent of these arms of BigLaw firms is how they give rise to a professional services environment for the emerging generation that is unlike what any previous law graduate was exposed to. Even just 10 years ago, “legal tech” wasn't a term being bandied around, let alone spoken about in any depth.



“Knowledge roles are evolving, and we now need a much broader range of skills alongside some of the traditional core competencies”

Anna Maloney,
director of knowledge for Asia Pacific,
Baker McKenzie

Legal education in Australia and abroad is, of course, a vastly different beast today, and – despite long held stereotypical fears from students and graduates – not only is there a bevy of career options to choose from outside of private practice, it is those very firms whom some may consider to dominate the on-campus jobs conversation who can offer a platter of choices.

These exciting new and emerging opportunities in a changing legal profession are giving rise to an increasing number of grads and lawyers who are interested not just in practising law but also in working on legal innovation initiatives, Ms Sandler submits.

“Traditional lawyer roles have struggled to cater for this. While we will still need lawyers with strong technical expertise, the successful lawyer of the future must have this technical excellence, combined with very strong legal problem-solving and analytical skills, and the ability to present solutions and make sound business decisions for their client,” she reflects.

“They will need to be well rounded and understand what’s going on in the market and have empathy for their clients’ challenges in the broader societal, regulatory and political context.”

Until recently, she continues, there was no precedent for an innovation role within a law

firm, for example, one was either a lawyer or they worked in a service function.

“While there are many lawyers straddling two different practice groups (e.g. construction/banking), combining an operations role with a legal role was a completely foreign concept. One major challenge for example is how to ensure inevitable client demands on the legal side would not end up monopolising 100 per cent of the lawyers’ time,” she says.

Looking at her own sector, Ms Underwood says that legal operations is a “growing discrete profession”, demonstrated by the volume of courses now being offered as part of law degrees together with the increasing number of post-grad courses available in the space.

“For junior practicing lawyers, being proactive in applying the LPM discipline in their practice groups and supporting their SAs and partners in the preparation of LPM communications and aides, will set them apart as great practitioners, with their finger on the pulse when it comes to understanding what the client needs and wants from the legal service providers,” she says.

Taking a more holistic approach, Ms Barr muses that in today’s world, there is a need for “lifelong learners”. In light of this, lawyers have a duty to remain curious and open-minded about new ideas and ways to continuously improve themselves and their service offering.

“Within your own firm, seek conversations with like-minded people and join any innovation squads or groups you can. For example, at Allens we recently had some clerks conduct part of their clerkship

in Integrated Legal Solutions, which complements our Legal Product Lab, providing technology-enabled services to clients alongside our legal practices,” she recounts.

There is also an imperative, Ms Maloney identifies – at least in the knowledge space – for lawyers to share what they have learned, and detail their experience gained from advising clients in this space, with their colleagues and peers.

“For those who want to get involved on a more formal basis, they could choose to take on a ‘knowledge champion’ role, which would involve making a commitment to [knowledge sharing] within their practice or industry group and encouraging their colleagues to do the same. Later in their careers, they may even step into a knowledge lawyer role for a period of time – on a secondment to the knowledge team, for example – or as a career alternative,” she advises.

“I speak from experience, having made a commitment to [knowledge] sharing early in my career, and also having worked as a knowledge lawyer in our IPTech group for many years. A key priority for me is to encourage interaction with [knowledge] as a core part of every lawyer’s experience.”

Fundamentally, Ms Sandler surmises, BigLaw firms are now enabling the lawyers of today to be ready for the future “by engineering a fundamental shift” in how innovation is being viewed by those in power within the environment of those firms.

“It could no longer be treated by the partnership as an ancillary function or ‘nice-to-have’, but instead as something vital to the business and genuinely of equal importance to direct revenue-generating legal work,” she says.

Conclusion

The modern professional marketplace is evolving at a breakneck speed, and the BigLaw sector is pulling out all the stops to stay ahead of the game.

Two things are evident from the extent to which the big end of town is moving to ensure its service offerings are as environmentally conducive to client needs: one, the legal profession of tomorrow will likely look much different to today’s world, just as the present context varies wildly from that of the past, and two, such rapid if not radical shifts legal practice will continue to create new and exciting vocational opportunities for legal professionals to thrive.

Change, on this front, is not to be feared, as some may be prone to do. As BigLaw firms in Australia have demonstrated, and will continue to do so, such change is not only an opportunity – it’s an imperative. ♦



Navigating waves of social change

in the FMCG space

“No two days are the same, and I am always on the go,” recalls L’Oreal Australia and New Zealand legal counsel Loren Goodwin. “Each day I get to work with people at the top of their respective fields who are truly passionate about our brands and what they do. There’s a special energy you can feel as soon as you walk into the building”



/ by Jerome Doraisamy and Adam Thorn /

Many if not most corporate counsel we at Lawyers Weekly speak to espouse the idea that in-house life is fulfilling due to the variety and diversity of work day-to-day. However, in no sector does this appear to be truer than for those in fast-moving consumer goods (FMCG) – and not just because three in four interviewees for this feature told us so.

In this feature, Lawyers Weekly is focusing its gaze on the FMCG sector and the myriad vagaries of such legal work, namely, how evolving sociocultural expectations from consumers are influencing not just the nature of in-house work for lawyers in this space, but the broader business direction of companies as well.

To do so, we spoke with Ms Goodwin, PepsiCo Asia Pacific legal director Lily Wong, Guzman y Gomez group general counsel Danielle Keyes and Who Gives a Crap legal counsel Kate Sherburn about the nature of life in-house at an FMCG business,

the inherent issues and challenges, how regulation and social media have impacted upon the nature of their work, the imperative for successful cross-team collaboration as well as how these roles will evolve in years to come.

What the FMCG sector looks like

According to Ms Goodwin, the FMCG industry is “fast-paced and constantly evolving”.

“To be successful, brands must be nimble and constantly innovate their products and services to not only meet but exceed consumer expectations. Consumers are more connected than ever with a wealth of information to inform their buying choices via reviews and social media,” she explains.

“New technologies and e-commerce are transforming the way that consumers experience, research, find and buy products which presents unique challenges and opportunities for FMCG brands.”

For her business in particular, FMCG has transformed the way that the L’Oreal Group does business, she notes.

“Data and artificial intelligence have enabled us to personalise and customise the way we engage with consumers – from our products to the experience on our websites. Our digital teams have partnered with tech start-ups and in 2018 we acquired our first tech company, Modiface, whose augmented reality and artificial intelligence technology [enable] make-up and hair colour try-ons and skincare diagnostics. For us, digital is not just a transformation; it’s a revolution”.

Ms Wong agrees on the breakneck nature of the work, labelling it “super fast-paced”.

“It’s really driven by the market and the customers, so I think in that sense you really need to be able to be agile and change your behavior and adapt to the changing market dynamic, so as to really ensure that the business is successful in the long term,” she muses.



“So, as part of our corporate strategy, we’ve had to always continually look at how we make, move, and sell products, and obviously that strategy and vision that we tried to implement [are] at the top of our minds as we execute what we’re doing on day-to-day.”

Life as an in-house FMCG lawyer is a “mixed bag”, Ms Wong continues, especially in businesses that have undergone or are undergoing necessary transformation to keep pace with marketplace shifts.

“We do everything from agronomy – which is studying and working with farmers to best get the most efficient and sustainable amounts of crops – to procurement, HR and taking the lead on all of our transformation projects. Whether you’re dealing with the sales team and enabling them to be as competitive as possible, or dealing with our customers, part of the transformation journey means being a key partner in each of the projects,” she says.

Ms Keyes supports the notion that “no two days are the same”, and there is perhaps no better demonstration of this than in the need to navigate sociocultural turbulence. Such

“New technologies and e-commerce are transforming the way that consumers experience, research, find and buy products which [present] unique challenges and opportunities for FMCG brands”

external forces, she notes, have a huge impact upon sales for FMCG businesses.

“In the supply chain, there are events that can have a catastrophic impact on supply, such as floods, fire and drought affecting crops. I don’t know the impact of the coronavirus yet, but there’s no doubt there will be something, I suspect. African swine flu, for example, affects the pork supply. So, there’s all these things that impact upon the supply chains which [create] an additional complexity of working within this sector,” she says.

Regulatory challenges

FMCG is “an incredibly fluid space”, Ms Keyes espouses, with voluminous media attention and regulatory scrutiny in the space.

“We’ve got big regulatory buckets: food, franchising, employment and consumer. Those spaces are really under the spotlight at the moment and we kind of fall squarely into all four of them. So, there’s real challenges I think that come with being able to get on with business and do all of the things that the business wants to do to keep growing,” she notes.



“Making sure there’s the right resources in place to manage and work within the necessary boxes, and ensure we’re getting the right advice from industry professionals and we’re hiring the right people in the relevant roles to make sure that we have that depth so that we can operate within those boxes, [are] fundamental given that we are an incredibly turbulent moment [for the sector].”

What can sometimes be onerous, Ms Sherburn highlights, is that regulatory changes can “move so quickly”, compounding the need to stay on top of what’s happening domestically and internationally.

“It’s not just what’s happening in Australia, it’s what’s happening in every market that we’re involved in and making sure that we’re complying with everything. That is a big challenge. The key to that is to make sure there that you plan,” she muses.

“There’s never a day that’s the same with this job, and so there’s a duty to maintain the right balance and make sure that we’re not exposing ourselves unduly to risk and staying protected. It’s something you have to figure out in-house... Sometimes, the black

and white legal answer is not necessarily the correct approach for the business to take.”

Ms Goodwin supports this, advising that year-on-year, the regulatory frameworks governing FMCG organisations become more complex and nuanced “even more so for global companies operating across multiple markets. This doesn’t just impact our marketing teams, but our entire business and supply chain.”

“For example, in recent years there has been the introduction of the Grocery Code of Conduct, the European General Data Protection Regulation and *Australian Mandatory Data Breach Notification law*, *Illegal Logging Prohibition Act*, changes to whistle-blower laws and the *Modern Slavery Act* – to name a few!”

It is therefore incumbent upon her, she submits, to “proactively monitor proposed local and international regulations and help the business navigate this”.

“I work closely with our teams in advance to assess current processes and systems to minimise disruption to business and our supply chain on implementation. This often involves collaborating with our legal teams in other markets to establish the broad ‘frame’ which is then adapted locally to ensure local regulatory requirements are met. This is not always an easy feat,” she says.

CSR and innovation in the modern world

Adapting to an evolving sociocultural landscape presents difficulties for counsel in this space, particularly with regard to changing consumer expectations around environmental friendliness.

The explosion of social media across the globe has allowed the average consumer to communicate to the masses in ways they’ve never been able to do before, Ms Keyes says, which subsequently adds a new lawyer of responsibility for businesses in the FMCG space.

As Ms Sherburn puts it: “You have to be across things as soon as they’re being spoken.”

“People definitely have more input and opinions about the way that brands that they support should act, what they should do, and where we are conditioned as well. I mean, we are positioned as an environmentally friendly organisation and our customers are going to be skewed to that anyway, they’re going to be socially aware sort of consumers in the first place. But I think the companies that do put themselves out there as being ethically and socially aware actually almost get put on a higher pedestal and have more scrutiny, because you are saying you’re doing the right thing. So, our customers want to make sure that we are doing the right thing and we’re not just talking the talk. They want to make sure that we’re actually walking the walk as well,” she explains.

Consumers are expecting more, Ms Keyes adds, and moreover they’re able to demand that in a public space.

“Guzman y Gomez is a company that – certainly I, as a lawyer – I feel very comfortable about when compared to some brands that, behind the scenes, don’t operate as well as they appear to on the outside. [For us], there’s a lot of investment in health and treating the staff right and not cutting corners. It’s made life easier for me as a lawyer, because the business itself is making sure that it is innovating and changing and listening to what consumers want and trying to give them what they want and engage with them,” Ms Keyes notes.

“That’s been a real challenge for us,”

Ms Wong recounts.

“There’s a lot of innovation being put into place to make sure that we move with our changing customer demand and expectations. This involves, firstly, the health front, and secondly, having a corporate strategy on sustainability. Our role as lawyers [in these circumstances] is not simply to say, ‘This is what the law says, and this is what the regulation says’. We have to be a strategic partner to enable the business to continue to be competitive and to ensure the long-term sustainability of it, because the customers are always expecting the new innovation, new products, better types of products as well as understanding what we are doing with plastics that we generate or use as part of the manufacturing process.”

As part of her role, Ms Wong notes that she joined PepsiCo’s sustainability and environment committee, which has a long-term goal to achieve “zero waste to landfill by 2025 but we’re 2020 now”.

“It’s our one planet at the end of the day, and we all get lost in the rat race and there’s been a lot of focus in the media lately, but it’s something we’ve been conscious of, but it’s important [in businesses like ours] do to it in a way that’s sustainable,” she says.

Moral imperatives aside, such projects also present enormous innovative opportunities. This has been the case for Ms Goodwin, who notes that driving legal innovation is “one of the most exciting aspects” of her role.

“Innovation and entrepreneurial spirit are core values of the L’Oréal Group, and as a legal team we absolutely embrace this. I love that I get to utilise my ‘right-brain’ creativity, intuition and imagination in my role as in-house legal counsel,” she says.

“Since 2015, our team has been transforming the way we support the business through automation of routine legal tasks and agreements, digitisation of the function and use of data analytics to drive efficiencies. We currently have 15 bespoke self-service business facing legal apps which generate



contracts (e.g. influencer agreements, services agreements, complex customer contracts) and automate workflows (e.g. contract approval and e-signature). I have had the opportunity to lead the development of several apps, with direct involvement across the entire automation process from contract and process simplification, defining app logic, mapping workflows, designing user experience and implementation.”

Working across the business

Cross-team collaboration is inextricably linked to the success of an FMCG business, but is not without its difficulties, muses Ms Wong – particularly when you are a larger brand and have to interact not just with teams across the nation, but abroad too.

“It’s a challenge to make sure that everyone is heard and then work with them. It’s important to be bold enough to be able to ask questions along the lines of ‘Why are we doing this’, which is a really valuable skill to have, and also necessary so that other teams

ensure they are listening to the lawyers. Commercially, it’s crucial to take a step back and ask, ‘Why are we doing this again?’ I’ve done that a couple of times, to make sure that we’re aligned to our core purpose and strategy,” she says.

Within the Pepsi business, Ms Wong continues, the legal department has been able to develop a strong working relationship with the sales function, with the latter “always coming to talk to us in terms of any potential issues”. Similarly, the marketing team is now engaging with legal on advertising concepts.

“There’s always room for improvement, but [it’s important to] really drive that message home: partner with us. Factor us in into your project timeline, because there’s no use coming to us later on after people have already commercially agreed, done the deal, filled everything and you just want us to document it, that isn’t how it works. You need to be able to engage with us a lot earlier so that we can leverage whatever it is that you’re trying

to negotiate so that we can be in the best possible position,” she says.

Ms Goodwin backs this up, noting that support for the business’ marketing team represents one of the largest components of the work needed to be completed by the GC and their legal team. This necessarily includes, she outlines, advising on “everything from engaging talent/brand ambassadors, new product launches, brand activations and consumer promotions and competitions”.

“The volume of marketing content and consumer promotions increases each year as the group acquires more brands. As a legal team, we have had to think outside the box as to how we can efficiently and effectively manage this increase in workload, in addition to the rest of our ‘business as usual’ matters,” she reflects.

“We have partnered with our legal tech provider, Plexus, to launch two business-facing legal apps – we currently have 15 apps in total – to assist with marketing compliance: one which provides our marketing teams



“There’s never a day that’s the same with this job, and so there’s a duty to maintain the right balance and make sure that we’re not exposing ourselves unduly to risk and staying protected. It’s something you have to figure out in-house”

[and allowing] things to get bottlenecked in legal. So, there’s been a really nice transformation in the business, and now – as the head of department – I sit with all the other department heads and can actually be involved in commercial discussions with them. They appreciate that there is always legal risk in everything,” she says.

Looming evolution of the role of FMCG lawyer

With all of the aforementioned challenges currently being faced by FMCG lawyers, Ms Sherburn feels the imperative to be involved across the business will remain integral, if not increased.

“It’s so important that when everybody starts [in the business], they have a one-on-one session with every business unit. I present every couple of months, and it just introduces you. Explain what you do and why you do it, so that there is no distance with legal. The earlier that you get involved, the less likely it is that I’m going to have to say no,” she says.

“Because, ultimately, we don’t want to say no. We just want to make sure that the companies we work for are protected. The earlier that people come, the more we can work together to get what they want, or as close as we can get to that.”

The lesson, therefore, is that if FMCG businesses can better engage with legal, “we can get to a point where we’re all kind of happy”, Ms Sherburn surmises.

Looking ahead, Ms Goodwin believes that the role of in-house FMCG lawyers will continue to expand in line with regulatory and business environmental changes – not to mention, of course, the sociocultural factors impacting brand strategy.

“As the workload continues to increase, being a strong technical lawyer will not be enough. Embracing technology to automate routine manual legal tasks will no longer be a ‘nice-to-have’ but a must-have. An effective FMCG lawyer will not only advise on the law, but drive value for the business as a true business partner,” she posits.

“To do this, in-house counsel must have an open and curious mindset and demonstrate empathy. Upskilling in areas outside of the strictly legal will enable lawyers to better understand the functions they advise rather than operate in a silo – for example, take a course in digital marketing or spend time with the retail teams on counter to experience first-hand the challenges they face.”

For Ms Wong, the role of the in-house FMCG counsel will increasingly become one whereby that lawyer is a strategic partner for the business.

“I see that playing out more and more... as you become more senior in the organisation, you will have that voice and confidence to be able to have those conversations with relevant stakeholders and influence the business’ direction. I see that as being key and it will continue to be an issue for in-house lawyers in this space in the future,” she says.

Conclusion

When asked about some of the challenges one faces as an in-house FMCG lawyer, Ms Goodwin responds that: “Our brands are constantly innovating and pushing boundaries which [mean] as in-house legal counsel I am often required to advise on things which haven’t been done in the market before or contemplate novel legal questions which have no clear-cut answer. I enjoy the intellectual challenge of problem-solving where things are not black and white – I get to practise law in full colour.”

That notion of getting to practice the law in full colour seems to sum up how those in this space feel about the breadth and scope of their daily work. The FMCG sector continues to evolve at breakneck speed, placing burdensome pressure upon the legal professionals at the helm. But, evidently, it’s a challenge that they’re more than willing to meet in a sociocultural landscape that can and is impacting upon the direction of the marketplace. ♦

with competition terms and conditions and more recently another which enables review of marketing collateral and flags any issues – both within 24 hours. The marketing team can access these apps from any device, anytime, anywhere to get almost instantaneous legal support. This has had a huge impact for our business and enabled us to do more with less while still managing legal risk.”

When it comes to cross-department collaboration, Ms Keyes puts it in a different light: “The struggle is real when lawyers and creators collaborate”.

There was “a lot of eye rolling” when she started working with the marketing team, she recounts, but once legal counsel have underscored the necessity of effective teamwork, things become easier.

“It took some time to really penetrate the mindset of the business. Initially, I had to up in their face, shaking everyone down and making sure that I was part of those discussions early, rather than leaving it

Rewiring the legal profession

The COVID-19 pandemic is the biggest business disruptor of our lifetime and it will require a radical response



AS THIS is written, the COVID-19 pandemic is still unfolding across the globe. As it spreads, so much still remains uncertain. It is likely we're seeing a large-scale, perhaps unprecedented, reshaping of organisations around the world. No industry will remain immune to, or unaffected by, this new virus. We're already witnessing massive shifts and transformations in how we conduct business. The legal profession will be no exception.

Rewind to the future

Now, more than ever, it's hard to discern the future of work. It is in these moments, when the future is murkier than ever, that we can turn to history to help illuminate the possibilities. In 1988, there was a postal strike across the UK. It was because of this strike that many businesses, for the first time, purchased a fax machine. Clearly, a postal strike isn't of the same magnitude as the current crisis, but it does bring some instruction on how businesses adapt to abrupt and disruptive change. Plato coined the proverb, "Necessity is the mother of invention", but perhaps this can be adapted to, "Necessity is the mother of adoption".

For nearly two decades, we've had technologies to enable remote working. But the inertia of going into work has been formidable. As any behavioural psychologist will tell you, getting people to change habits is incredibly difficult. Sometimes it takes monumental occurrences to break habits. Just as the postal strike catalysed the adoption of fax machines by businesses around the UK (and the wider world in turn), COVID-19 could be the spark that ignites the distributed work movement. The full impact of the pandemic (as yet unknown) will likely change the way we work and could very well galvanise the movement towards more flexible, more remote, and more distributed legal work.

Revolutionary change

For a long time, legal departments (and law firms) have talked about evolution, not revolution. Incremental change is always more palatable than "big bang" changes. However, that preference for slow and steady may not be relevant in the dislocating upheaval of the COVID-19 pandemic. The imperative now is to adapt immediately to these conditions thrust upon us by

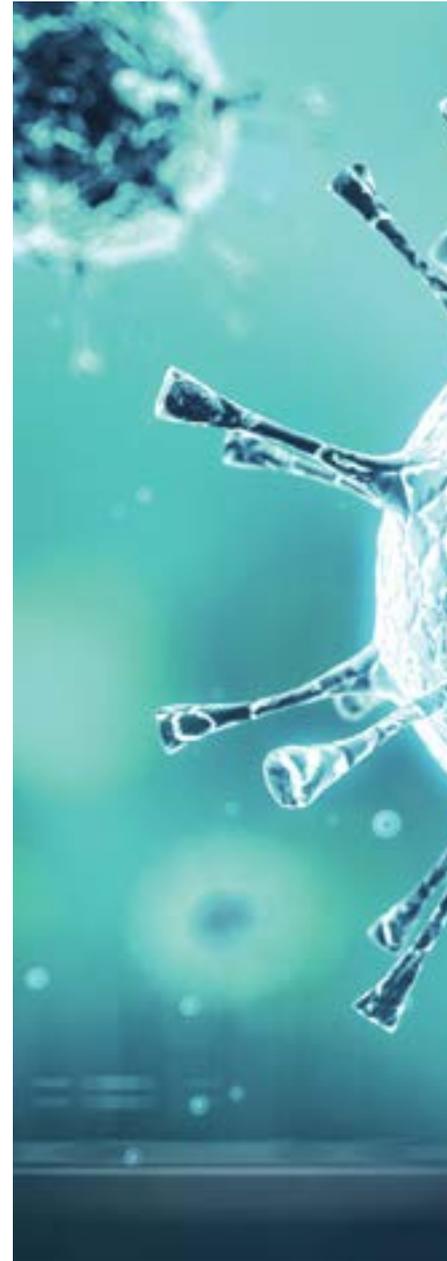
microbes. Large committees, cumbersome steering groups, glacial transitions and staggered milestones are not realistic options for most legal teams in the present environment. Action is required *yesterday*.

We now need to revisit many of our assumptions about how work happens. The default is no longer always going to be co-location, large offices and the daily commute. The default might no longer be face-to-face meetings. Essentially, the presumption of the past – a centralised and co-located workforce – is cracking under the weight of COVID-19. The default of how we organise legal teams will change and the current pace of progress surrounding the use of technology and process will accelerate.

Rewiring our work

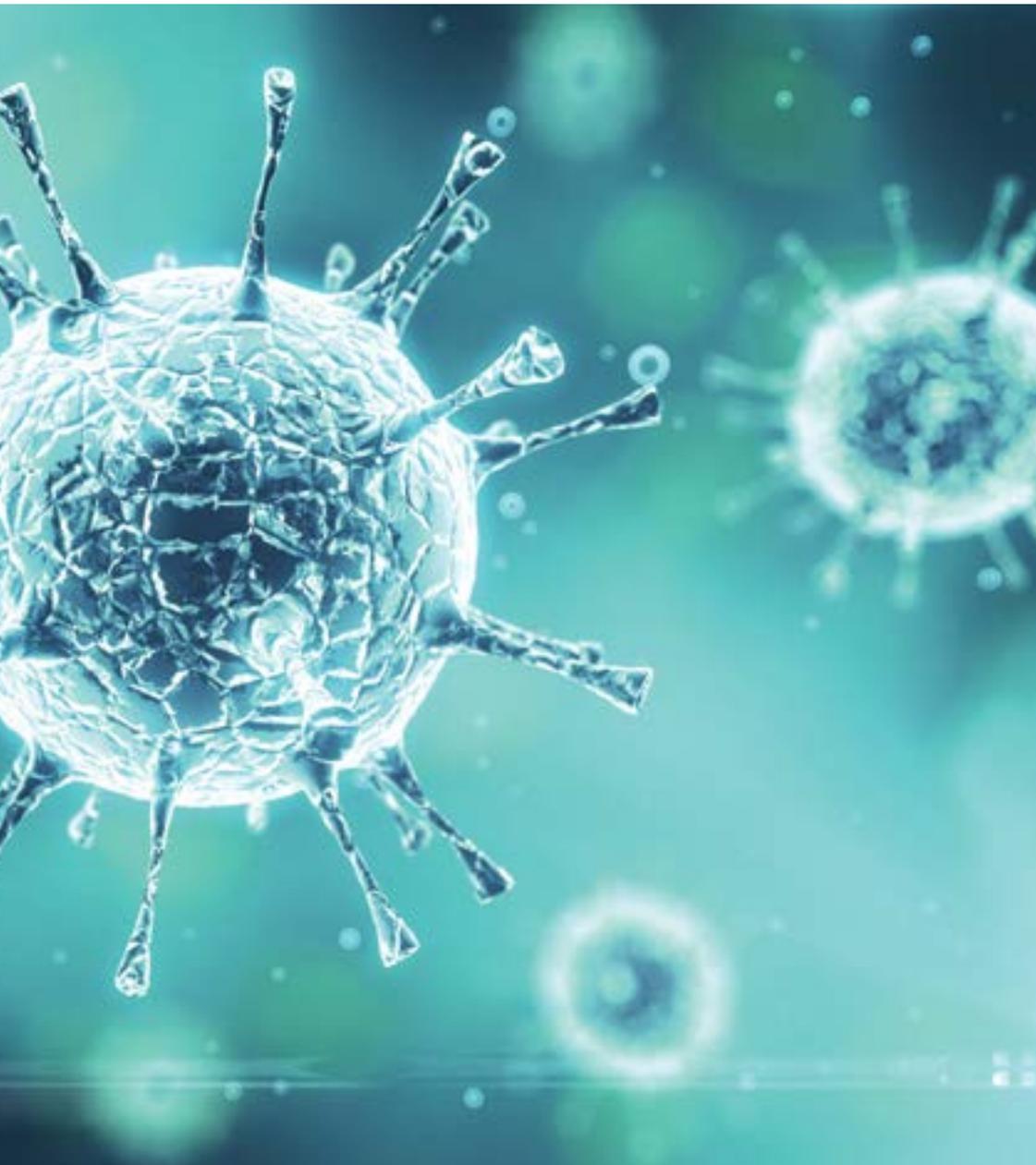
COVID-19 is accentuating and electrifying the latent challenges and demand surrounding flexible work and flexible resourcing. We've known for over a decade that both clients and lawyers (and other professionals) want a more flexible approach to delivery – whether it's part-time work, remote work, shared roles or adaptable retainer models.

How do we at LOD know this



demand exists? We've grown to over 13 cities around the world, our workforce has grown to over 1,000 lawyers and consultants and over 40 per cent of them work flexibly. We now work with major global clients across all key sectors and industries. The appetite for alternative legal work is clear – just look at any report on the ALS market in the past five years – but the appetite from the lawyer side is also incredibly strong.

Over the past decade, we've had nearly 20,000 applications by lawyers and consultants around the world to work flexibly,



work differently and work better. While this figure is a long way from the total lawyer applications to traditional law firms, it's only been growing over time. We now have, on average, 500 applications a month across the globe. And once they join, they tend to stay, with a global average of at least four separate long-term assignments for our LOD lawyers and consultants.

While we've seen this demand grow over time, we're now seeing a radical catalysis caused by COVID-19. We believe that the prefix of "alternative" legal services will become less and

less meaningful as the profession comes to grips with the new norm. As legal teams are forced to reshape how they work, an opportunity is presented to shift towards more sustainable, efficient and productive work practices. Something that we've been striving for since 2007.

Caution: Bumpy road ahead

With all our experience, we understand that immediately putting your entire legal workforce into a remote working situation is plunging into the deep end. You cannot expect a silky smooth transition – you

should expect teething issues surrounding IT, team morale, communications, expectation management and much more. As an organisation which has been coordinating a global flexible legal workforce for years, we're well aware of the attendant challenges of remote workers. It would not be fair to think you can continue your work practices and output exactly as you were, just with everyone at home.

Responses to COVID-19 have already begun

We're already working with a number of legal departments

from major Australian companies to help address the pandemic turbulence. For one client, we're using automation technologies to help process and respond to *force majeure* claims. For another client, we're helping them develop a global response plan, a policy document that looks at their corporate approaches to travel, illness and remote working. For others, we are providing highly skilled remote-based lawyers to deal with ever-evolving and complex legal scenarios.

But much more significant than these specific examples, we've been working at the forefront of alternative legal services since 2007. For over a decade we've been looking at legal service delivery and how to do it differently, do it better. Whether it's secondments, flexible retainers, legal operations, automation or our new law challenger law firm LOD Legal, LOD has been pushing legal service delivery towards the cutting edge. Our pursuit of greater efficiency and flexibility provides us with a strong platform in the new normal of COVID-19.

What's the upshot?

The vast majority of legal departments around the world will change. They'll change how and where they work. Now is the time for deliberate action and speed. We like to look at things optimistically and through this crisis, it's quite possible that the legal profession will emerge with better work practices and more sustainable models of delivery. ♦



Paul Cowling

LOD managing director, Australia



A grim reality:

The justice system and sexual assault cases

Leave a little bit of evidence, and offenders of a murder are easier to prosecute. Leave the smallest remorse and offenders of manslaughter or burglary or drug trafficking and a whole range of other major criminal offences are more likely to be prosecuted. Leave the most gruesome, traumatic scene behind from the brutal assault of a female victim of sexual assault and rape, and the criminal justice system freezes up



/ by Naomi Neilson /

Sexual assault survivors are Australia's victims of an almost invisible crime, one which fails to make it through the ranks of justice almost every time. For most women, taking their assault to police is a burden in and of itself, out of fear of being judged or ridiculed or as one advocate put it, subjected to a game of "Russian roulette" where they either stand to receive appropriate assistance or they get "treated like rubbish".

In her memoir *Eggshell Skull*, Bri Lee said looking at victims of sexual assault from the criminal justice system was similar to looking at a "map of human misery".

In Ms Lee's role as a judge's associate at the Queensland District Court, she says looking out her window became less like noticing landmarks and more like noticing a "constellation of crimes". She says a failure to judge these crimes goes back to the system's origins.

"I see it as pretty simple," Ms Lee tells Lawyers Weekly. "The laws we have now come across from the [UK] at the time of invasion and at that time, women and children were literally under the dominion of men. What we're talking about is a system in a constant state of trying to catch up with how society has progressed."

"In my opinion, and in the opinion of many others, it has never gotten to a point where it has met the principles of ideas of equality that society has reached.

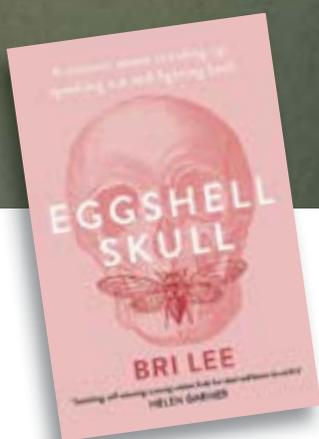
"It's always a dozen steps behind."

This opinion is shared by juror researcher and Monash University associate professor of criminal law Jacqueline Horan, who says there are "lots of people doing lots of things and they have to because there are a lot of problems with the system".

"The criminal justice system was set up historically for the traditional offences that are assault or murders, which involve men killing men or men punching men.

“Gross numbers of perpetrators are not only never tried, but they’re not even charged”

Bri Lee, author, *Eggshell Skull*



The book takes a look at how hard it is for victims to find justice in a deeply flawed system

Rape is very different because they are done without witnesses, they are done silently and nobody is there to see what happens so you have a problem of one word against the other,” she says.

Growing up, there is a lot that young girls are taught about rape and assault: don’t put yourself in a position where you are vulnerable; always dress appropriately and do not show too much skin; if you feel like you are being followed, you probably are so make sure you call someone; and, if you are actually assaulted after all that, take it to police

but don’t expect much. Only the very lucky get justice out of sexual assault.

Around 120 million girls and women worldwide have experienced some form of forced sexual intercourse at some point in their lives – that’s one in 10 women who have been subjected to a horrifyingly scarring, life-altering attack that changed everything. These women are the victims of an assault that cannot be judged as clearly as a murder can, and it’s this attitude in the justice system that lets the world’s vulnerable down.

“One of the biggest problems we have is that people don’t feel like they’re going to be supported when they make a complaint,” Ms Horan says. “There’s been a lot of work done by the police and the courts to fix it, but there’s still a lot more to do.”

It is a common practice to determine a case’s outcomes by looking at past judgements and comparing similarities. It’s a given that the justice system seeks guidance from its past, but Ms Lee says this is part of the reason why “it’s so slow to catch up”. It’s

not an issue with just gender only, but across the law system as a whole.

“The law is just so clunky and slow. The thing for me and the central frustration I have had with people who are wary of progress is that they think it has anything necessarily to do with upsetting the balance of the presumptions of innocence. They think it’s better if 100 guilty men go free [rather than] one innocent man be locked away,” she says.

The role of advocates in changing ‘archaic’ sexual assault laws

Ms Lee is the author of two books, a freelance writer, speaker, academic, an advocate, qualified to practice law (but chooses not to) and a victim of sexual assault. Her book *Eggshell Skull* takes a stunning look at how hard it is for victims, much like herself, to find justice in a deeply flawed system that presumes perpetrators are innocent.

Ms Lee’s story follows her experiences as first an associate to a highly respected and well-liked judge and then, two years

allows for an accused rapist to argue they had a mistaken, but honest and reasonable, belief that the sexual act was consensual. It is an argument regularly used by accused rapists in the state, who can contest that intoxication, a person's behaviour, previous flirting or limited English caused them to believe the other person had consented.

In July 2019, Ms Lee successfully used her new-found platform to inspire major change in Queensland. The "mistake of fact" law was referred to the Law Reform Commission for review and in January 2020, the commission released the consultation paper and began the process of accepting submissions. At the time of writing, the government in Queensland had released its first framework to prevent sexual violence.

Minister for the Prevention of Domestic and Family Violence Di Farmer says the guide builds on Queensland's progress so far, and brings "together the evidence and advice of survivors with the expertise and experience of the people there to support them".

"While community attitudes are changing thanks to social movements #MeToo and to #TimesUp, and the committed advocacy of survivors and governments, evidence has shown experiences of sexual violence are widespread," Ms Farmer says.

The Queensland government may be celebrating its changes – and of course most, if not all, are welcome changes – but it still has a long way to go.

"Queensland is the worst state," is Ms Lee's criticism.

"Something that is really frustrating is that we have all these examples from Australian jurisdictions and other jurisdictions about procedural things that make survivors more comfortable, even reporting crimes, that can stop unnecessary three, four, five years delay between reporting and trial," Ms Lee says in relation to its systems and the slow pace Queensland has moved to catch up with the rest of Australia's jurisdictions.

Lawyers Weekly spoke to Queensland Bar Association's president Rebecca Treston, who says the recurring themes in critiques of sexual assault offence laws are the claims that there is a high rate of acquittal in cases, which shows provisions need amending.

"The association is not aware of any published data that objectively supports premises or the conclusion," Ms Treston says. "Without any evidence to support the claim, these descriptions of Queensland's laws as archaic seem to be made without foundation."

On the "mistake of fact" law, Ms Treston explains it applies to every criminal offence in Queensland, apart from a small number of largely regulatory offences.

"Significantly, it requires an offender to actually hold a belief, and that belief be honest and reasonable in the circumstances. This means that offenders who are reckless as to consent, whether because of alcohol or otherwise, simply do not hold a belief that a complainant is consenting, let alone one that is both honest and reasonable," she says.

"Suggestions therefore that the law needs to be changed as to prevent reckless or the intoxicated defendants escaping criminal liability are ones which understand law."

Justice system failing victims right from step one

Queensland is already at a highly contentious point in its flawed legislation and in how it treats victims of sexual assault, but its worst part is at the policing stage. Drawing on new data from the ABC's independent investigation into police handling of victims, Ms Lee describes police officers as being the "biggest problem in the system the way it is now".

The ABC flags that more than 140,000 sexual assaults were reported to Australian police in the 10 years to 2017. Police rejected nearly 12,000 reports on the basis they did not believe an assault had occurred and they "cleared" more than 34,000 without making an arrest due to a mirage of reasons, such as not having enough evidence.

Let's take a look at Queensland in particular.

Police rejected 20 per cent of the sexual assault reports; one in five sexual assault reports were "unfounded", compared to the one in 20 in NSW; Queensland's regional councils were among the areas with highest unfounded rates, rejecting 25 per cent of the assaults reported in 10 years; and nearly one in three sexual assault reports are withdrawn in Queensland.

Queensland's police problems were highlighted in a scathing report by the Audit Office which found police pressured victims into withdrawing complaints. Officers were found to have also changed the status of some cases from unsolved to unfounded.

The report noted that a sharp increase in offences being classified as withdrawn from across the Gold Coast district is not attributable to victims uniformly deciding to have their case withdrawn, but rather the Gold Coast divisions employing methods that are aimed at encouraging victims to withdraw as a means to increase clearance rates.

"Despite the withdrawal of complaint form specifically stating that a victim's withdrawal of complaint must not be 'solicited or induced by any police officer', we have obtained evidence that demonstrates some divisions

Bri Lee, photo credit: Alana Potts

later, her own trial of an assault that happened to her when she was only very young. It's an incredible look at how the Australian system, and particularly the Queensland system, has let down sexual assault victims.

"What statistics show is that gross, gross numbers of perpetrators are not only never tried, but they're not even charged. They're never even properly investigated," Ms Lee says. "The statistics show it, and I think there's a frustrating connection between a lack of care about sex crimes and lack of resourcing and prioritisation of dealing with it."

"Most sentencing principles suggest it's the second-most serious type of crime, second to homicide offences. At least one in five Australia women, which means that at least 10 per cent of the Australian population, are experiencing these crimes.

"Yet comparative resourcing [for sex crimes] just absolutely don't match up."

As it currently stands, the 110-year-old "mistake of fact" legal defence in Queensland

within the Gold Coast district are inducing or leading victims to withdraw their complaints," the report says.

It included police officers meeting with victims to advise them that the police exhausted their investigation and to solicit a withdrawal from the victim. What's worse is that this was founded to be a longstanding issue, with traces back to 2013.

"Queensland is the worst state at the policing stage," Ms Lee says. "It's naive to think that with how archaic and how behind Queensland's legislation is, it would be absurd to think that doesn't flow back through to how outdated policing attitudes are."

In her memoir, Ms Lee explains that her father was a cop and that when she thought of officers, it was her father she thought of first. The book begins with him jumping out of a car with Ms Lee still in it to confront a couple fighting in the street. She would come home and overhear him talking to her mother about assaults, once asking what "rape" means but never once thinking while still a kid that it would ever really apply to her.

I asked Ms Lee whether she believes this issue in this part of the justice system is due to the attitudes of particular officers, rather than an organisation-wide problem. Ms Lee agrees it was an individual issue and said it was the "biggest issue in the system".

"Individual police officers and also individual prosecutors are exercising their individual discretion and there are currently no effective mechanisms requiring them to account for those individual decisions," Ms Lee tells me in response.

"In my personal experience, and from everything I've heard and read in the last three years, survivors are basically left playing Russian roulette. You can walk into a police station and get a really incredible cop that has done the specific training, or you can walk into a police station and get treated like absolute garbage."

I reached out to the police union in Queensland for a response to the allegations, long before public, for a chance to respond. They never replied. Take that as you will.

Issues within the courtroom: Judges and the defence team

Judges have a major effect on the outcomes of a sexual assault trial, whether there is room for unconscious bias or not. A more extreme example came from a rape trial in December 2019, in which a man appealed against a judge's decision to continue their criminal trial while excluding evidence of the complainant's history of false complaints.

But there are lesser, and certainly more

subtle, ways judges can influence the court's decisions in a rape or sexual assault case. Ms Lee says it's "not as spoken about that judges have a lot of control over how trials are run in their courtrooms" and set tones.

For example, there are some judges that won't accept aggressive shouting in cross-examinations, whereas others will: "It's widely known that some judges, if they do not appreciate the tone or angle of the cross-examination, will politely interrupt counsel, whereas some judges absolutely would not. It is their position that counsel should not be interrupted unless an actual injustice is about to occur," she says.

An example Ms Lee brought up is the rule which says counsels in cross-examinations cannot ask the same question multiple times. However, in reality, during a multi-hour and multi-day cross-examination of a sex crime complainant, victims are still subjected to "extraordinarily similar questions" put to them "repeatedly and repeatedly with goals of trying to tease out any possible, tiny inconsistency in the story".

"It's a really fundamental frustration I've had in touring my book and doing so much

of this advocacy that it is absurd to me that people think the individuals doing justice don't have a fundamental effect on the way justice is done," Ms Lee says.

"I talk about the absurdity of the idea that justice is blind or that we have these inherent problems in our legislation and in our processes and procedures and in our defence positions, and people start getting really uncomfortable."

Another issue with defence exists in the ability to submit a peremptory challenge, with the design of taking away jurors based on gender, race and career.

Ms Lee says defence use theirs a lot more frequently. It has been so rejected by some jurisdictions that some states, like Victoria, have dropped down to four challenges and, in the UK, where Australia adopted the system, it has been abolished altogether.

"My concern with the peremptory challenges is that we should not have them at all as there is no research that supports the decision of the defendant to challenge particular people. It's based on superstition and myth," says Ms Horan.

For example, as it stands, there is a "fashion" to pre-emptively challenge teachers and nurses as they are



“At least one in five Australia women, which means that at least 10 per cent of the Australian population, are experiencing these crimes”

predominantly female. Ms Horan notes it's an example of why justice systems should abolish peremptory challenges “because they work in a sexist way”.

“Peremptory challenges are a very, very frustrating thing,” adds Ms Lee. “There are so many problems with the jury and I'm interested in seeing what is coming out of New Zealand where they are trialling more judge-alone trials for sex crimes.”

Juries an ‘awesome’ thing in cases, but rape trials prove too challenging

The main issue held with jurors in rape trials is the unconscious bias they bring with them into the courtroom. Ms Lee says jurors are the cross-section of an Australian community, but society is “racist, transphobic and homophobic, not to mention sexist”.

“It's questionable how much jury direction

is listened to and understood by jurors, but that is opening a whole separate can of worms around discussions where jurors work in sex crime trials and the answer is not very well,” adds Ms Lee.

Lawyers Weekly spoke to Ms Horan to get her unique view into how jurors will operate in sexual assault cases. Part of her research looks at the perceptions of the evidence presented to jurors, as well as attitudes and unconscious biases of a typical juror.

“Juries generally in the criminal justice system are an awesome thing,” Ms Horan concurs. “But rape trials are the most challenging for the justice system and the juries.”

Ms Horan adds a 12-person jury is a good way of judging cases, rather than introducing a panel of assessors, as it cuts down unconscious bias. If somebody in the jury says something wrong about

the behaviour of a victim in a rape case, there is often another juror to challenge this opinion and point out flaws in the argument.

“Everyone is a product of their own experiences. Even judges have unconscious bias. If you leave it up to just one person, you run the risk of biases not being challenged,” she says.

There have been some improvements to the juror system, particularly in Victoria, that aim to cut down the unconscious biases and the effects this has on sex crimes cases. For example, Victoria allows a psychiatrist to explain to the jury what is normal and not normal for a victim to be doing; for example, it is normal for a victim to resist an internal investigation by a medical officer and it does not mean they are being untruthful.

Another concern is in prejudicial publicity, which is a “huge issue for the criminal justice system going forward”, as the old ways no longer deal with the concerns.

Ms Horan points to disgraced Cardinal George Pell's case, which saw an order come from the court to prevent local newspapers from publishing details. However, just one search and the world could read updates in international media sites.

“...depending on the state in which you’ve been assaulted, your options for getting what you define as justice can be really different”

120
MILLION

girls and women worldwide have experienced forced sexual intercourse

“It’s a huge problem and not easily solved either,” says Ms Horan. “One of the saving graces of the juries – and it’s very hard to unlearn the things you’ve learnt – but juries are really diligent and want to do the right thing. So, if the court explains the rationale for why they shouldn’t look at these things online, the jurors will generally accept that.”

There have been many suggestions for how to improve the jury system, including just abolishing it altogether. Another option is limiting it to specific experts – but there looks to be several barriers preventing major change, according to Ms Lee.

“I think it is really telling that when it is suggested that juries should be limited, people that speak up against the law are the bar associations, who historically have always had the least progressive attitudes towards reforms to do with consent law,” she says.

Having been given the opportunity to respond to this critique, Ms Treston says that bar associations are uniquely placed to advise on sensible law reform that actually works in practice, because members are daily in court conducting cases for both parties.

“Inevitably, particular interest groups will not always share the bar’s view. But it would be a mistake to ignore the views of the association whose members have a thorough knowledge of how the law works, and understand the consequences of ill-conceived or hasty reform that is not founded on evidence,” Ms Treston says.

What’s the future of the justice system and its handling of sex crimes?

So, what happens now? According to Ms Lee, the last thing we should be advocating for is increased sentencing and penalties for offenders as the “knee-jerk” response will not go far in preventing future sexual offences or potential rehabilitation. She said she believes so much against it that she will never advocate for longer sentences.

Ms Lee says these calls have been borne out of the shouting from #MeToo, #TimesUp and an overall social media campaign. While shouting is necessary to promote legal challenges and is overwhelmingly encouraged, shouting for longer sentences can only be damaging. More justice for the victims should not mean less for the accused.

“All I’ve ever cared about [are] investigations and prosecutions and charges,” she adds. “It’s a very frustrating thing that the rare time you do get a conviction, and the rare time you do get press coverage of the matter, the knee-jerk response is ‘how come he was locked away for 10 years, he should be locked away for 25!’ she says.

“I don’t think that helps at all.”

Australian states should also be cautious about introducing an alternate court for any potential dispute resolutions. Some victims of sexual assault and rape have called for a specialised court that would achieve their wishes of receiving a formal apology from their attacker and have their assault recognised by the legal system.

For starters, Ms Lee says it’s a “really frustrating thing” that the justice system has been split between the states: “There is almost like a different kind of Russian roulette where depending on the state in which you’ve been assaulted, your options for getting what you define as justice can be really different [state-by-state].”

Ms Lee says courts should always respect survivors’ wishes for how their matter should be dealt with and to keep the process of inquiry and the process for justice under their control. And although onboard with an alternative dispute resolution court, Ms Lee says it should still ensure that there are formal records of an apology on the record.

“The huge part of the wonderful potential of alternative dispute resolution is a prospect that the person could learn and never perpetrate again, and obviously all anyone tries to achieve is prevention and that is something that would be a potential by-product of a more conciliatory process,” Ms Lee explains of the specialised courts.

“The reality is that there are people that have already offended multiple times or would give an apology to not risk going to jail and would continue to offend.” ♦



Three sessions lawyers can't afford to miss at Governance and Risk Management Forum

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Editor note: Speakers subject to change



Catherine Maxwell
general manager, policy & advocacy,
Governance Institute of Australia

Spirituality, positivity and connection: The next frontier for boutique wellness?

Life as a sole practitioner or in a boutique firm often, if not always, requires determination of workplace habits that best suit the individual lawyer's needs. To further ensure holistic success and wellness, some professionals are finding that incorporating "new-age" practices offers an additional boost on the road to personal and business health and happiness



/ by Jerome Doraisamy /

Some people cringe at the idea of spirituality – they simply write it off as ‘hocus-pocus;’ muses Gallant Law principal Lauren Cassimatis.

This piece is not intended to push or advocate for any variation of spirituality that individuals – lawyers or otherwise – can immerse themselves in. Law, as with any profession, is a vocation that requires that one extrapolate how best they will find value and purpose in their daily work.

For some – perhaps for many – spirituality (maybe in the form of religious belief), practising positivity and seeking connection with the world around one's self are ways to better reach such value and purpose.

This, ultimately, is what Ms Cassimatis and others would encourage: “Find something that brings you a real sense of hope or inner peace – that mentally takes you away from the stress of law and business – and implement it at a time that feels right,” she says.

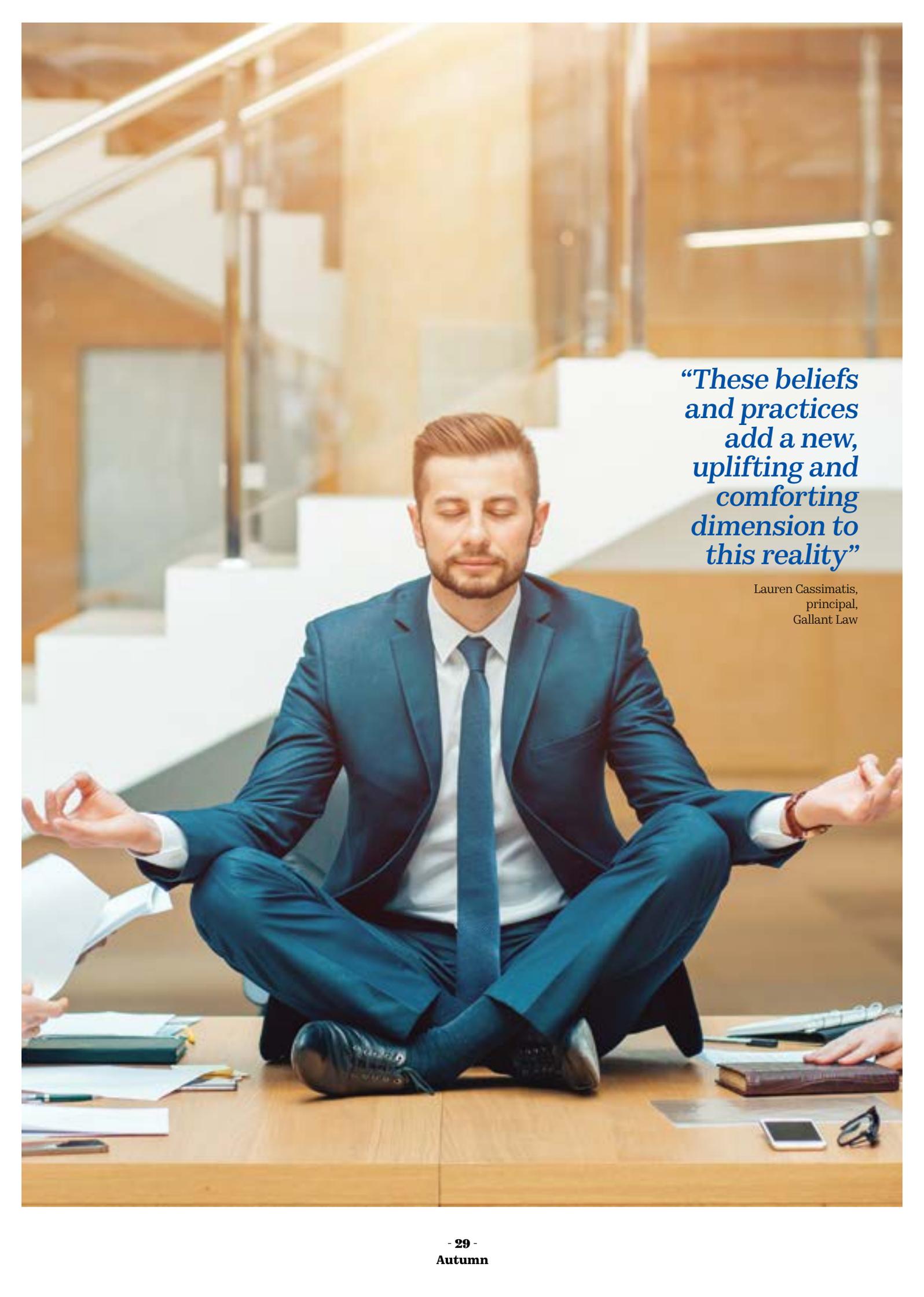
To explore the myriad avenues of such “new-age” legal practice, as well as why adopting such approaches can be so beneficial for those who choose to adopt them, Lawyers Weekly spoke with Ms Cassimatis, Victorian barrister and Survivor contestant Sharn Coombes, Slades & Parsons director Jasmine Pisasale and Stidston Warren Lawyers partner Virginia Warren, self-styled as “The Zen Lawyer”.

Beliefs and practices

Meditation is a practice that Ms Pisasale undertakes daily, noting that the use of diffusing essential oils in the office helps enhance or complement specific moods or states of mind.

“I am a believer in angels who look after you, in my specific case, my late father. I quietly turn to him for support in times where I feel I need personal or professional guidance. Sceptics may raise an eyebrow or two at this approach; however this has helped me get through some very tough times and follow my gut when making big decisions. I've never regretted anything because of this,” she says.

Ms Pisasale says it is fundamental for her to engage in such practices, given how

A man with a beard and short brown hair, wearing a dark blue suit, white shirt, and blue tie, is sitting in a meditative lotus position on a light-colored wooden table. His eyes are closed, and his hands are resting on his knees in a mudra. The background shows a modern office interior with a staircase and glass railings. The lighting is warm and soft.

*“These beliefs
and practices
add a new,
uplifting and
comforting
dimension to
this reality”*

Lauren Cassimatis,
principal,
Gallant Law

accountable she is to her clients and their concurrent demands.

“Such practices keep me in touch with my true self, it reminds me to be honest with who I am and not lose perspective or try to be someone I am not. Stress can have such a profound effect on one’s personal functioning too, ultimately, you can find yourself getting wrapped up in your own emotional and physical responses to it. These practices keep me grounded and remind me to be present,” she says.

Ms Cassimatis employs a similar faith-based approach, in accordance with teachings handed down to her by her grandmother.

“I believe, as my grandma always told me, that you should have faith and confidence that things will turn out as you want them to. I feel this is something akin to the ‘law of manifestation’ – that is, if you put your dreams/goals out there and trust that you’re being guided or assisted to achieve them, all the while being genuinely grateful for what you already have, you will achieve them,” she explains.

“Some people channel ‘the universe’, others pray. I pray to my grandma and a greater energy out there. Whatever it is – I thank them for all I have, the help and guidance they give me, and ask them to continue to guide me.”

What this allows Ms Cassimatis to do, she says, is better appreciate what is in front of her.

“It’s important to have hope and trust that you’re being taken care of. The world of the criminal lawyer is intense, traumatic, complex and high-pressure. We absorb negative emotional energy, we become analytical, investigative and we picture worst-case scenarios,” she notes.

“These beliefs and practices add a new, uplifting and comforting dimension to this reality. They give you a sense of resilience, confidence and hope.”

Elsewhere, Ms Warren believes that all humans are “fundamentally connected”.

“I am an aspect of you, and you are an aspect of me. This connection, science is showing us, emanates from our hearts,” she submits.

“To live from the heart means you experience your emotions and connect with others in that space. I use centring practices to ensure I live the best life I humanly can by creating space within the ‘now’ moment, given that now is all we have. The best, most loving life choices for ourselves and others are made from this moment.”

Such an approach is meaningful for Ms Warren, given how lawyers have to work “from their heads”.



“Yet life and law are all about relationships, yet inherent in relationships is emotion. We need to shift our approach to find a balance in working between our heads and hearts. That way we feel fulfilled and begin to reconnect,” she says.

On the other hand, Ms Coombes finds that immersing one’s self in nature – whether it be “hiking in the bush, going on a trail run or getting to the beach for a surf” – is a surefire way to get back in touch with what is important.

“Reconnecting to the natural environment is huge for me in restoring equilibrium to my life. I find by focusing on the natural beauty that is around, indulging in that sensory feast, [helps centre] your thoughts, creates a sense of calm and gives you perspective. I meditate regularly, practice yoga and run,” she outlines.

Such pursuits are non-negotiable, Ms Coombes explains, so as to maintain an optimal level of wellbeing.

“As much as I enjoy my career and busy family life, if I don’t take care of myself first, I can’t function at my best in these other

areas. By employing these practices, such as meditation and exercising regularly it [helps create] a balance in my life, which I find improves my productivity and general wellbeing,” she says.

Going against the traditional grain

In considering why the adoption of a more spiritual approach to her work was so fundamental, Ms Cassimatis says as a “generally outgoing, playful and compassionate” person, she has often wondered whether she is the right fit for a traditionally rigid and structured industry such as law.

“The formal business models, billable hours, the glass ceilings in the industry, the politics – none of these are really compatible with who I am and why I am a lawyer. I wouldn’t have been able to launch my own firm in a style that represents how I feel a law firm should operate, let alone as a woman in my 30s and mother of two young children, without incorporating positive thinking and the ‘law of manifestation,’” she recounts.



“Reconnecting to the natural environment is huge for me in restoring equilibrium to my life”

Sharn Coombes, Victorian barrister and *Survivor* contestant

“My clients appreciate my empathy and hopeful approach. I go beyond their case, I assist them to put in place the right measures for the long term. We look at how they can salvage their personal relationships, find work, engage in rehabilitation. Through my incorporation of such a ‘new-age’ law approach, I instill some hope in them that with the right support, confidence and trust in the world they can turn their lives around.”

Ms Pisasale and Ms Coombes come at this query from a wellness angle, with the former pointing to the fact that the legal profession has often been wrought by overwork, fatigue, depression and in some cases alcoholism.

“This has been a cycle that has gradually become the norm, resulting in a mentality that you have to ‘do it tough’ to be a resilient and successful lawyer,” she says.

“By prioritising such practices, I want to reduce the risk of ‘burnout’ and break this recurring chain of negative wellbeing. It has resulted in high staff retention rates, a happier workplace and better performing lawyers.”

Meanwhile, Ms Coombes says: “The integration of ensuring a good balance of exercise, and a regular connection to nature helps me connect with clients and creates mental ‘space’. It alleviates the feeling of being overworked and stressed, which can affect the interactions you have with others and overall performance.”

Ms Warren comes at it from a physiological perspective, highlighting the importance of being heart-centric and detaching from stereotypical lawyer traits.

“Effectively we are trained to approach legal problems as half a human (left-brained thought) dealing with half a problem (conflict devoid of emotion). We have disconnected from ourselves and our communities.

This is unnatural and, in my opinion, why depression and suicide are prevalent within the profession. And perhaps even why client dissatisfaction is an issue,” she says.

“A heart-centred approach brings us as lawyers back to who we are at a fundamental human level. Above all, it’s satisfying to work this way.”

Incorporation into the day-to-day

Ms Warren feels it is integral to embody the beliefs and practices one subscribes to: “Whilst I work in my day job as a lawyer, I am a connected human first. Law is the work I do, it’s not my identity.”

“By being centred and present, I create a loving space. I treat every client that walks through my door without judgment and with absolute compassion as I draw them into my field of connection. Essentially people want to be metaphorically heard and held,” she says.

Ms Cassimatis has a bevy of activities she incorporates into the day-to-day.

“I meditate before I go to bed at night for about 10 minutes and during this, I express my gratitude to the world and seek guidance from my grandma or a greater energy,” she says.

“If I feel myself becoming overwhelmed at work or anxious, I take a moment to breathe and repeat my practices. Sometimes I even do this when I’m about to appear in a case at court. If I feel particularly strongly about a case and find the nerves getting the better

of me, I incorporate my practices at the bar table! I visualise a greater outcome for my client and gain strength as their advocate.”

Ms Coombes adopts a similar approach, noting that she starts her day with yoga at 6:00am.

“This incorporates mediation as well. As far as exercise and connection to nature, I try and go for a walk or a run in a garden or parkland at lunch time to take in the different sounds and scents that are a stark contrast from the digital light of a computer screen, or intense environment of the court room,” she explains.

What can also be just as important, Ms Pisasale adds, is to schedule a “time-out” into each and every day.

“I would often come back from court, eat lunch at my desk and solidly work past dinner time before rolling out the front door feeling deflated and depressed. What I didn’t realise was that work was taking longer to complete as I wasn’t working as my best self,” she reflects.

“I always make sure staff aren’t working late or on weekends. If they tell me they did so, I reinforce for them not to make a habit of it as it’s important that they use that time to reset for the new week ahead.”

Flow-on benefits to clients

Ms Warren’s practices have led her to a greater connection with clients by, simply, checking in with how they’re feeling.

“Being centred in my heart, I then hold space for them to be heard. If I’m dealing in litigious matters, I am able to show a client that the conflict they are in is the best thing happening to them for their personal growth,” she says.

“Every client is right from their perspective, yet this does not work in a win-lose model. Clients invariably walk away disappointed. I reveal to them that their perspective of the truth in their case arose from their belief systems. This helps a client self-validate. It is such a revelation to people to know that they don’t need to blame someone to feel better. That it was simply their belief system, whilst working for them when they were young, lead them to react to a situation in a certain way.”

Ms Cassimatis backs this up noting: “My clients are appreciative of my positive, even spiritual approach. They are thankful for my compassion and big-picture thinking – for giving them a sense of direction, worth and purpose.”

For Ms Pisasale, the flow-on benefits to clients arise in that her practices allow her to be more productive across the board.

“For example, sometimes when I need to de-stress, I apply some calming essential oils





“A heart-centred approach brings us as lawyers back to who we are at a fundamental human level”

Virginia Warren,
partner,
Stidston Warren Lawyers

to my neck and wrists, whether they work or not, I feel as though I approach decision-making in a more measured and calculated manner,” she says.

“Clients then observe a calmer, less frantic lawyer. I believe small changes like this results in increased confidence in the work I do for them and higher levels of satisfaction.”

Ms Coombes supports this.

“I think these practices help you function and perform better as a lawyer because they allow you to be more focused, and calm under pressure. When you feel balanced and centred, clients get a sense of that, which in turn means they feel more confident in you,” she says.

Personal and professional advice to other boutiques

As already noted, adopting a more “new-age” approach to legal practice and one’s workplace environment does not have to mean conversion to a particular faith, nor should such things be simply dismissed as “hocus-pocus”. It is, as Ms Cassimatis identifies, about discovering your own sense of self, purpose and inner peace.

“Whether it is going for a run or swim, drawing, singing, yoga, being with nature – these are examples of uplifting/rewarding practices that actually help you connect with yourself, to clear your mind, think positively, understand your aims/goals/dreams and actually believe you can achieve them,” she says.

“It’s about believing you deserve something and knowing it can come your way. These beliefs are best pursued when you’re in a positive/relaxed headspace.”

The benefits of such approaches are not just personal, but also professional, Ms Pisasale notes.

“Even if people think that some of these effects are a placebo, I say go with it! It only serves to benefit your daily practice. Some of my biggest business decisions have been made on the back of reaching out to my father and seeking guidance,” she muses.

“I have relied on the signs that I needed to go forward in the right direction and follow my gut instincts. As a result, I couldn’t be happier with where I currently stand professionally.”

It doesn’t just apply to lawyers, Ms Coombes adds, but all people should search for some kind of spiritual practice or belief that strengthens their sense of self.

“Whether that be in the form of meditation and/or yoga, or walks immersed in nature, or even painting or drawing. Whatever allows you to be focused on the present moment where you can quieten the mind

“I believe small changes like this results in increased confidence in the work I do for them and higher levels of satisfaction”

Jasmine Pisasale,
director,
Slades & Parsons

and find a sense of peace in this busy world,” she says.

This necessarily requires discovery of what works for each unique individual, Ms Coombes says.

As such, she notes lawyers should “experiment with different things, get creative, start conversations with other lawyers who might be employing different tactics and get ideas. Even though we undertake serious work, as a profession we can find better ways to look after ourselves and become even better lawyers in the process”.

Moreover, lawyers in the boutique space should be unafraid to indulge in and embrace “new-age law”, Ms Cassimatis argues.

“Try different things, such as meditation, yoga, crystals, praying, being with nature – whatever feels most interesting/intriguing/comfortable. In a high-pressure, traditional profession where we are so programmed to focus on evidence, facts, justification, proof – sometimes it is comforting, rewarding and interesting to explore something unique and new,” she says.

“It causes no harm – in fact it fills you

with a lot of motivation, enthusiasm and hope to not just survive but to thrive.”

If nothing else, finding ways to reconnects allow lawyers to better serve others, Ms Warren deduces.

“Find a way to reconnect with your heart. You must put your own oxygen mask on first before you can help others,” she suggests.

“Other people can feel this. They feel your uplifted energy and that resonates through your workspace. Clients feel supported as you offer a loving, not fearful environment. The legal system is terrifying. People want an uplifting experience.”

This is especially important because it is “very easy to slip” into negative traits as a result of complacency, Ms Pisasale adds.

“There is no one-size-fits-all approach, different things work for different people so don’t be afraid to start small. Take a 10-minute walk for fresh air, or listen to rainforest sounds at your desk with your headphones in. You will start to feel the positive change and subconsciously you will learn to make time for more meaningful practices and prioritise yourself on a daily basis,” she advises.

Conclusion

Being spiritual, practising positivity or connecting with the outside world will, of course not be for everyone. However, there are undoubtedly a plethora of psychological, social and professional benefits that one can tap into if they so wish.

For the professionals profiled in this piece, what is ultimately fundamental is being cognisant of the opportunity that lawyers have to make a positive difference in the lives of others and ensure that one is in the best possible position to create such change.

“Law is about governing relationship, we can either foster reconnection with people, bringing community together or we can continue to work in an unnatural state of separation,” Ms Warren espouses.

“In law school you were trained to disconnect from your humanity. You were taught that a client’s emotions don’t matter. Yet, this is a fundamental aspect to all conflict. Shifting to balance the head and heart not only brings you client satisfaction, it offers you a fulfilling vocation.” ♦

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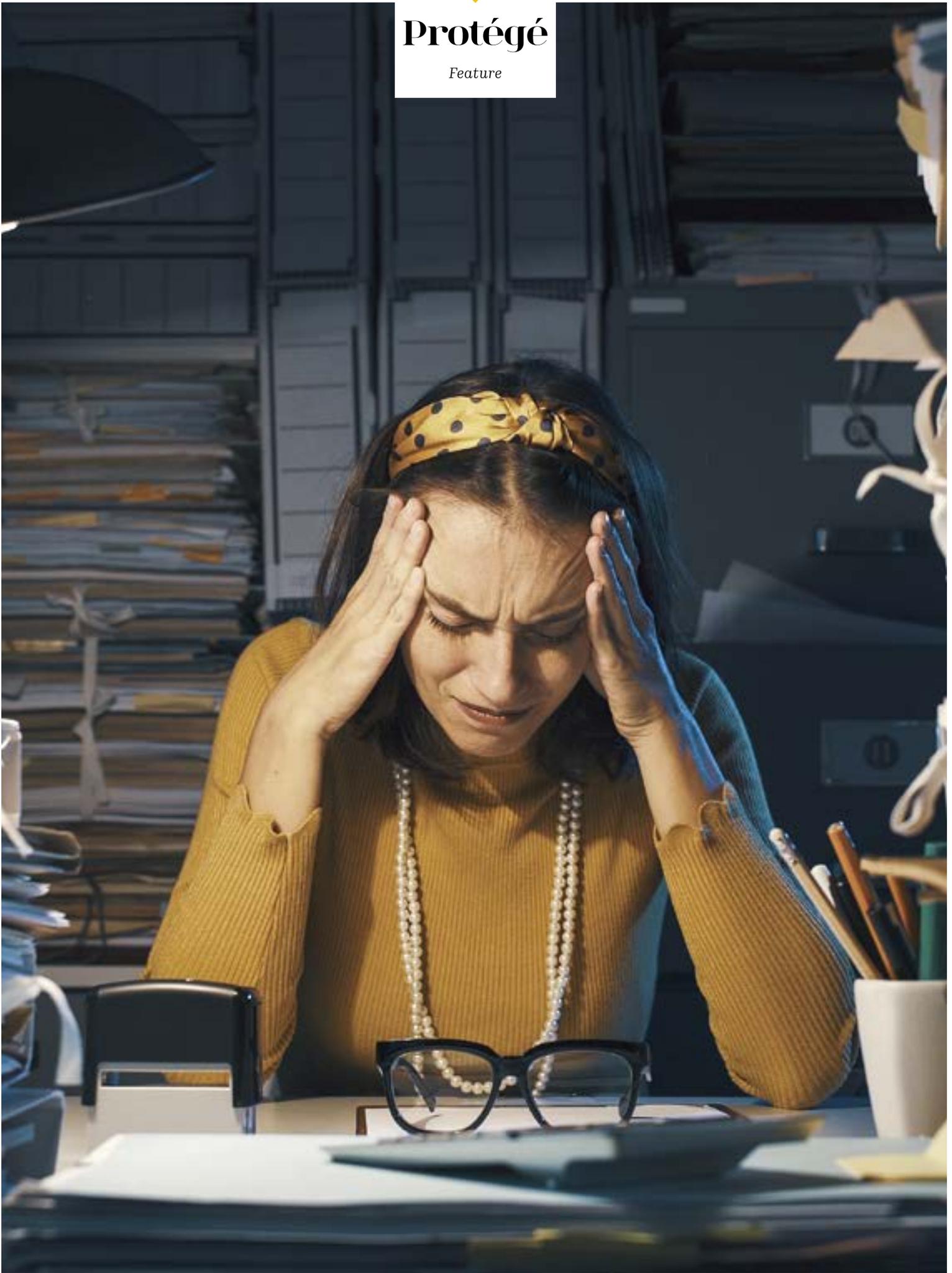
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How legal education fails

to match up to the shifting legal profession

Due to the ever-changing landscape of the legal profession, law students are now more than ever needing to adapt to the skills required to work in the present and in the future, but the state of legal education is failing to properly prepare future law leaders. To gain an insight into what is missing for 2020, Lawyers Weekly spoke to three top students



/ by Naomi Neilson /

Even before they have graduated, thrown the cap and stepped into the profession they studied for across a minimum of five gruelling years, law students are already working in the legal profession, either in internships, cadetships and clerkships or as paralegals for small and BigLaw firms. It means legal education needs to prepare students not just for the future of law, but how to successfully navigate the present legal environment.

According to some of the top Australian students, the current state of legal education is not quite equipping them with the necessary skills. When speaking to Lawyers Weekly, Australian Law Society Association (ALSA) 2020

president Margaret Cai says she does not believe students are prepared for the future of law.

This opinion seems to be a shared one. It only takes a quick search to find comments by legal leaders which give cause to the argument that graduates are not sufficiently prepared for modern-day law.

“Anecdotally, people question whether compulsory core subjects are actually relevant and foster the necessary critical skills for real-life practice,” Ms Cai says.

“One question that is often overlooked in these discussions is what are the motivations for legal education? Why do current and prospective students choose to undertake a legal education? An understanding of this is important in informing whether education is

appropriately providing students with what they’re looking for.”

The failure to appropriately prepare future leaders for the next phase of the legal profession is in not recognising the trends and pre-emptively offering training and further studies. Meika Atkin, Lawyers Weekly’s winner for Law Student of the Year at the 2019 Women in Law Awards, says despite growing concerns in relation to technology, and the demand for innovation in the sector, educators are failing to design appropriate practices for students.

“Many legal educators are struggling to effectively design and implement courses and units to prepare students for the future profession,” Ms Atkins notes. “Legal educators need to work collaboratively

with technology specialists, data analysts and strategists from a range of industries and work to design curriculum that is shaped around future professions, rather than the one that exists today.”

In part, legal education has failed to allow students the opportunity to expand on their chosen fields. The Law Student of the Year at Lawyers Weekly’s 2019 Australian Law Awards, Michael Jeffries, says legal education is too “domestically orientated”.

“The main concerns that I observed during my studies were a perceived lack of career opportunities for graduates, coupled with workload expectations and the mental health challenge once such a position is obtained,” Mr Jeffries tells Lawyers Weekly.

Above all, the legal education system is struggling to predict issues and trends which will arise in the future. Ironically, it’s what law schools should be pre-emptively managing, which it can do by implementing ways to encourage resourcefulness, Ms Cai says.

“The pre-eminent HR catchphrase within the legal profession at the moment seems to be, ‘We’re not looking for cookie-cutter candidates’. Given that legal education is critical to producing these candidates – from everything from commercial law to policymaking and consulting – a similar sentiment should be driving our legal education,” she says.

“How do we produce well-rounded graduates?”

Where Australia’s legal education needs to catch up in 2020

So, where do Australian law schools begin? According to Ms Cai, there are identifiable trends within the legal sector that exist currently and even more that are expected from 2020 and onwards.

During this next year, law schools and leading bodies will continue to hedge questions over whether legal education has adequately “catered to emerging demands for skills” that students need to effectively practice in their chosen field.

Some of the major challenges identified by the students include technology and failure to manage innovation. On this, Ms Atkins identifies a trend the sector has particularly been struggling with – artificial intelligence. It has been widely adopted in many major firms across Australia, and it is imperative students know how to manage it.

“With the sector’s increasing resilience on AI software solutions, demand for the time-consuming administrative processes – that is primarily reserved for junior lawyers and paralegals – is rapidly diminishing,” Ms Atkins says, noting the trend is

“altering the role and desired attributes of law graduates”.

In addition, firms have started the process of deviating from a focus on their theoretical knowledge and legal drafting, choosing instead to emphasise on the importance of their strategic innovation, design thinking and data analytics. With the way courses are set up for students, education is not quite preparing them for this minefield.

“Eventually, this same focus will permeate through the whole profession,” Ms Atkins says, adding this shift significantly impacts the available subjects that legal educators should be offering and the learning outcomes students should be striving to achieve.

Off this, Ms Atkins also identified trends around the growing sophistication of the cybercriminals, increased resilience on automated software and the existing skills gap within legal technology. There are also concerns on the implementation of effective adaption and mitigation strategies posing a major challenge for smaller firms and

business, who may not have the existing, required resource capabilities to do so.

“Human error remains the most proven contributor to the success of cybercrime,” says Ms Atkins. “As such, legal educators should give considerable attention to integrating theoretical and practical awareness of cyber security to ensure graduates adequately are equipped to appropriately respond to potential cyber-threats.”

Technology has and will continue to substantially change the legal industry with AI just one of the major trends to come from this. The key argument is the state of education does not adequately prepare students for this future, but Mr Jeffries says he identified automation and online dispute resolution processes as a plus.

“It is great to see that some universities have developed offerings which integrate and provide students with increased exposure in this respect,” Mr Jeffries explains.





“Rather than focusing on the current needs of profession, educators must focus on pre-emptively preparing students for profession of the future”

“Students can rise to the challenge individually throughout participation. Law students should also be prepared to step up whenever technological innovation opportunities present themselves in their future workplaces; this is often a means by which they can contribute unique value and skills.”

Outside of legal education, technology and innovation present challenges to practical management internally and any external dealings.

Ms Cai says this is illustrated in the difficulties law firms currently have in attracting and retaining talent and clients. There is also a lack of integrity and trust among the community and a failure on global trends.

“Importantly, these issues are not content-specific. When the biggest trends and issue facing the profession are about critical thinking beyond the law, attention must then be directed to the delivery and tangible outcomes of legal education,” she notes.

Ms Atkins mirrored this, adding there is a notable skill gap in the area of technological advancements and innovation, which she said is likely to continue widening. Although most legal educators have integrated some form of innovative focus on their programs, as Mr Jeffries identified, many are still struggling to keep up with the demands.

“The sector is moving faster than ever before and it is the role of legal educators to be at the forefront of this change. Rather than focusing on the current needs of profession, educators must focus on pre-emptively preparing students for profession of the future,” he says.

And although it is hard to look past technology and innovation as the current and main trends creating new opportunities for the legal profession, Ms Cai notes there are other trends that should be the focus of legal education throughout 2020. This includes new offerings in the legal landscape, which are encroaching on traditional careers.

Further trends include the emergence of NewLaw firms and the in-house in businesses and organisations to manage legal issues, which are disrupting and shaping the current and challenging way the future of law is beginning to appear.

“These trends mean that legal education needs to be dynamic and readily responsive. While underpinning concepts and principles in black letter law may not have changed, relevance of these principles is in their application to real-life contemporary problems,” he says.

The primary concerns of 2020 law students and graduates

A relatively common concern among law students is in school's persistence in having the Priestley II ingrained in its students, especially centred on whether it reflects the current state of education and if it retains relevance for modern-day law and the future practices of law.

Currently, the crux of legal education

“We’re big on communication and conversation and we have a range of practices and policies in place to help graduates manage their wellbeing”

in Australia is centred on this concern, according to Ms Cai. It forms the core law subjects as well as learning outcomes to underpin each degree.

“As the parameters of the legal profession are redrawn, it is natural for the state of our legal education, the foundation of which has largely remained the same since the early 1990s, to be challenged,” Ms Cai says of the current protests on the Priestley II.

“On a broader level, conversations about the Priestley II should include the students’ perspective – I am always a bit surprised when discussions about the future of legal education take place in public or in media without input from its target demographic.”

The very state of legal education is a primary concern. That is, the structure and design of semesters, trimesters and segmented study. This is in addition to modes of delivery. Law schools should be mirroring the legal profession’s shift towards

flexible practices and practical methods of engagement, like recording lectures and open book exams.

Ms Cai says this should be at the forefront when it comes to preparing for the future.

On top of flexibility practices, Australian law firms are also implementing policies which centre on mental illness and wellbeing. It is only natural that this extends to students, during their studies and when they step into a professional role. Ms Atkins notes there have been educators highlighting “concerning statistics” around mental illness in law.

“Students are increasingly concerned about what is being done to actively tackle the entrenched culture of norms that have given rise to the alarming rates of mental illness. While wellness centres and gym memberships have become the norm in many large firms, anecdotal evidence and recent statistics suggest that there

is still much to be done to support mental wellbeing in the profession,” Ms Atkins says.

The diversity of law students means the interests and concerns are “often coloured by the differences”, much like geographic and career aspirations.

Ms Cai says the issues and concerns of representative law student organisations, much like the ALSA, have a particular focus on bullying and sexual harassment, diversity and mental health.

“These are not new problems. The fact that they remain big talking points in 2020 only indicates that much more can be done to address them,” she explains.

Students predominantly want educators and employers to represent and offer lessons on the growing social consciousness of current graduates.

Ms Atkins says students will need to see initiatives that endorse the change in



areas including ecological innovation and gender and sexual diversity, in addition to promoting mental health and wellbeing.

“Notably, statistics surrounding mental illness in law students and legal professionals convey an unequivocal need for legal educators and employers to be promoting more sustainable practices with respect to health and wellbeing,” Ms Atkins says.

“Students want to see that tertiary institutions and employers are letting go of stigmas surrounding mental illness and make genuine, sincere attempts to refabricate social and cultural practices that have led to such systemic issues.”

So, what changes do students want to see? Ms Cai says it needs to start with a clear continuity between legal education and employment in the legal profession and there should not be a mismatch between the knowledge and skill set graduates have

and the knowledge and skill set prospective employers expect them to have.

“Students and graduates want to see values prioritised. In both policy and practice, a tertiary institution and the wider legal profession must do more to combat issues which relate to bullying and sexual harassment, diverse representation and mental health,” she says.

“We already know these are things which widely affect the legal profession, but there is a difference between ticking boxes and driving meaningful change.”

Ms Atkins echoes a similar sentiment, adding that many students are currently questioning the future of the profession because “existing culture doesn’t fit their interests”. She said it is this mindset, however, that supports inaction in the profession.

“Students do not need to alter or undermine their values,” Ms Atkins notes.

“The onus is on the profession to transform their culture to reflect prevailing values to attract and retain the highest quality of talent.”

To instigate change, Ms Atkins suggests students form a “collective voice”, either by engaging with university law societies, the ALSA or through informal advocacy groups.

Students should be providing workable solutions to work on reducing the adoption and use of “ineffective, tokenistic initiatives that don’t actively address the issues”.

How can students create this change?

This collective voice is instrumental in implementing the change students want to see in their education and in their future. Students should be more involved in the planning and decision-making discussions around their own legal education, or there will not be much change and the status of learning will remain static and ineffective.

Ms Cai says this approach is both “logical and uncontroversial”. Although part of onus for legal education is on the tertiary institutions to involve a range of student voices to consult on curriculum change or teaching direction, students should be driving change.

Outside of this, “the legal profession doesn’t exist on its own”. Clients and stakeholders also play a role in the law, from every sector, and lessons exists here.

“Another practical thing students and professionals should do – particularly given the popularity of multidisciplinary studies and careers – is to observe what is working with experiences outside of the law, whether it’s from their second degree, extracurriculars or employment,” Ms Cai says of these external agencies.

“The legal profession and law schools should not be afraid of borrowing from what is working in other disciplines, by reviewing, for example, how they prepare graduates to be diligently literate and responding to demands of technology.”

Ms Atkins agrees that many changes students want to see adopted should begin, first, at the university. If students commence making positive efforts to address issues that they face in the profession while at university, Ms Atkins says “the effects of the efforts will eventually ripple through as the new generation of graduates enter”.

“To further support the attempts for change, rather than building the static, superficial relationships with the legal profession, student law societies should place a great focus on creating collaborative, two-way relationships to communicate the desired changes and concerns within the profession,” Ms Atkins concludes.

What the top law firms offer for graduates

Lawyers Weekly identified eight of the BigLaw firms graduates want to work with. This week, we take a look at what new starters stand to receive from their favourite firm



/ by Naomi Neilson /

GradAustralia published results of its Top 100 workplaces for graduates, and in its fifth year, eight of Australia's BigLaw firms made the list. They are, in order, Allens, Herbert Smith Freehills, MinterEllison, Clayton Utz, King & Wood Mallesons, Ashurst, Corrs Chambers Westgarth and Gilbert + Tobin. Each of them experienced a shift from 2019's results.

Each of the BigLaw firms identified the commitment to people as the biggest factor for its attractiveness. The firms go the extra mile in delivering on mental health initiatives, flexible work practices, support and thoroughly designed graduate programs.

Lawyers Weekly spoke to each of the eight firms to identify what about the workplace attracts graduates to the firm. In this edition, we break down the policies and programs graduates can expect if they score a spot at one of Australia's top-rated firms.

What graduates can expect from their chosen BigLaw firm

Allens was rated first place in the rankings for most attractive firm, and in our Protégé bulletin last fortnight, it credited its commitment to ensuring the staff are able to focus on "being the best they can be" in an encouraging, supportive environment.

Speaking on what graduates can expect

from a career at Allens, its chief people officer Jane Lewis said the firm is committed to supporting the health and wellbeing of people and creating a culture that encourages and fosters this connection. Ms Lewis said the firm knows wellbeing combines "physical, mental, emotional and social factors".

"We're big on communication and conversation and we have a range of practices and policies in place to help graduates manage their wellbeing," Ms Lewis said.

She added the firm has a focus on work allocation and management, flexible working practices, pro bono activities and committees, to sports and wellness activities, gym memberships, flu vaccines and healthy catering. All graduates also have a dedicated performance coach and can access the firms' employee assistance program.

Graduate recruitment manager James Keane and resourcing manager in Australia Liz Henry at Herbert Smith Freehills said its graduates can access a global mental health strategy, including a range of programs that ensure overall wellbeing.

"These include our Mental Health Champions program and onsite psychology services," Mr Keane and Ms Henry said.

"To embed practices that support efficient and effective ways of working, we recently

launched our How We Work guidelines."

MinterEllison aspires to deliver a workplace that fosters agility, empowerment and the autonomy that is embedded in the "cultural fabric of the firm". A spokesperson said it's critical that the firms' people trust the firms and believe in a sense of meaning.

"We want to really capture the imaginations of our people and support them in thinking creatively about what it is that we can offer in terms of career growth and positioning," the spokesperson said. "What client opportunities are going to engage them at stages in their careers? What secondments really make sense? Importantly, where are their creative and strategic stretches?"

"These are critical questions our leaders are discussing to engage the highly educated group who have a truly global outlook and understand the value of innovation."

MinterEllison added that it understands "there's more to life than your job" and ensures there are opportunities to take unpaid leave for special requirements covered by its usual leave policies to either study, work overseas or be a judge's associate. The firm also offers social events, discounted health insurance and even in-house massages.

At Clayton Utz, it's really important for people to "enjoy their work". Head of talent



Amy Lennox said the firm looks seriously at its offerings and ensures that it is always happy and healthy. Wellbeing and positive mental health are at the top of its priority list.

“We have high levels of mental health literacy at the firm supported by 200+ advocates. Advocates participate in training and/or receive accreditation as either a mental health champion or mental health first aid officer,” Ms Lennox said.

The firm has also appointed a national flexibility manager to ensure there are programs in place for flexible working. Clayton Utz has also included a range of programs open to graduates, including mindfulness sessions and resilience training.

“As a firm, we also focus on giving back. Through our leading community program, our graduates have access to volunteering opportunities as well as the onsite visits and education through our 30 community partners,” Ms Lennox said.

At King & Wood Mallesons, graduates have access to a range of policies and benefits that include agile and flexible working, time in lieu, gym memberships and other health checks, after hour meals, access to technologies and Employee Assistance Program.

“However, policies and benefits are not a panacea for a positive experience,” said the firms’ spokesperson. “What is more important to us is creating a supportive environment that enables our people to balance high performance with sustainable ways of working that promotes wellbeing.”

KWM said it is constantly exploring how it can improve the experiences of individuals and teams, and it is actively learning and adapting through engaging with people. Last year, the firm engaged in a series of listening forums to understand experiences.

“The graduates were incredibly generous with thoughts and feedback and their insight was valuable. We will continue to actively seek their input into evolution of strategy.”

The graduate program at Ashurst runs over 18 months, with graduates completing three six-month rotations. The firm also offers a virtual internship program – a free, interactive program that offers insight into life at Ashurst.

Each state has a slightly different clerkship system, helping develop an understanding of what it’s like to work at Ashurst, to experience its culture and the type of work they do.

“We are absolutely committed to welcoming talented candidates from all walks of life, backgrounds and universities, and have been for many years. We’ve always looked at factors beyond strong academic performance, and take a holistic view of candidates and broader skills and experience they can bring,” said head of HR, Richard Knox.

Director of people and performance Ross Hargreaves with Corrs Chambers Westgarth said the firm recognises the importance of health and wellbeing and has committed to

improving the workplace through a range of programs and policies.

“In particular, our Wellbeing@Corrs program provides a range of initiatives that brings insight and awareness to assist people in maintaining good health, by supporting their physical, mental and emotional wellbeing,” Mr Hargreaves said.

“Importantly, we also recognise the role a person’s manager plays in wellbeing and so we place emphasis on effective ‘everyday leadership’”

Finally, Gilbert + Tobin maintains a positive environment for its employees through the various programs and initiatives in place. Immediately, staff can enjoy spaces with lots of natural light, greenery, an open plan layout and leading IT equipment. Socially, the firm organises a variety of activities within the company.

G+T said it is proud of its commitment to diversity and inclusion, which has always had an “integral part” in its culture. There is a firm-wide Diversity Council, with a core focus on mental wellbeing, accessibility, flexibility, gender and senior women.

“Our G+T innovation team plays an important part in the streamlining and automation of our work practices, which has had a direct impact on graduates,” a spokesperson for the firm said. “An example of this is a tool we developed to improve productivity of due diligence. Traditionally graduates would have spent countless hours doing this work.” ♦

Spotlight: Todd Keeler CEO, FilePro

Legal service delivery will look vastly different one decade from now to what it is today, and as a result, practice management solutions must evolve in turn. Here, Lawyers Weekly speaks with FilePro's CEO Todd Keeler about what the legal profession needs from such tech platforms and how solutions must adapt to changing expectations and needs



/ by Jerome Doraisamy /

Q. How do you see practice management solutions evolving in the legal profession over the next decade, or even just the next few years?

Fully integrated

There will be an increasing focus on fully integrated solutions to minimise logins, increase automation/reduce rekeying. This does not mean one system to do all, but rather a solid practice management platform that interfaces with other new technologies that offer best practice in specific areas. For example, using AI to reduce manual work when bringing on a new client. In saying that, don't fall into the trap of technology for technology's sake.

Providers that specialise

There is a preference for specialisation rather than generalisation of software providers. Case in point are the new niche technologies addressing specific inefficiencies or gaps.

Overall, there should be a preference for providers that specialise so to avoid the scenario where a software product is a hook to "sell" the providers' other products.

Staff retention and client services

Technologies have traditionally been promoted as creating efficiencies for the staff of law firm. Whilst this will remain, progressive firms are now seeing software from a broader perspective – retaining quality staff and clients.

Our own client survey in 2018 indicated that a lot of the functionality of FilePro was not passed on to new staff members, or that our clients were not aware of new features creating a "disconnect" between our clients and our software. So, we launched our new training initiative recognising that (while FilePro already offered training courses), there were a few obstacles: cost (however small) and accessibility.

To overcome this, we invested in a Training Unlimited initiative, providing unlimited (surprise) access to courses, 24/7 online learning and regular offsite workshops to our clients. We saw an excellent response, with a 37-fold increase in the number of people attending our training. We expect that this will mean more firms are better utilising their investment in FilePro, with flow-on positive impacts to their staff retention and client satisfaction.

Broadly speaking, how can practice management solution platforms work with legal businesses and teams across the board to ensure that transitional phases are as smooth as possible and don't impact upon client service delivery?

The transitional phase is such a significant roadblock when firms are considering change. Often, it is not specifically raised by a prospective client,

*“There are two
barriers to
change for firms:
firstly, the effort/
expectation of
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secondly, the initial
set-up fee”*



but it is certainly a key factor in their decision process and timing.

There are two barriers to change for firms: firstly, the effort/expectation of disruption and secondly, the initial set-up fee.

Once systems are implemented, ask your provider to come back to visit in three or six months. Ask them what you're doing well, and what you could be doing better. Discuss the results being seen, or not, based on agreed goals at the outset. Regarding the second barrier, the establishment or set-up fee, it is ideal if firms have choice from their PMS provider. Much like clients requiring legal assistance, who now have choice between time-based vs fixed fee/value billing, firms should be offered a range of alternatives to incurring an upfront fee.

With data retention and cyber security shaping up as key issues for law firms and legal teams in-house in the coming years, what are the challenges that practice management solutions will have to address and overcome?

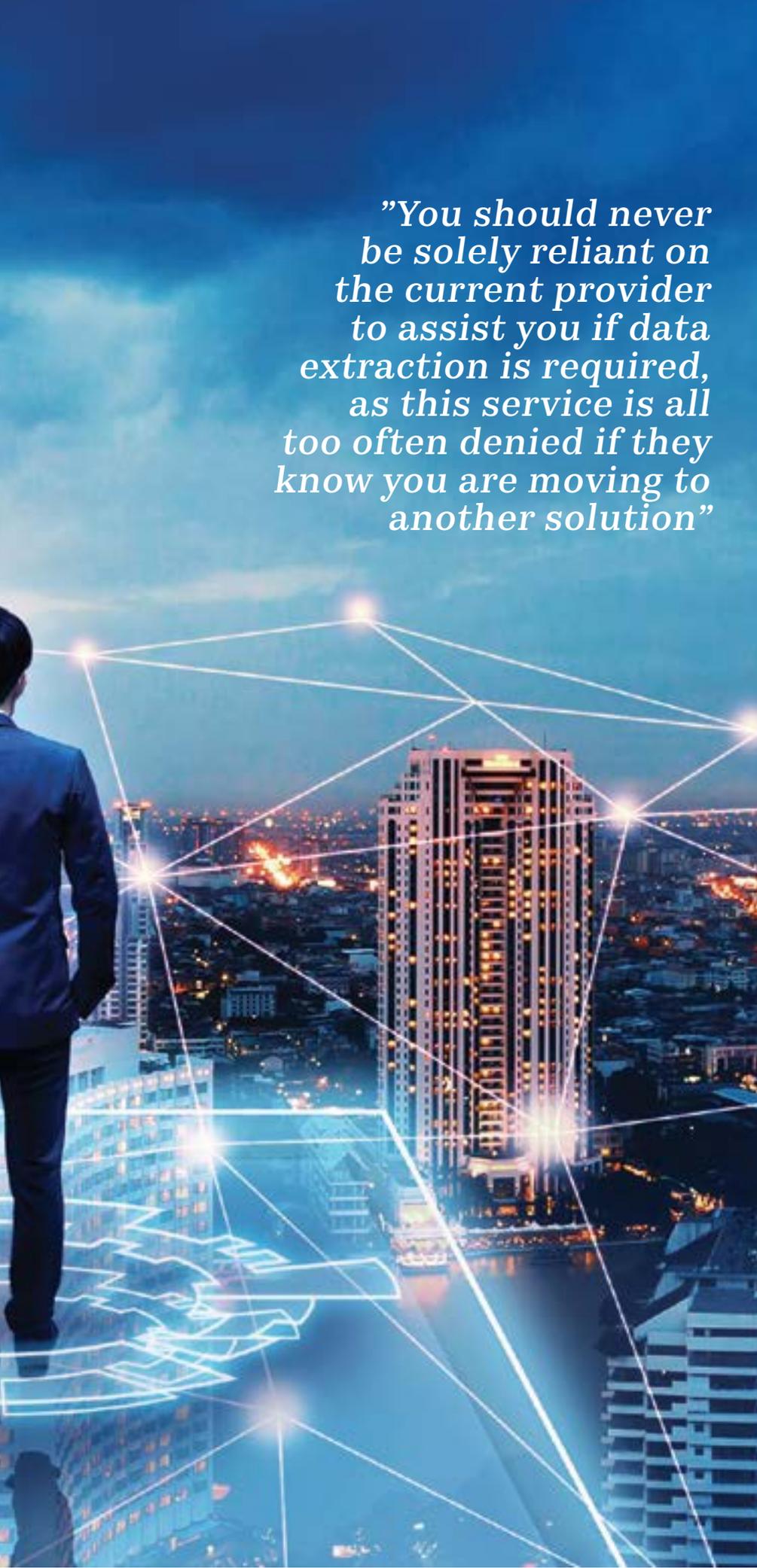
The key is finding the balance between technology and risk mitigation. Firms should consider mobility, off-site backups, cloud hosting and all of the other great tools now at our disposal. However, this should be balanced with careful consideration of where critical data resides, who has access and ownership of it, and how it can be recovered in various scenarios.

We believe that firms should have choice in many areas but with that choice should come recognition of the pros/cons of each approach. This is particularly the case with data storage which encompasses data retention and cyber security.

In recent years, there has been a rise in the number of software providers who lock client's data, making it unavailable to them should they wish to migrate to another system of their choice. This is all too frequent with cloud solutions. Typically, it is not a software limitation. It is a commercial decision by the provider to make it difficult, if not impossible, for clients to migrate their own data. And sadly, most clients only find this out the day they want to leave.

When going to market to consider your options, it is all too easy to focus on features, pricing, user experience, etc when choosing the right product for your firm. You should never be solely reliant on the current provider to assist you if data





“You should never be solely reliant on the current provider to assist you if data extraction is required, as this service is all too often denied if they know you are moving to another solution”

extraction is required, as this service is all too often denied if they know you are moving to another solution.

Your data is sacrosanct. It is the lifeblood of your practice, and considerably more valuable than the \$100,000 you deposit with your bank. Access to your data and regular backups are equally important.

With practice management solution platforms - theoretically - streamlining processes and improving efficiency, how best can legal teams and law firms move to converting their organisation into one of 'high performance'?

In our experience, high-performance firms work with their providers. Lawyers are now driving change, rather than being “disrupted”. Rather than digital laggards, we’re working with firms who continue to evolve using technology as a core part of their long-term strategy - rather than react to buzzwords such as “disruption” and “innovation”. As an industry, the level of ownership of technological change is at a record high as evidenced by the spectrum of legal technology events on offer.

Technology and data aren't afterthoughts

For a number of the firms FilePro works with, technology is the enabler to deliver strategy and providers are more than just suppliers to their accounts team, they are a part of a mutually beneficial relationship.

This has a secondary effect: firms that properly implement technology start to recognise data as a multiplier to increasing the value of a firm’s client experience and brand value. They start to plan and ask questions about how data is stored, used and shared.

They embrace the concept of continuous improvement

Rather than make radical changes to their firm’s technology, these law firms have learnt that introducing steady and consistent changes with adequate training and management is key.

There is such thing as too much change too quickly, and without proper education, introducing too many new processes and technologies will overwhelm your staff, and in the worst case, increase error and staff churn. Instead, we advocate steady and continuous improvement.

To some, this may sound disruptive. But for your teams and clients, it’s the reality of today’s technology-led world. Clients want to walk into a law firm and see that



lawyers are on the cutting edge of tech and doing things efficiently.

While technology is on the checklist of many clients, it also helps improve a number of processes – it enables fast and effective responses to changes in regulations, risks, processes, pricing, competition, client or staff needs.

Even better, technology-led change is no longer the exclusive domain of large or NewLaw firms. In fact, freeing up your staff from routine paperwork allows them to add extraordinary value through other avenues, such as stronger client relationships and networking. It also enables flexible work arrangements and, as a consequence, retention of quality staff.

Drive change from within the firm

If the introduction of technology is to be successful, then everybody needs to be onboard. All owners, partners and directors should lead the change by demonstrating

the support and enthusiasm for the changes. Is your practice manager invited to your strategy sessions? How about someone from IT? If not, is there someone who will champion the use of technology, or at the very least has an understanding of the technology market?

From the outset, your team should be involved – whether it's planning a new process, installing a new system, or making any significant change to day-to-day work responsibilities. This may seem simple, but it's surprising how often teams are first notified of a change after it has been made.

Accountability drives ongoing gains

Once they've set the goals noted above, successful law firms establish sustainable change by developing shared accountability between the firm and provider.

Agreeing on goals within your firm allows meaningful and open performance

discussions – although this relies upon a transparent process to monitor progress. This will also create visible improvements in client experience standards.

And, lean on your technology provider. I can't stress this enough.

What are some of the other challenges and issues that practice management solution providers and legal teams and firms will have to navigate, and how best can parties work together in response to such matters?

It is fair to assume that most firms now have a practice management system and would like to maximise their investment through greater utilisation of the system's features. We see benefits in following these three steps:

Data entry

Is it consistent and correct across the firm and the various roles? Consider what you want to capture for reporting, templates, notifications, dashboards and workflow. Again, ask your provider to assist with a health check.

Document templates

Review and overhaul to ensure consistent branding and to leverage “to the max” automation features including use of questions in templates to prompt consideration of options/ alternatives.

Workflow

Having completed the first two stages, the firm is now ready to consider and implement the “workflow” feature. This is a big topic, but essentially when we speak about Workflow in FilePro, we are normally referring to automating a predetermined set of tasks that needs to be completed for a specific area of law.

It may surprise some to know that Workflow builds on your own processes and precedents whilst allowing individuality. The benefits are wide ranging, whether for succession planning, best practice and improved productivity, allocation of duties with staff turnover/leave or to increase the value of your practice.

You might also choose to have multiple Workflow “threads” running concurrently, i.e. one for the legal work, and one for your CRM-type activities, such as introducing clients to the firm, keeping in touch, providing updated cost estimates on a regular basis, noting how they like their coffee etc.

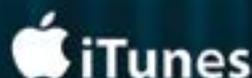
In an era of rapid change, improving efficiencies, client service and risk mitigation remain paramount considerations for firms. Workflow is a greatly under-utilised feature that can deliver improved performance across all these areas. ♦



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How lawyers can make 2020 their best mental health year to date

LAWYERS – PARTICULARLY those in small practices – often complain that there are just not enough hours in the day for self-care. According to one neuroscientist, 2020 can be the year of mental health for legal professionals, by dedicating just an extra five minutes per day to one's self.

In conversation with *Lawyers Weekly*, Driven CEO and neuroscientist Jurie Rossouw said that for those working in professional services environments such as law, it is integral to connect to one's purpose.

He said: "This is a powerful technique we teach in high adversity occupations. Everyday think about what you have done or will do today and connect that to your purpose in life, or what is meaningful to you. Is your purpose to help people, or make a big difference?"

"Now, connect what you did today to that purpose, and it will help remind you why you do what you do, energise you to keep doing it, and constantly remind yourself that what you do is truly important."

This is especially necessary for lawyers, Mr Rossouw continued, given the tendency to be perfectionists.

"As a lawyer, there is an expectation of delivering perfect work all the time, so it's natural that you might have an incredibly high standard for yourself. Take note that perfectionism can often lead to depression and anxiety, especially if you constantly put this pressure on yourself," he said.

"You might notice this driven being counterproductive, where you put so much pressure on yourself that you end up performing worse than when you're relaxed! While maintaining a high standard

of work, take care to also let yourself be human and relax your expectations, and find that balance where you deliver high-quality work at a sustainable pace."

Finding meaning and purpose, he mused, is the most important domain of resilience for such professionals.

"Staying on top of this provides perspective over all areas of life. It makes decisions simpler, since you know what's important. It clarifies goals and helps you focus, particularly making it easier to say 'no' to things that would otherwise suck up your time," Mr Rossouw noted.

"In a world of ever-increasing digital distractions, the greatest gift you can give yourself is purpose."

Connecting to one's purpose is also important, he added, given the psychological and professional dangers of not doing so.

"The pressures of professional services, combined with relatively higher disposable income lead to a growing trend to self-medicate mental health challenges with technological distractions, such as bingeing on TV shows, playing games, and constantly checking social media," he said.

"This is expected since entertainment is becoming better than ever, which is not helpful for mental health. The problem is that these coping mechanisms drift towards increasing loneliness, as we spend less time meaningfully connecting with others, increasing risk of depression, anxiety, and even heart disease."

When it comes to prioritising such wellness, Mr Rossouw said those who work in small teams (or even alone) must remember that sustainability is "the key".

"For your business to thrive, you need to be able to put in a level of effort that is sustainable in the long term. It's no good if you get your business running while working at a pace that's unsustainable, as eventually you'll need a break and then the business might break too," he said.

"Develop the personal discipline to exercise four times a week, eat healthy foods, and sleep around seven hours at least each night. Make time to catch up with friends. Stay focused on why this is meaningful to you. If you can do all these, you might well find the path to sustainable high productivity!"

Finally, for those who manage teams, even small ones, one must "find out what you don't know".

"A crucial component of providing meaningful health and wellness support is assessment. When done holistically through an external provider that can collect and aggregate confidential responses, it can provide crucial insight into how best to support staff with which programs," Mr Rossouw concluded.

"This avoids inefficient scattershot approaches and [helps laser] in on the specific issues your workforce face. This is the path to reduce waste and efficient help in meaningful ways.



Celebrating wins makes you a happier, healthier lawyer

IT MIGHT sound corny, but acknowledging your personal and professional achievements can make a substantial difference to your psyche and keep you motivated, argues one director.

In her office, Clarissa Rayward has a wall where she pins cards, quotes and notes from clients, colleagues or peers thanking her for work she has done. Her inbox also contains a folder where she saved emails that feature similar sentiments, offering reminders of good things that are happening in her personal and professional life.

Some might call such practices arrogant, Ms Rayward muses. However, she doesn't see it this way.

"It's really powerful to have that information when you are struggling, when you're having a difficult day or a difficult week and just being able to see those positive things," she told Lawyers Weekly.

Human brains are wired, she noted, to "fundamentally tilt" towards negative stimuli as a survival mechanism: "Regardless of whether we're optimists or pessimists, just as a group of people, we will see the world usually and be more affected by the negative than the positive. Lots of studies [show that] it takes the brain longer to recover from negative stimuli and process and accept and understand that than it does positive."

For lawyers in particular, Ms Rayward identified, negativity can be present throughout the day.

"If, like me, you're practising in family law, the majority of the challenges that my clients are having are very negative, and as such, the content that I'm dealing with more often than not is challenges, difficulties, people's problems, because those people are themselves under significant stress," she said.

"Often, the way they then deal with us is really difficult, and so it's easy to get sucked into a negative headspace as a practitioner pretty quickly."

What research shows, she continued, is that "by celebrating wins and by changing how your mind sees the world, by focusing on the positive, by creating rituals in your day (such as practising gratitude), the brain reacts by releasing the neurochemical dopamine, [offering] little hits of energy, of fun, of a really natural high".

Such energising highs will not come naturally, though, Ms Rayward warned. One has to create rituals, as she has learnt from moments where, for example, she has felt that a speaking engagement "went very poorly" and she focuses more on those talks rather than the dozens of others that went swimmingly.

For lawyers working on large projects, she continued, there is incentive in celebrating small wins along the way, as it gives you a "much greater chance of achieving that big goal".

Many lawyers across the country may be reluctant to engage in such forced reminders of achievement – especially given our culturally ingrained tall poppy syndrome, Ms Rayward reflected – but remembering and celebrating wins has flow-on benefits, both for one's self and those around them.

"For some people, maybe a lot of things haven't gone well, but making their minds hunt for the thing that has changed how they feel gives them that dopamine hit and makes them feel happier, which is so important. There's lots of research that's shown that, in workplaces, a culture of celebrating wins leads to happier employees, leads to more productive employees."

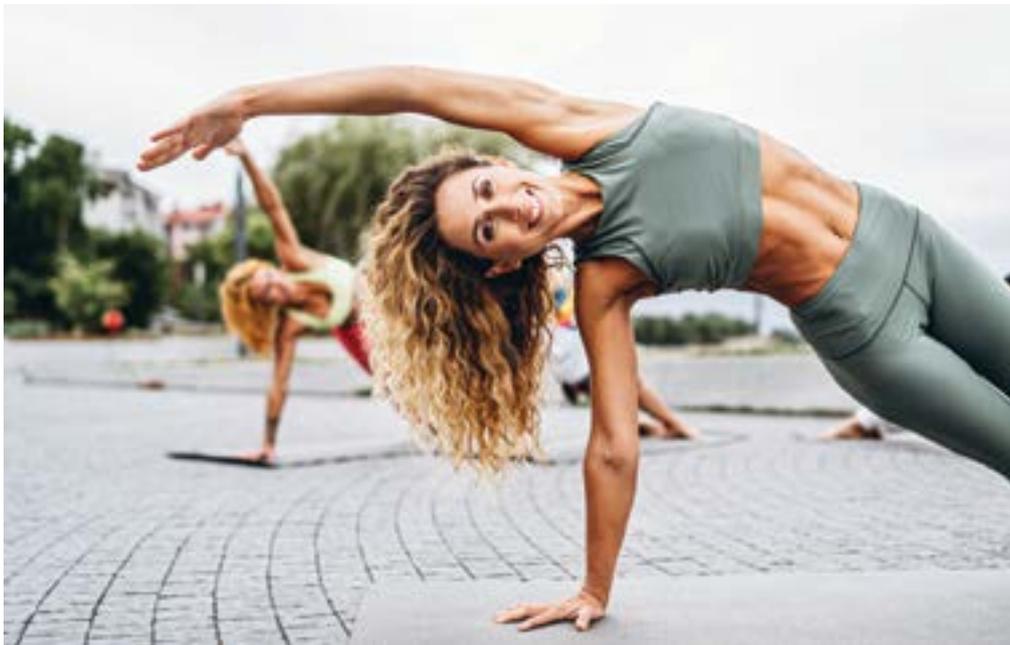
This is what she does for her firm, Brisbane Family Law Centre: if something good happens, or if a colleague receives a positive note or email, "we make an effort to circulate that around the whole firm and acknowledge it", she said.

"...we will see the world usually and be more affected by the negative than the positive"

OPINION

Can lawyers create a life they love?

It is only by doing things differently, and simplifying how we practice law, that you can even begin to create a life you love, writes Marianne Marchesi



IT'S NO secret that being a lawyer is a highly stressful career choice. The constraints of the billable hour, overwhelming deadlines and the nature of the work itself often mean that there's little time left for self-care. Coupled with the fact that lawyers are typically perfectionists, the "work-life" balance is an elusive concept which, in reality, resembles more of a complex juggling act.

The sad result is that lawyers are often forced to choose between their careers (and therefore their incomes) and their personal lives. And it's only a matter of time before these competing pressures collide, with dire physical and mental health consequences. It's commonly said that lawyers have one of the highest rates of depression and anxiety, not

to mention the greater risk of relationship breakdowns or burnout.

When I started Legalite in 2017, I made a conscious decision to choose my personal life, and in particular my health, and was completely prepared for the fact that this may mean a huge cut in my salary and working from home in my trackies. In some ways, I almost had no choice, because I was tired, overwhelmed and overworked, and not really enjoying being a lawyer anymore.

I began making time for the things I loved – like exercise, walking my dog, spending time with family and friends – whilst still focusing on the business and looking at new ways to deliver legal services. As Legalite blossomed, I fully expected that the choice between my work

and my personal life would rear its head again. It was a choice I dreaded, because I loved the direction the business was headed in and was even loving the law again.

Surprisingly, the choice never came. I had shaped how I wanted my life to look, without sacrificing one or the other.

This made me wonder, does it really have to be a choice?

When you take away the red tape, and most importantly, the traditional methods of practising law, it's completely possible to create a life you love. For me, it was doing away with the billable hour, being able to choose which clients I worked with, and working flexibly that allowed me to enjoy the freedom, and even fun, that I had never experienced as a lawyer before.

And it genuinely saddens me to see the majority of lawyers missing out on the opportunity to love what they do again. So much so, that I recently launched a new arm of Legalite, Horizons, which gives principal-level lawyers the platform to shape their career, without sacrificing their income or their personal lives.

In such a traditional industry, most lawyers will never have this opportunity without going out on their own. Even then, I know first-hand how daunting it can be to start from scratch, and why so many simply can't take the risk. Whilst Legalite Horizons is one platform giving lawyers this opportunity, there is a greater wave of NewLaw firms and other alternative models that empower lawyers to shape their career and their life.

"In some ways, I almost had no choice, because I was tired, overwhelmed and overworked, and not really enjoying being a lawyer anymore"



Marianne Marchesi
principal, Legalite



Rejuvenation key to success in boutique practice

BOUTIQUE PRACTITIONERS are “constantly on high alert”, and thus it is crucial to have a space to recharge the batteries so as to come back to work the next day ready to go again, argues one director.

Why rejuvenation is needed

By virtue of having to be immersed in all aspects of their businesses, boutique lawyers are “constantly on high alert” and are stretched for long periods of time, according to Kalpaxis Legal Family and Surrogacy Lawyers director Cassandra Kalpaxis.

Speaking to Lawyers Weekly Ms Kalpaxis explained that, in her experience as a family lawyer, practitioners in this space expend a lot of emotional and mental energy dealing with their clients and navigating the trauma that often comes with their work.

“Vicarious trauma is a real issue for many of us practising in the field and it takes a lot of self-care, and discipline to remain empathetic but also detached from taking on our clients’ own emotional turmoil,” she said.

As a result, she said, “having a

space to rejuvenate and restore is vital for lawyers to prevent burn out and to cope with the high conflict and stressful work we take on”.

Getting out of town to rejuvenate

Such rejuvenation – whether it be via a dedicated retreat or any other getaway – is crucial for anyone in a boutique practice, Ms Kalpaxis continued.

“As a working parent [and] running a boutique law firm, I have experienced the pressure of juggling children, and trying to practice whilst maintaining my own wellness. It takes years of practice and discipline and there are plenty of days where I feel like I haven’t quite found the balance.”

Creating physical separation between yourself and those work stresses can really help one detach and effectively unwind, Ms Kalpaxis noted.

“Being away allows your brain to switch off from work and this provides you with the space to be present and to focus on your wellbeing,” she posited.

“Being in a holiday location is the trigger for your mind to put up an out-of-office sign and to focus on yourself. When away from home at a holiday location you are more likely to focus on your holiday and less likely to seek to log into your emails and shoot off a quick reply.”

Balancing the financial considerations

Lawyers Weekly asked Ms Kalpaxis what she would say to lawyers who want to find ways to rejuvenate – such as a weekend up the coast – but are concerned that, in the course of getting their boutique practice off the ground, they cannot justify the financial outlay of such self-care.

She responded by saying that the long-term effects of stress on the human body (both physical and mental) are well-known and that we need to be able to move past impressions that proactive self-care is somehow a “luxury”.

“Self-care when working in a job that is such high stress is a priority to longevity in staying

in the practice of law. There are so many rejuvenation programs that offer value for money. In fact, some programs offer CPD points, allowing you to kill two birds with one stone,” she said.

“Wellness and self-care are things that something that we are just starting to talk about now, and people are realising these are absolute priorities if you want to remain healthy, and capable of navigating the day-to-day stresses of running a law practice.”

Lessons about self and community

Moreover, making time for rejuvenation by way of regular breaks throughout the year allows one to “recharge and restore” wellbeing, both emotionally and mentally, Ms Kalpaxis reflected. Such timeout has offered valuable personal lessons, she added.

“I have learnt that I spend so much time throughout the year looking after other people’s families that I forget to look after myself and to check in with people that I love. Being at retreats allows me to establish a connection with people that is often not a focus when navigating the busy and fast-paced nature of running a legal practice,” she said.

“I have also learnt that when I give myself permission to slow down, be present, be ‘out of office’, that I am able to focus and concentrate more easily when I return to work. This in turn makes me much more efficient and productive.”

Ms Kalpaxis said she has “been so lucky to meet some absolutely amazing people” over the last few years whilst attending retreats with like-minded people across Australia.

“I have networked with professionals across all aspects of the legal industry and built up a wealth of contacts in all areas of the law which I can now access at any time. I have also made some incredible friends who provide me with support in both my professional and personal life,” she said.”



Boutique principal to ride 500km in Thailand for charity

THE FAMILY Law Project principal Shaya Lewis-Dermody has undertaken a pushbike ride of 500km over five days throughout Thailand to raise funds and awareness for Australian charity Hands Across the Water.

Ms Lewis-Dermody, who heads up socially responsible family law firm The Family Law Project, said this will be the sixth year that the firm has been involved in the charity bike ride through Thailand, raising money for Hands Across the Water, which aims to support Thai children in need.

HATWA started following the Boxing Day tsunami in 2004 which saw many children homeless, having lost their parents, and the charity has “many homes in Thailand and homes a number of children who

\$50k

will be donated
to Hands Across
the Water

do not have any other feasible living options”, the firm said.

Funds were raised through various initiatives, she said, including in the preparation of Wills and Estate documents for the public with the cost of same being directly donated to their HATWA fundraising targets.

“The FLP’s involvement in this annual bike ride over the past six years has seen the law firm fundraise and donate over \$50,000 to this charity. This year, the ride will take place in the northern province of Thailand and the riders will average 100km per day on hybrid pushbikes. The heat of the day in Thailand is typically extreme, creating difficult riding conditions,” the firm said in a statement.

“The experience of being involved in such a physically difficult challenge, while raising much-needed funds and awareness for these Thai children, is an absolute privilege. It’s also fantastic to be giving back to the community and meeting our social responsibility obligations when lawyers often are portrayed negatively,” Ms Lewis-Dermody added.



Aussie Lawyers retains Cricket World Cup title

A TEAM of Aussie lawyers took out the Lawyers' Cricket World Cup in Hamilton, New Zealand, beating Sri Lanka in the finals.

Australia retained the cup in a draw of 13 teams throughout the Commonwealth held from 29 December 2019 to 9 January 2020. Countries included Australia, Sri Lanka, India, Pakistan, Bangladesh, English barristers, New Zealand and the West Indies.

Ashley Tiplady, partner at Mills Oakley has represented Australia since 2011.

"I often describe myself as a cricketer trapped in a lawyer's debt cycle!" said Mr Tiplady. "I've played first-grade cricket in Brisbane, so to combine that passion with the ability to travel the world with mates and play on test grounds is a 'no brainer'."

The Lawyer's Cricket World Cup was instituted by legal practitioners to promote the rule of law throughout the Commonwealth by using cricket as an opportunity to meet regularly at different locations and to interact with legal practitioner friends from elsewhere at the biennial competition.

A senior associate at Clayton Utz, this year's captain Daniel Maroske,

had actually begun when the tournament first began.

"I first became involved in the LCWC in 2009 when the tournament was hosted in Cambridge, UK. At the time I was playing as an overseas pro in the Middlesex Premier League and was working as a lawyer in London," said Mr Maroske.

"I was alerted by a number of former Queensland team mates that they were touring the UK with the Australian Lawyers team and they were keen to have me involved. Having hit the winning runs at The Oval in 2009 when we won the tournament, I have played in all subsequent editions (as listed by Ashley) and captained the side that won in Colombo in 2017."

Starting in Hyderabad in 2009, the LCWC was then hosted across the globe in London, Barbados, Delhi, Brisbane and Colombo.

Mr Tiplady was man of the match in the final of the 2009 LCWC and went on to captain the side in the 2011 Cup in Barbados and continued to play in Delhi in 2013, Brisbane in 2015 and the 2017 Colombo World Cup.

However, according to Mr Tiplady, the LCWC isn't just a place to travel the globe and play cricket. He said there is also a much deeper purpose.



13
number of
teams Australia
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2k
individuals given
free legal advice



Beachside legal clinic offers bushfire victims free advice

IN THE midst of the bushfire crisis, a pop-up legal clinic recently offered free legal advice that addressed issues like natural disaster insurance claims.

The University of Newcastle Legal Centre's annual beachside pop-up clinic provided the opportunity for locals to ask questions on all legal matters. The clinic was staffed by law students, social work students and volunteer lawyers.

Director of the Legal Centre, Shaun McCarthy, said he hoped Law on the Beach would provide an easy avenue for locals who have been affected: "Our thoughts are with the communities across NSW in view of the terrible bushfire seasons we are experiencing.

"University of Newcastle Legal Centre offers free legal advice to the local community, and to anyone that might have been impacted," Mr McCarthy added.

The clinic was held at the Merewether Surf Life Saving Club and had improved accessibility and approachability to local legal services.

In conjunction with the opening of the Older Persons Legal Clinic last year, the beachside clinic recently offered older persons assistance with matters such as wills, family law and neighbourhood disputes. The initiative is now in its 17th year and has supported more than 2,000 individuals with free legal advice.



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David Lewis on the appointment of three women to head of practice group roles at Shine Lawyers

Until there is true equality between the sexes, I think it's worth celebrating achievements like this. [@bradblickstein](https://twitter.com/bradblickstein)

David Ritter questions BigLaw's bushfire response

Here @LawyersWeekly asked some Australian law firms about how they were responding to the #AustralianFires. I wonder how many of them still act for the coal, oil & gas corporations driving the climate crisis, driving the catastrophic fire conditions? [@David_Ritter](https://twitter.com/David_Ritter)

On the new emerging law of eSports

"What is eSports? What are the legal issues? How do lawyers work in eSports?" I recently spoke with the host of 'The @LawyersWeekly Show', @JeromeDoraisamy, to discuss the part of my practice working as a lawyer in eSports. [@MatJessep](https://twitter.com/MatJessep)



On our coverage of legal innovation rotations

More than technicality is required to futureproof one's career in law (or other professions). Human, leadership and tech skills will be mandatory, to keep lawyers (and other professionals) performing at their best, personally and in teams, which will increase productivity, value to clients and profits. A great article by Lawyers Weekly on thinking outside the box re: tech and rotation

Louise Mathias - Elizabeth Street Chambers

Ways to escape the delays in the family court system

Recently Kelly was interviewed by Lawyers Weekly about the options for families looking to escape the long delays in the Family Court system. As an arbitrator Kelly has seen the benefits to families first-hand of choosing to take their case out of the system and hiring their own private arbitrator who makes a final decision 28 days after the last day of the hearing.

Solicitors & Mediators

REBUTTAL

Got something to say about the magazine? Email editor@lawyersweekly.com.au

Top cop leaks Lawyer X identity, brings scandal full circle

Lawyers are supposed to be intelligent. Anyone who remotely cares about social media and "likes" is not.

Concerned citizen - 12 February 2020

Interruption of female judges, compared to males, highlights lingering issues

It should not be assumed that interruptions are bad. It is often said that woman have a capacity for more rounded discussion than the linear train of male communication (which is oft monologue in nature). At the level of high abstract thought given in the High Court, everyone may benefit from more interruptions if they shed more light on the subject - the reason there is less interruptions with men is

the fear factor - but fear does not create light, it plunges one into darkness. So perhaps we should be considering it as something to learn constructively from instead of demonising it as another negative which presumed that the "male" way of no interruptions is somehow superior. I always consider this phenomena in some feminist topics as a great irony.

Barrister - 8 February 2020

Should firms move towards fixed pricing in the wake of FWC requirements?

It's a bit of a myth perpetuated by NewLaw that the Big(Bad)Law groups do not fix fee and that BigLaw is some non-progressive Dark-Ages Fat Cat prison - please... I hear your ad nauseum white-anting rhetoric and call BS.

Anon - 31 January 2020

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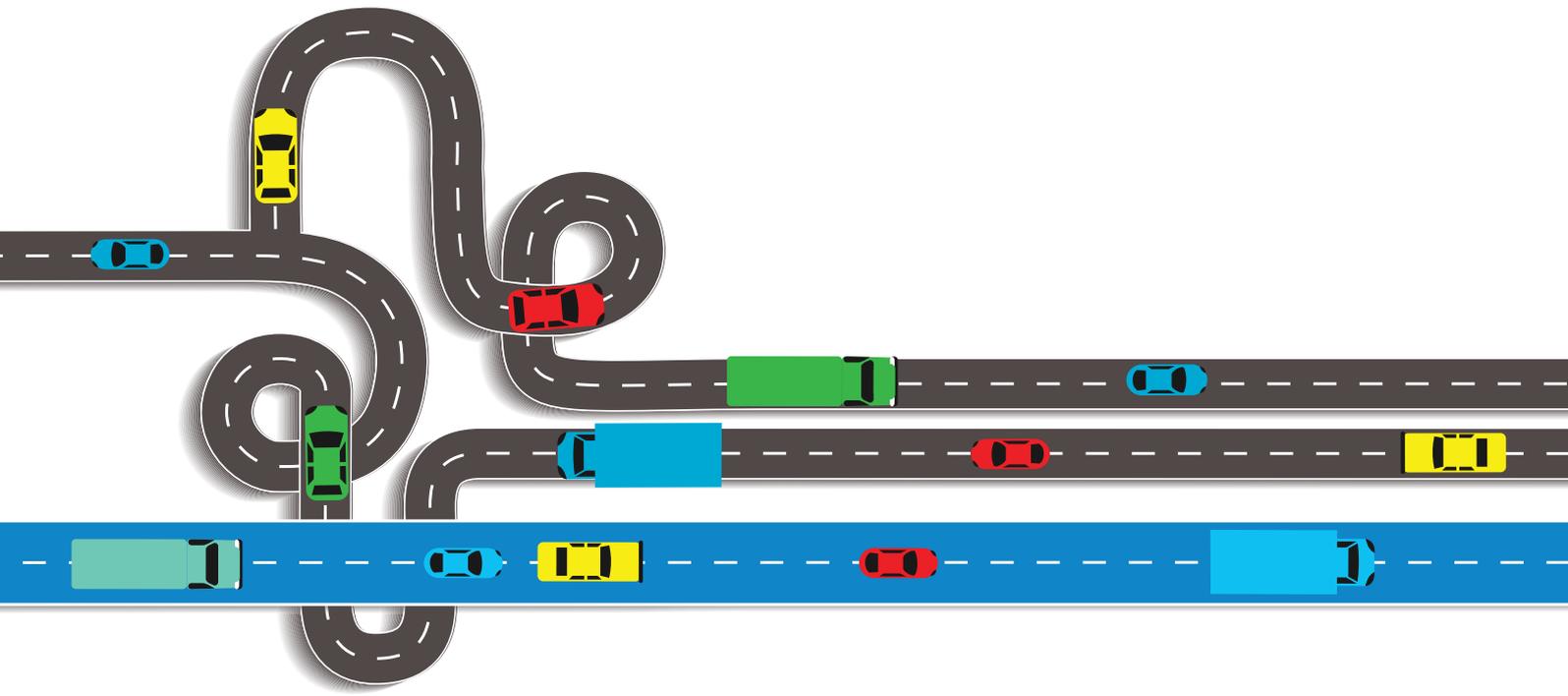
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