



flipstream

THE LAW SOCIETY OF NSW IN
COLLABORATION WITH UNSW LAW & JUSTICE

THE FUTURE OF LEGAL SERVICE DELIVERY

SOURCES OF INNOVATION IN
THE LEGAL PROFESSION

Dr Marina Nehme and Dr Felicity Bell



THE LAW SOCIETY
OF NEW SOUTH WALES



UNSW
SYDNEY

WHAT IS FLIP STREAM?

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

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

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

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

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

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

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

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

Each year the FLIP Stream, as it has become known, will undertake research into an annual topic that will then be disseminated through the academy, the profession and society. In 2018 the annual topic was Artificial Intelligence and the Legal Profession, led by Professor Michael Legg and Dr Felicity Bell. The 2019 topic on Change Management was led by Dr Justine Rogers. The 2020 topic on The Sustainability of Law and Lawyers was led by Professor Michael Legg and resulted in two primers: The Future of Legal Costs and Legal Fees - Time Based Billing and Alternative Fee Arrangements by Professor Michael Legg, and Legal Design Thinking by Dr Felicity Bell. The FLIP Stream will also engage in and respond to other areas of research and law reform.

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

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THE LAW SOCIETY OF NEW SOUTH WALES'S
FUTURE OF LAW AND INNOVATION IN THE PROFESSION
RESEARCH STREAM, UNSW LAW & JUSTICE (FLIP STREAM)

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EXECUTIVE SUMMARY

In 2017, the Future of Law and Innovation in the Profession (FLIP) Report noted that new forms of law firms were emerging in New South Wales, indicating the early stages of a flourishing and innovative market. Interest in whether and how ‘NewLaw’ and law firm business structures might impact on innovation led to the current study. The project interviewed 24 partners or their delegates in legal practices which held themselves out as utilising innovative practices in their organisation. The research questions for the study were:

1. How are business structures perceived as supporting strategic and innovative goals?
2. What are the core beliefs and ideals underpinning what innovative law firms provide their clients?
3. What is the value that innovative law firms are providing to their lawyers?

Law firms have distinguished themselves based on the business model that they have adopted and business structures have been established with the aim of providing value to clients. Discussion around this value centred not only on the introduction of new technology but also focused on pricing, communication, and legal advice. Furthermore, law firms were looking to build an organisational culture that supported their lawyers. All these themes, highlighting sources of innovation, are discussed in detail in this report.

A. How are business structures perceived as supporting strategic and innovative goals?

In terms of *business structures*, Part II confirms the challenges of the partnership model which can sometimes act to slow or stop innovation. To surmount these challenges, law firms structured as partnerships have adopted two different approaches – they either *outsourced* their innovation by investing in new projects or making new allegiances outside the firm; or they created *internal* departments or introduced personnel tasked with innovation from within. Incorporated legal practices perceived that they had advantages over partnerships, namely that they could reinvest in long-term innovation projects and also attract external capital, enabling them to invest in new technology and better compete with more established law firms.

A. What are the core beliefs and ideals underpinning what innovative law firms provide their clients?

In regard to *innovation and value for clients*, Part III highlights that many firms were established with the main purpose of building value from the clients’ perspectives. More traditional law firms also described different initiatives that they have implemented to meet client expectations. Interviewees talked about client value in terms of fees and costs, communication, and advice. *Fees* were seen as crucial, and many firms interviewed had, at least in part, adopted some form of fixed fee. Their approaches were intended both to give clients certainty in term of fees and to attract clients who might previously or otherwise have been priced out of the market.

When it came to *communication with clients*, law firm interviewees recognised clients’ own expertise and consequently focused on promoting lawyers’ active listening to build empathy with clients and recognition. All this supported lawyer ability to respond to clients’ needs in an efficient and quick manner. Ultimately, this approach flowed through into *firms’ advice giving*, where interviewees commented that clients wanted targeted, definitive and business-savvy advice. Most of the firms were also using *technology* to enhance their client service in different ways, from active collaborations with the client to using automated update services to keep clients always informed of progress. With the use of technology, however, came cybersecurity concerns, and in some instances, these had slowed or even ended technology use altogether.

A. What is the value that innovative law firms are providing to their lawyers?

Finally, law firms discussed the idea of promoting a more *inclusive, positive workplace culture* within their organisations. Part IV discusses the different initiatives adopted by law firms to foster innovation and change, attract and retain personnel, and provide clients with the best possible service. For some

interviewees, setting up their law practice was a direct reaction to their dissatisfaction with previous workplace cultures. Consequently, this had a strong influence on the *values* they pursued via the practice's goals and aspirations, and directly affected the organisational culture of the law firm including *flexible work arrangements* and *wellbeing initiatives*. COVID-19's occurrence had a mixed impact on law firms by providing them with opportunities to embrace new technologies to be able to provide their services while at the same time creating immense challenges to the promotion of positive workplace culture: interviewees outlined their firm strategies for maintaining employee wellbeing and engagement without a physical office space to bring everyone together. Wellbeing was a key issue, even absent pandemic conditions. Interviewees outlined some of their deliberate, structural choices about how their firm had chosen to reduce stress and overwork.

Conclusion

Innovation was *front and centre* for our interviewees and their firms, but areas of priority were different. Table 7 in Part V wraps up the above discussion by providing a taxonomy of the innovations taking place within firms. More innovation is likely to occur in the future as the 'silver lining' of COVID-19 has been to show lawyers the extent of what is possible.

INTRODUCTION

In 2017, the Future of Law and Innovation in the Profession (FLIP) Report noted that new forms of law firms were emerging in New South Wales, indicating the early stages of a flourishing and innovative market. This development was made possible by the liberalisation of the profession's regulatory scheme.

Consequently, a review of the legal marketplace highlights a shift from categorising law firms based on size, location or practice area to also include different business models, such as virtual law firms, legal process outsourcers, secondment firms including law marketplaces and contract and staffing services. Alternative Business Structures (ABS), Alternative Business Models, Alternative Legal Services Providers (ALSP), Managed Legal Services, New Models or NewLaw are some of the terms used to designate these new players in the legal market. These terms are not well defined, but such entities are becoming more prevalent.

For our purposes, these terms are broadly referred to as 'NewLaw' and are defined as '[a]ny model, process, or tool that represents a significantly different approach to the creation or provision of legal services than what the legal profession traditionally has employed'.

This broad definition encompasses the delivery of some or all of the following services:

- the provision of high-volume process-driven technology-enabled legal services, including document review, e-discovery, due diligence, commercial contracting; Provision of outsourced services to clients' in-house legal teams, commercial contracting, leasing, intellectual property, portfolio management and remediation; Provision of contract lawyers and secondment services of lawyers for the completion of specific projects; Provision of legal project management and/or legal processes to improve the delivery of work; and
- Provision of multidisciplinary services to deliver a more holistic solution to the client, which takes into account both legal and non-legal advice.

The incorporation of some of the above-mentioned services has allowed law firms to introduce within their business model new value propositions for both lawyers and clients as represented in Figure 1.

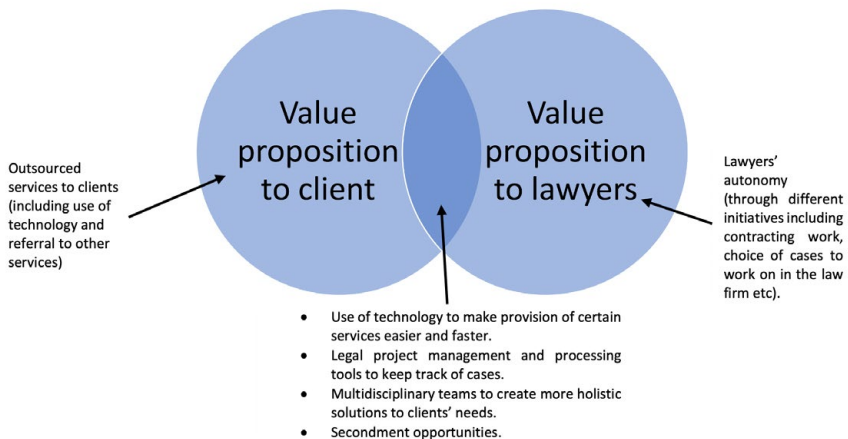


Figure 1: NewLaw initiatives adding value to both clients and lawyers

In view of the changes taking place in the delivery of legal services, this project set out to overview and assess the innovations taking place within the legal profession. The impact and different uses of technology was a key focus.

A. Push to Dramatically Change the Face of the Legal Profession

Currently, there is an extensive existing literature discussing the new technological disruptions that are occurring within the legal profession.¹ This has led Susskind and Susskind to suggest that the profession is facing major changes that will alter the way legal services are provided.² Along with the adoption of different business models, there is a call for lawyers 'to think more creatively, imaginatively and entrepreneurially about the way in which lawyers can and should contribute to our rapidly changing economy and society.'³ According to Susskind, ignoring this reality brings the risk that traditional lawyers may be largely 'replaced by advanced systems, or by less costly workers supported by technology or standard processes, or by lay people armed with online self-help tools.'⁴

Over the last four decades, the legal profession has slowly started losing its monopoly, including first with the introduction of non-lawyer conveyancers and then with the promotion of new business models.⁵ For example, non-law legal service providers now go beyond just the multidisciplinary teams developed by the big accounting firms, to include banks and financial services providers.⁶ The National Australia Bank (NAB) for example, has set up 'NAB start-up' to help people launch their businesses more quickly by providing a range of services, including legal advice.⁷ Further, online document providers are now selling basic legal forms and documents to consumers and small businesses for competitive prices.⁸

The provision of traditional legal services by non-legal providers raises a range of issues regarding controlling the quality of products and services and providing appropriate redress when things go wrong, as there is less regulation surrounding those providers. However, these providers also may create new access to justice avenues to people who would not usually be able to afford the cost of a lawyer.⁹

This, accompanied with the changing environment in the provision of legal services and the need to meet clients' expectations, has meant that law firms have had to adapt by revisiting their business models to ensure the growth and profitability of the profession. They needed to assess:¹⁰

- How might lawyers prove their 'added value' or their 'value proposition' in the services they provide to their clients?

1 Michael Legg and Felicity Bell, *Artificial Intelligence and the Legal Profession* (Hart Publishing, 2020); Michael Guihot, 'New Technology, the Death of the BigLaw Monopoly and the Evolution of the Computer Professional' (2019) 20(3) *North Carolina Journal of Law & Technology* 405, 405.

2 Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology will Transform the Work of Human Experts* (Oxford University Press, 2015) 67.

3 Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2010) 2.

4 *Ibid* 2.

5 Vicki Waye, Martie-Louise Verreyne and Jane Knowler, 'Innovation in Australian Legal Profession' (2018) 25(2) *International Journal of Legal Profession* 213.

6 Armstrong, Bushby and Chin, (n 9).

7 NAB, *Start your business the easy way with NAB Startup* (Web Page) <<https://www.nab.com.au/business/small-business/moments/starting-out/new-business/nab-startup>>.

8 See, eg, LawPath/LegalZoom; Rocket Lawyer; Epoq; Law Depot; Cleardocs; Legal123; Wonder Legal; Net Lawman; Precedents Online; Law Central; Legal Docs; Legal Zebra; LawLive; Progressive Legal; Easy Legal Templates; Law on Earth; Boost Legal Templates; Willed; LegalWill; Safewill.

9 Benjamin H Barton, *Glass Half Full: The Decline and Rebirth of the Legal Profession* (Oxford University Press, 2015); Henderson (n 11).

10 Mark Johnson, Clayton Christensen and Henning Kagermann, 'Reinventing Your Business Model' [2008] (December) *Harvard Business Review* 57, 58.

- How best to respond to the disruption caused by non-legal providers?
- What type and level of change to the business model is needed?

Law firms chose to answer these questions in different ways, by adopting different approaches. The extent to which they need (or feel they need) to reinvent themselves to meet clients' expectations and remain competitive varies, with some adopting new business models and others adopting different strategies within their current business model, to ensure that they meet clients' expectations and remain competitive. The evolution that is taking place in the legal profession is reflected in Figure 2.



Figure 2: Toward the adoption of more innovative business models – Different approaches

Law firms have adopted different initiatives to respond to the needs of the community and to distinguish themselves from other legal services providers through a variety of ways including through a focus on their clients; promotion of positive firm culture; and using technology to meet the needs of both clients and lawyers. These areas of change do not come as a surprise as a successful business model usually has three key components: customer value proposition, profit formula, and key resources and processes, as illustrated in Figure 3. Law firms have adopted different business structures to enable the adaptation of some or all of these considerations, as highlighted in Part II. These three components are discussed in Part III.

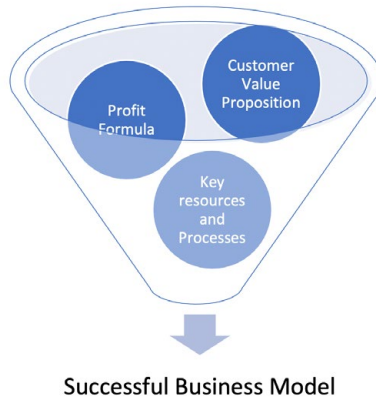


Figure 3: Considerations for a successful business model¹¹

A. Project Aims and Methodology

The interview study reported on here sought to assess the level of innovation within Australian law firms. The findings of the project are based on an extensive literature and grounded in interviews with 24 partners or their delegates in legal practices.

These law firms were chosen from a broad pool of firms who have received innovation awards and/or indicated on their website that they see themselves as conducting innovative practices within their organisation. Noting the appeal of NewLaw services, the research questions underpinning this study are:

1. How are business structures perceived as supporting strategic and innovative goals?
2. What are the core beliefs and ideals underpinning what innovative law firms provide their clients?
3. What is the value that innovative law firms are providing to their lawyers?

Following Ethics approval, interviews were conducted in early 2021.¹² Each lasted approximately 1 hour. Table 1 below sets out the number of interviews conducted in each category depending on the size of the law firm. The category of small law firm also included some sole practitioners. However, all the sole practitioners ran their firm in the form of an incorporated legal practice.

Size	Number
Large law firms (including Big Law)	9
Medium law firms	5
Small law firms	9
Total	24

Table 1: Size of participant law firms¹³

¹¹ Diagram adapted from ibid 62.

¹² Ethics approval no. HC200941. Please contact the authors for more information on methodology.

¹³ The law firms were classified into each of these categories based on the number of lawyers and employees in the firm: Small law firms have between 1 to 20 lawyers; Medium law firms have between 21 to 100 lawyers; Large law firm have over 100 lawyers. This classification also includes BigLaw.

The interview findings are used to inform the findings which follow. They are not representative and so cannot be used to generalise to the population of law firms as a whole. However, there was consistency in interviewee reports, suggesting that the findings are not atypical. Based on the findings, a taxonomy is put forward to highlight the innovations that are currently taking place in law firms.

IMPACT OF BUSINESS STRUCTURE ON INNOVATION

More and more, law firms are being established as incorporated legal practices (ILPs) registered under the *Corporations Act 2001* (Cth). As highlighted in the following paragraphs the rise of this business structure is due to the fact that it is viewed as a 'more flexible form from a legal structural standpoint',¹⁴ and it allows law firms to adopt more innovative business models.

A. Background

For a very long time, the monopoly that lawyers had regarding the provision of legal services remained unchallenged.¹⁵ However, in Australia, the legal profession came under more and more scrutiny in the 1970s, 1980s and 1990s. For example, self-regulation was first challenged in the 1970s when it became apparent that the cost of legal services was limiting people's access to justice.¹⁶ During the ensuing three decades, some of the concerns raised related to:¹⁷

- Poor consumer focus by law firms, as the New South Wales Law Reform Commission found that the profession had failed to meet clients' needs and concerns;¹⁸
- Anti-competitive practices by the profession;¹⁹ and
- Gender bias within the profession.²⁰

Restrictive practices within the profession were an obstacle for both access to justice and competitiveness of the provision of legal services. In response to the criticism, the structure of law firms began to be altered as highlighted in Figure 4.

¹⁴ Interviewee 24.

¹⁵ See eg, Ysaiah Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (6th ed, LexisNexis, 2014) Ch 4.

¹⁶ See Michael Cass and Ronald Sackville, *Legal Needs of the Poor: Commission of Inquiry into Poverty: Law and Poverty Series* (Australian Government Publication Services, Canberra, 1975).

¹⁷ Christine Parker, 'Justifying the New South Wales Legal Profession 1976 to 1997' (1997) 2 *Newcastle Law Review* 1, 5.

¹⁸ See for example NSW Law Reform Commission, *Scrutiny of the Legal Profession: Complaints Against Lawyers* (Final Report No 70, 12 November 1993); NSW Law Reform Commission, *The Legal Profession: Complaints, Discipline and Professional Standards* (Background Paper No 3, October 1980).

¹⁹ See, eg, Fred Hilmer, *National Competition Policy* (Australian Government Publishing Services, Canberra, 1993) 133-137 ('*The Hilmer Report*'); Trade Practices Commission, *Study of the Professions: Legal* (Final Report, Australian Government Publishing Services, Canberra, 1994) 3-4.

²⁰ See, eg, Keys Young, *Gender Bias and the Law: Women Working in the Legal Profession in NSW: Research on Gender Bias and Women Working in the Legal System* (Report Prepared by Keys Young for the New South Wales Department for Women, March 1995).

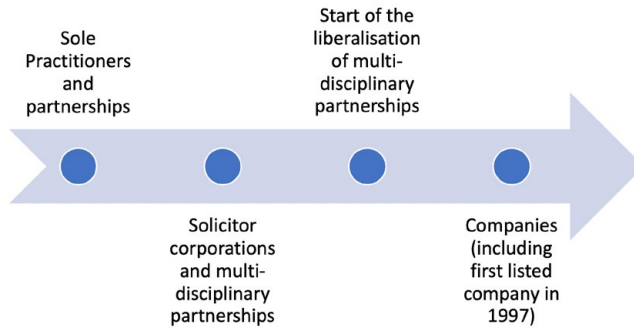


Figure 4: Introduction of new business structures to the legal profession

This liberalisation of the legal profession occurred slowly. For instance, while it was possible to run solicitor corporations and multidisciplinary partnerships as of the late 1980s,²¹ these structures were not popular back then due to the numerous onerous conditions attached. Rules around multidisciplinary partnerships started slowly easing and by the end of the 1990s the rules were streamlined.²² Soon after, ILPs registered under the *Corporations Act 2001* (Cth) were allowed to be constituted in NSW.²³ When this change occurred, then Attorney-General and Minister of Industrial Relations, the Honourable Jeff Shaw stated:²⁴

The Government is of the view that incorporation will lead to more transparent management structures in law firms, because of the requirements of the Corporations Act. Within a corporate structure, the accountability of individuals for the management of the practice will be enhanced, and this is likely to lead to a better delineation of responsibilities within firms and to more efficient services provision.

Since then, a growing stream of law firms have been incorporated.²⁵ With the flexibility provided by the liberalisation of the legal profession, the different business structures allowed for innovative practices to be embedded within them, as is highlighted in the following paragraphs.

B. Partnerships and Innovation

ILPs have become increasingly popular in New South Wales, with over 3,000 in August 2020.²⁶ We can assume that a good number of these are sole practitioners practising as ILPs. While there have long been many sole practitioners, partnerships are also a popular way to run a legal practice. However, this

21 *Legal Profession Act 1987* (NSW); *Professional Conduct and Practice Rules Legal Profession Act 1987* (NSW).

22 For a summary of this evolution, see for example: Steve Mark and Georgina Cowdroy, 'Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales' (2004) 22(4) *Penn State International Law Review* 671, 673.

23 *Legal Profession Amendment (Incorporated Legal Practices) Act 2000* (NSW) amending the *Legal Profession Act 1987* (NSW) ss 47B-47T.

24 Parliament NSW, Legislative Council Hansard (23 June 2000) 7265.

25 Steve Mark, Former NSW Legal Services Commissioner, 'Issue of Listing of Law Firms in New South Wales' (Address to Joint NOBC, APRL and ABA Centre for Professional Responsibility Panel entitled "Brave New World: The Changing Face of Law Firms and the Practice of Law from a Professional Responsibility Perspective", 10 August 2007) < https://www.olsc.nsw.gov.au/Documents/notes_for_joint_nobc_aprl_aba_panel.pdf.

26 Frances Moffitt, 'Setting up an Incorporated Legal Practice under the Uniform Law in NSW' [2020] (70) *Law Society of NSW Journal* 88.

business structure has faced its challenges in adapting to new and innovative practices.²⁷ As one interviewee in this study noted:²⁸

The provision of legal services is still a very good business, a very successful business and the way we worked over many years, decades, still is a good way to run our businesses. If it ain't broke, don't fix it. So, it does make it challenging. Because it's a partnership and because of the nature of the legal profession, this is certainly not the industry that's most forward-looking and most driven, incentivised to be innovative compared to others.

A review of the literature²⁹ and the responses of eight of the interviewees in this study who work in legal partnerships highlighted that there is a tension between traditional practice and the incorporation of innovative practices as illustrated in Figure 5.

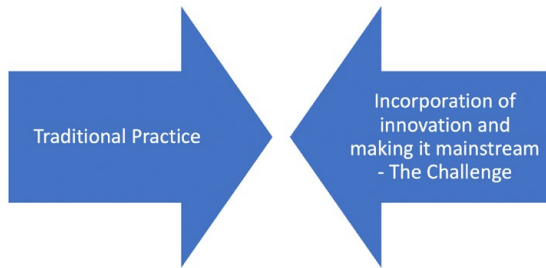


Figure 5: Frictions within partnerships when it comes to innovation

This tension may be the result of a range of factors. Firstly, the partnership structure is not well set up to fund innovation and investment in the future. For example, a number of interviewees noted:

The partnership model does create some challenges and I would say that's, for me, specifically around profit and investment and that's because the profit of the firm is the dividend that the partners have paid, so in order to take a chunk of money and invest it, say, outside the firm, equity in another business, there are a lot of hoops to go through.³⁰

Law firms in the traditional model where it is a partnership flush out of the money each year to my observation have not done very well at investing on a five-year horizon. Because if you have a bunch of partners who are in influential positions, let us say they are white men in their early 60s, which is quite a strong cohort traditionally in that space they are not making a decision for 2030, because it is not in their financial interest to do so.³¹

27 Anthony Notaras, 'Leadership and innovation – The partnership dilemma', *Legal Business* (online, 6 October 2014) <<https://www.legalbusiness.co.uk/analysis/leadership-and-innovation-the-partnership-dilemma/>>; Anders Spile, 'Partnership Structures & Innovation in Midsize Law Firms', Thomson Reuters (online, 15 Mar 2017) <<https://www.thomsonreuters.com/en-us/posts/legal/partnership-structures/>>.

28 Interviewee 19.

29 See the summary of Justine Rogers and Felicity Bell, 'Transforming the Legal Profession: An Interview Study of Change Managers in Law', *Legal Studies* (forthcoming, 2021) ('*Transforming the Legal Profession*'); Thomas S Clay and Eric A Seeger, '2018 Law Firms in Transition Survey: A Altman Weil Flash Survey' (Report, 2018) <http://www.altmanweil.com/dir_docs/resource/45F5B3DD-5889-4BA3-9D05-C8F-86CDB8223_document.pdf>.

30 Interviewee 4.

31 Interviewee 11.

Accordingly, long-term planning in terms of innovation is a challenge. This is especially the case as partners still have to pay taxes for the funds they receive during the year.³²

If we decide as a firm to hold back some of our income for investment, the partners still have to pay tax on it, and so that can be challenging for partners to have to pay tax when they do not get the cash. And so, the partnership model does have a limitation when it comes to investing in capital and technology and new businesses beyond the current year.

Furthermore, reaching a decision to invest in innovative practices may take time, as a consensus has to be reached between the partners for such an investment to occur.³³ It is also a challenge as some interviewees felt that there is a very traditional mindset within the legal profession.³⁴ Accordingly, a number of established large legal partnerships have chosen two key and different positions as a means of incorporating innovation within their practice:

1. *Outsourcing of innovation* through different methods including investing in new forms of legal businesses, outsourcing legal services and establishing alliances or collaborating with New Law entities;³⁵ and
2. *Incorporating innovation from within*, by creating departments within law firms that are in charge of sourcing and implementing innovation.

With option 1, law firms may be more passive players in the innovative market and only adopt practices when they see that they have worked effectively. They may not always be actively seeking to innovate and are more traditional in their approach. For instance, one interviewee explained that their firm had invested in a ‘disruptor’ in order to learn:³⁶

We saw that there was disruption and change going on in the legal market and we expected that new players coming up through the ranks would be disruptive to a business such as ours. And we made that investment because we thought it would be good for us to have a stake in that disruption; and that we would be able to also learn from what they are doing, that we could bring things back into our business. And it is quite separate from our business; we interact and we share ideas, but it is very much, a sort of a separate investment that sits off to the side of what we do. I think we do need to invest in understanding [disruptors] more even just as a defence against disruption.

When it comes to option 2, even when a traditional partnership has incorporated innovation from within, challenges remain in place as the reality is that the department in charge of innovation potential and practices may not be fully understood or appreciated by lawyers in other departments, including those in leadership roles, in the firm. A form of capture is created. Those departments still need to change their lawyers’ perceptions and sell the innovation to their colleagues.³⁷ As one interviewee observed:³⁸

[I]n any change or transformation you’ve got 20 per cent laggards who are never going to change; you’ve got 10 per cent early adopters, who are out there ahead of the pack; then you’ve got 70 per cent in the middle. What we need to do in my job is to convert that 70 per cent, and then the 70 per cent will convert the 20 per cent. I just need to ignore the 20 per cent. I need the 70 per cent. That’s hard. It’s really hard trying to change the minds of partners. It’s really hard to get them to think about how to deliver

32 Interviewee 3.

33 Interviewee 3.

34 Interviewees 2, 4, 11, 16, 20, 23.

35 For examples, see Waye, Verreynne and Knowler (n 20) 221.

36 Interviewee 3.

37 See Rogers and Bell, ‘Transforming the Legal Profession’ (n 44).

38 Interviewee 16.

legal services differently when they've been doing the same thing for the last 20 or 30 years and they don't really want to think about doing it differently.

This is especially hard in partnerships that are deeply siloed and where conflict may arise regarding the priorities of different departments.³⁹ One interviewee noted:⁴⁰

I am aware through connections with other law firms that that can certainly be a bit of a barrier for change internally. When – I guess some partners who would say the more efficient that you make the work the less we can bill the client.

Some of the above challenges faced by well-established partnership may not be there for more recently established ILPs which may set up their business model to take into account or to be built on an innovative mindset. A number of newly established ILPs have flagged that their law firm was established with the desire to change the way legal services are provided.⁴¹

C. Incorporated Legal Practices and Innovation

The benefits of incorporation for legal practices are well documented in the literature⁴² and the key advantages are outlined in Figure 6 below. These advantages were also identified and referred to by our interviewees.⁴³

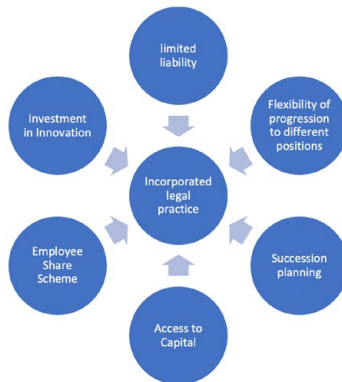


Figure 6: Benefits of incorporation

For example, the majority of interviewees said that one of the appeals of incorporation of legal practices related to asset protection and limited liability attached to the corporate form.⁴⁴ Further, a company can be run in the form of a partnership. As one interviewee explained, ‘we’re incorporated but we function practically speaking as a partnership.’⁴⁵ Sole traders could also be incorporated.

A corporate form is better suited than a partnership to implement long term innovative policies due to

39 Interviewee 14.

40 Interviewee 15.

41 Interviewees 2, 5, 6, 7, 8, 9, 10, 17, 20, 22, 23, 24.

42 See, eg, Steven Mark and Tahlia Gordon, ‘Innovations in Regulation – Responding to a Changing Legal Services Market’ (2009) 22(2) *Georgetown Journal of Legal Ethics* 501, 503–504, 529–531; Steve Mark and G Cowdroy, ‘Incorporated legal practices – a new era in the provision of legal services in the state of New South Wales’ (2003-04) 22(4) *Penn State International Law Review* 671, 676–681.

43 Interviewees 2, 5, 6, 7-13, 17, 20, 21, 23.

44 Interviewees 5, 6, 10, 13, 17, 20, 21, 23.

45 Interviewee 24.

the perpetual succession of the entity. Further, the profit of the organisation may be redirected toward the implementation of further innovation. Additionally, this business structure does provide newly established law firm with some advantages that may allow them to compete with well-established law firms that have more resources at their disposal.⁴⁶ One way to do that is through attracting external investors.⁴⁷ The funding brought in may allow the organisation to ‘invest heavily in building the system process technology, the customer base, and scaling out all of that to a point where now we can grow very quickly without adding on operating expenses.’⁴⁸

Additionally, this allows for legal and non-legal parties to work together through an investment:

*[Raising capital is] really crucial to the kind of business model we have because we are building for scale and we need the investment to do investment in technology and marketing. That requires outside funding, and you can only do that really under a company structure.*⁴⁹

*So the primary reason for choosing an incorporated entity is we wanted to involve non-lawyer participants at an equity level. So, that’s the main reason we went for an incorporated structure because we saw law as - there’s no reason why it shouldn’t be an investment vehicle for non-participants and for shareholder participants rather than just those who participate at an executive level in the business.*⁵⁰

One interviewee elaborated by noting the two key benefits of having non-lawyer shareholders within an incorporated legal practice – capital, and access to expertise:⁵¹

The first is actual capital. Partnerships tend to be based primarily on not so much capital injection but more participant level and sweat equity type injection. So the first thing was actual money, a greater source and a greater pool of money. The second was access to a commercial skill set at Board level. So it was really about getting access to a commercial level of understanding, awareness, expertise, where a person also had skin in the game. So it was really about getting business advice and business participation from people who weren’t lawyers.

Accordingly, ILPs may promote innovation by attracting the necessary capital that is not otherwise available through partnerships.

In summary, each of the business structures discussed above has a different appeal in terms of innovation, as highlighted in Table 2.

46 Interviewee 16.

47 Interviewee 8.

48 Interviewee 9.

49 Interviewee 8.

50 Interviewee 13.

51 Interviewee 13.

Area of Innovation	Partnerships	Companies
Decision-making	Requires unanimity	Decisions made faster at board or below board level
Funding of new projects	Cost benefit analysis highlighting short-term as well as long-term benefits	Focus on long-term benefits of the innovation due to the perpetual succession of the company
Implementation of innovation	Partners coming on board to implement change	One system implementing the change
Involvement of non-law people within organisation	Adoption of multi-disciplinary teams to broaden the services provided to clients and involvement of non-legal partners	Involvement of parties from different backgrounds to promote innovation

Table 2: Business Structures and Innovation

To a large extent, newer law firms may have an easier job to implement new business models as they can embed innovative practices as part of the core business of their organisation. However, investing and embedding technology within organisations is expensive. Unlike well-established entities, NewLaw entities may not have financial resources to implement expensive innovative technologies. In that regard, a company may allow these firms to tackle this lack of capital by raising funds from a range of investors such as venture and angel investors.

INNOVATION AND CLIENT VALUE

Our interviews with law firms established post-2005 highlighted that, in most instances, their entities were set up due to some form of dissatisfaction with the way traditional law firms operate.⁵² For instance, one interviewee noted:⁵³

[...] we felt that the traditional leveraged model of law firms was not serving our clients' best interests and we wanted to create a firm where we could truly meet their needs in terms of costs and service delivery.

Accordingly, these entities have attempted to incorporate within their business model different approaches to tackle a number of issues including:

- Fees and costs;
- Communication to clients; and
- The nature of the advice provided to clients.

More traditional law firms who took part in this project had also come onboard and implemented their own changes in these areas. The fact that these areas have been targeted should not come as a surprise as they are some of the 'most complained about' categories as reported by the Office of the Legal Services Commissioner (OLSC), as illustrated in Table 3.

⁵² Interviewee 5, 6, 10, 12, 17, 20, 22, 23, 24.

⁵³ Interviewee 10.

Type of Complaint	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Negligence	17.5%	15.8%	17.7%	15.2%	18.2%	17.7%	17.8%	16.1%
Communication	15.5%	15.7%	15.5%	15%	15%	14.3%	15.8%	18.4%
Overcharging	12.6%	12.6%	11.5%	13.9%	12.8%	13.9%	13.5%	14.9%

Table 3: Complaints received by the OLSC⁵⁴

Technology has also enabled the introduction of changes in these, and other more traditional, law firms as will be discussed in this section.

A. Fee Structure

Fee structure is an important part of the service that law firms provide to clients. Price, in fact, changes the actual experience and perception that a client may have of the service provided.⁵⁵ For law firms, time-based billing remains the most dominant form of billing⁵⁶ despite criticism attached to it.⁵⁷ This fee structure serves two purposes:⁵⁸

- Determine the fee the client is going to be charged; and
- Measure the productivity of lawyers.

While time-based billing has its advantages as it may provide transparency to clients by providing them with a reference to the time taken to complete the required tasks,⁵⁹ clients are still likely to complain about the fees charged by lawyers, as illustrated in Table 3. This could stem from a range of reasons including lack of understanding of the billing system and issues related to accuracy in the billing system.⁶⁰ As a consequence, a number of law firms have introduced different measures to deal with these concerns: the initiatives are wide ranging and include the implementation of different set of billing structures, adoption of strategies to better explain the fees to clients and the use of technology and other approaches to lessen legal cost.

1 Adoption of Alternative Methods of Billing

Table 4 highlights the different billing practices adopted by the law firms we have interviewed for this project.

54 The data is a compilation from the OLSC's annual reports from 2012-2013 to 2019-2020.

55 Harry Beckwith, *The Invisible Touch: The Four Keys to Modern Marketing* (Business Plus, 1st reprint ed, 2009) 78.

56 Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge Press, 3rd ed, 2018) 257; see also Michael Legg, 'The Pros and Cons of Different Types of Fee Arrangements' [2021] (74) *Law Society Journal* 84 ('*Pros and Cons*').

57 Michael Legg and Justine Rogers, 'Lawyers' Fee Arrangements and Their Wellbeing' in Michael Legg, Prue Vines and Janet Chan (eds), *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 267.

58 Dennis Curtis and Judith Resnik, 'Teaching Billing: Metrics of Value in Law Firms and Law Schools' (2002) 54(6) *Stanford Law Review* 1409, 1412.

59 Legg, *Pros and Cons* (n 71).

60 Christine Parker and David Ruschena, 'The Pressures of Billable Hours: Lessons from a Survey of Billing Practices inside Law Firms' (2011) 9 *University of St. Thomas Law Journal* 619, 621.

Fee Structure	No. of Interviewees
Time-based billing	5
Time-based billing with fixed fee or disbursement for use of technology by clients	4
Fixed fee including value billing	7
Mixed use of fixed fees and other fees including annual retainers, subscriptions and time billing (including provision of choice to clients and lawyers re-billing)	8

Table 4: Fee Structures of Law Firms in this Study

Time-based billing in both its iterations in Table 4 was the main source of billing for well-established traditional law firms such as BigLaw.⁶¹ A number of these entities who have incorporated a captured NewLaw model within their firms have moved to or are moving toward charging a fixed fee or disbursement for the use of those services only.⁶² Additionally, some BigLaw have started renting their in-built technologies to their clients' in-house counsel teams.⁶³

One of the smaller law firms that we interviewed also adopted time-based billing with a twist. As highlighted in the Legal Cost Primer, it capped the maximum amount of fees that can be charged to a client.⁶⁴ Accordingly, clients have certainty that the fees charged would not exceed a particular amount.⁶⁵ Consequently, a hybrid form of billing is created where time-based billing will only be used to a certain amount.

The majority of newly established law firms have adopted a form of fixed fee. This approach can give predictability of cost to clients and effectiveness of service.⁶⁶ Some law firms have confined the use of this form of billing to matters that are within their control. For example, one interviewee noted:⁶⁷

A lot of [our fees] are fixed cost. Basically, we have a model where we will fix cost anything within our control. So, what can we control? [...] So advice and documents we can entirely control, and we should be able to give an absolutely certainty of fee. The bits that we cannot control and still remain on a time basis are either intensive litigation (where basically we are in the control of third parties) and third-party negotiations most commonly in a merger or acquisition transaction. So, we still do have an element that we do we still do have an element of fluidity, but overall, we are trying to provide that that certainty.

Other law firm interviewed have taken different approaches to this. For instance, another interviewee noted:⁶⁸

The model that we use most often with litigation is a hybrid arrangement which has a retainer component and a fixed fee component. So we basically break the litigation down into its component pieces, so phases. We charge fixed fees for each phase and then usually we charge a – like a base retainer as well which covers the day-to-day bits and pieces of running a litigation.

61 Interviewees 1,3, 4, 14, 15, 16, 18, 19.

62 Interviewees 14, 15, 16

63 Interviewee 4.

64 Michael Legg, *The Sustainability of Law and Lawyers – Costs and Fees: A Primer* (2020, Law Society of NSW and FLIP Research Stream).

65 Interviewee 12.

66 Sean Corrigan, 'Alternative Fee Arrangements' (2021) 44(2) *Manitoba Law Journal* 134, 138; Interviewee 8.

67 Interviewee 5.

68 Interviewee 24.

Additionally, some interviewees have set up their law firm and their billing practices to service a market that, for a long time, was priced out of the provision of legal services.⁶⁹ The availability of certainty through fixed pricing may make clients without significant resources more comfortable to seek legal representation.⁷⁰ For instance, one interviewee noted:⁷¹

We offer fixed fees, but we not only do that. We put it on our front door, like a cafe, and it's on the website as well, so you don't have to sit and have a full first conference and then find out what the fixed fee is. For someone who's purchasing professional services for the first time, that's a massive barrier. [...] I think we just - we reduce those barriers to entry of not knowing how long it's going to take and how much it's going to cost.

Other law firms provided subscription and/or annual retainers to their clients and they found that this allowed the client to access the full services that the firm may provide. For instance, one interviewee noted that this model allowed the law firm to create a road map for the client to achieve the desired outcome over 12 months while at the same time providing certainty regarding the cost being paid.⁷² Another noted that subscription fees allowed for stability of income and also provided the client with value as:

[Through the subscription], we will basically do all your legal work for that fixed weekly fee. It means we are constantly trying to think of more things that we can help [the client] with and so on so forth, not to make more money from them, but to ultimately keep them as a client and we keep them as a client by making sure that they you know, they have got everything they need done legally for their business.⁷³

Lastly, value billing was also of interest to a number of firms interviewed.⁷⁴ For instance, one lawyer noted in term of benefits:⁷⁵

From a lawyer's perspective it's really saying that it's not – it's really focusing on output. So, it's focusing on the quality that you provide and the output that you provide. [...] You do away with all of that [time billing] and you focus on the product that you are providing to the client and it becomes so much easier. You don't have to worry about timesheets, I think that's a massive sell, isn't it? You don't have to stop a clock when you get up to go to the toilet.

Another challenge relates to lawyers' mindsets associated with billing as many, even when using fixed fee and value billing think in term of time spent on a case rather than value provided in a matter when quoting the cost of the legal service:

the difficulty there is when it comes to pricing work, how do you do it? Because you need to stop thinking in terms of time and thinking in terms of output, and that's really hard. I really struggle with it, to be honest, because I still automatically say "Well, that's going to take me four hours to do, so that's where the value lies". So it's a very difficult mindset shift.⁷⁶

[...] I think the best way to summarise this problem is what time-based billing tends to subconsciously implant in the mind is that it's all about activity. Do, do, do, do, do. We need lots and lots of activity. Whereas a value priced model and delivering what's essential and delivering value to a client is a different mindset. It's all about doing

69 Interviewees 6, 8, 9, 12, 17.

70 Interviewees 6, 9, 17, 21.

71 Interviewee 6.

72 Interviewee 18.

73 Interviewee 9.

74 Interviewees 2, 10, 13, 23, 24.

75 Interviewee 23.

76 Interviewee 23.

what's essential and what's effective. That requires an entirely different approach. It requires you to think more. It requires you to take time out. It requires you to think carefully about what you do in each step rather than just jumping on the treadmill and going for it. So, I, again, didn't appreciate how big a cultural adjustment that is for some. [...] It's hard. It's a real challenge for our business, because as we grow and we add people with experience, we're also taking on board that cultural mindset that we need to reshape.⁷⁷

Accordingly, some law firms have implemented training sessions to educate their staff on the best way to implement and use this form of fees.⁷⁸ However, even then, changing this mindset is also challenging when law firms require staff to keep timesheets even though they promote fixed fee services to clients. As one of our interviewees stated:⁷⁹

Most firms who do say that they fixed fee still maintain timesheets right...and they still measure performance according to timesheets. So what that does is it creates internal tension within the business but also within the brains of all their lawyers because they're saying one thing to the client which is the value of the work I'm doing for you is \$X, the fixed fee. Whereas within the business they're saying the value of the work we're doing isn't the fixed fee, it's the hours that were taken to do the work, multiplied by a charge out rate which is also a made-up number.

In conclusion, depending on the business model adopted, the law firms have incorporated different fee structures, as highlighted in Figure 7.

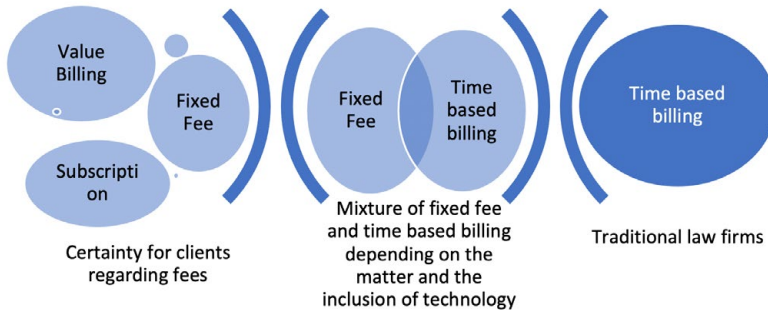


Figure 7: Fee structures

While still focusing on fixed fee billing systems, some law firm provided choice to clients regarding the billing as they found that some clients expected time-based billing.⁸⁰

It's absolutely embedded [hourly rates] and our clients expect it. So we do not kind of say this is who we are and take it or leave it. We say this is what we can do and this is how we do it, you tell us what you need and then we will make a partnership together and it proceeds on that basis

This highlights the importance of discussing fees options with clients so they can take part in the billing narrative.

77 Interviewee 13.

78 Interviewee 24.

79 Interviewee 24.

80 Interviewee 10.

2 Better Communication regarding Fee Structure

The majority of cost related complaints are usually made when a client is surprised by the cost of the legal service at the completion of a matter as there is an element of poor communication, or indeed failure to communicate at all, between the lawyer and the client.⁸¹ Consequently, communication between the parties is a key factor in assessing clients' perception regarding cost. This reality has not been missed by most of the lawyers interviewed in this study as they all noted the importance of providing certainty regarding price, and this theme of certainty has been a priority for a number of our interviewees.⁸² For example, one of the interviewees noted:⁸³

We are scoping out the work very clearly from the outset. So, it means that, you know, the client knows what they are paying for and they are not paying for things that they do not need, and it gives them certainty.

While litigation may be unpredictable in terms of duration and outcomes, this desire to provide certainty to clients has expanded in a number of instances to litigation with lawyers breaking the litigation in stages to provide clients with certainty. As one interviewee stated:⁸⁴

it can be difficult in litigation. We tend to price on that Rumsfeldian idea that there are known unknowns and unknown unknowns. You can go out to the known unknowns circle. You can't go beyond. So that tends to mean we're pricing by stage. [...] The first we always do is a kind of assessment piece, which is really a scoping or investigation piece. That's really about informing the client about what the likely pathways and risks are and where we think they should be investing their money into this to achieve their objectives. We then tend to have the articulation phase. That tends to be that sort of pleadings phase. Then we tend to move into a mediation and then a trial phase. Now, how we price by stage will depend on the extent to which there is unknowns. The primary unknowns in litigation tend to be around discovery and documents and the extent to which there may be other causes of action and other parties involved. So they tend to be the main things. Our underlying philosophy is litigation is not as unpredictable as most people make out. It's unpredictable precisely because people don't do the hard work at the beginning. They just get on the treadmill and then they discover things as they go and then they use that as a basis to say oh my God isn't commercial litigation unpredictable. When of course if they had just asked the hard questions at the beginning, they would have had some sense about what the answers to those questions would have been. So, in fact the irony is litigation is entirely predictable about process. It follows the same rhythm. Every piece of commercial litigation effectively follows the same kind of rhythm. So most of what we consider to be unpredictable - can be dealt with if there is a thorough assessment process at the beginning. Not only that, but an iteration of that process, that assessment process as you go.

This focus on providing certainty to clients is important to tackle emotions that may be attached to pricing. These emotions are the following:⁸⁵

- **Price resistance** – initial shock at the price. The fact that some law firms are advertising their fees upfront can provide consumers with a sense of the cost of the legal service that they may seek.

81 Steve Mark, 'The Cost of Justice or Justice in Costs – The Experiences of the OLSC in Handling Costs Complaints' (2004) 27(1) *University of New South Wales Law Journal* 225, 226-227.

82 Interviewees 2, 5, 6, 10, 12, 13, 20, 21, 23.

83 Interviewee 20.

84 Interviewee 13.

85 Ronald Baker, 'Burying the Billable Hour' (ACCA Report, July 2001) 23-24 <https://penheel.com/wp-content/uploads/2013/07/Rob-Baker_Buring-the-Billable-Hour.pdf>.

Additionally, law firms are also offering free initial consultation which may provide clients with a sense of whether they need a lawyer and whether they have built a rapport with the lawyer.⁸⁶ These initiatives can be viewed as initial steps toward educating clients on the cost of the legal service.

- **Price anxiety** – buyer’s remorse. This is a normal emotion clients may have especially when signing a fixed fee agreement with the law firm. There are questions as to whether they have made the correct decision in going with *this* lawyer. However, this emotion can be managed through proper communication. A number of lawyers and firms, recognising this, and have implemented systems to keep clients apprised of the progress of the matter.⁸⁷ One interviewee noted:⁸⁸
 - we wanted to improve on is around matter updates and cost visibility. So a lot of work went into that around the way we report on progress. Portals so that clients can check the work in progress on a matter, estimates up front and reporting against those estimates to address to address all of those needs.
- **Payment resistance** – clients’ unwillingness to pay. This resistance can be overcome by involving the client in design and pricing of the matter. In fact, the majority of lawyers interviewed highlighted that by charging fixed fees at the end of the case they had avoided the issue of recouping costs from clients, as clients knew what they were getting into.⁸⁹ One interviewee stated:
 - we take the time to talk to the client and have the value conversation with them and understand what they want, so that we can then scope it and align the expectations and then come up with an agreed price, means that in the client’s mind and hopefully in reality, they are receiving value for what they get.⁹⁰

Another interviewee explained that their practice was to have a discussion with the client to see what the client could afford, and based on that understanding they would provide a service that meets the clients’ needs and finances.⁹¹

Accordingly, while communicating and discussing cost and its implications with clients is not innovative by itself, the majority of interviewees had taken extra measures to ensure that clients understood the value of the work being done, the way pricing is determined and the benefits the client would be getting. This interaction between emotion and action is summarised in Figure 8.

86 Interviewees 6, 9, 17, 21.

87 Interviewees 3, 6, 8, 11,13, 16, 18.

88 Interviewee 4.

89 Interviewees 17, 21.

90 Interviewee 2.

91 Interviewee 6.



Figure 8: Managing pricing emotions

3 Technology: Lowering the Cost of Legal Services?

Technology has also been another way to provide value to clients. This is something clients have been pushing for:⁹²

the clients are losing patience for law firms doing due diligence and document review and all of those types of things the old way and charging millions of dollars for it. They are forcing their firms to do things more cost-effectively.

In term of cost, Figure 9 highlights the extent to which technology has affected pricing from our interviewees’ perspective.

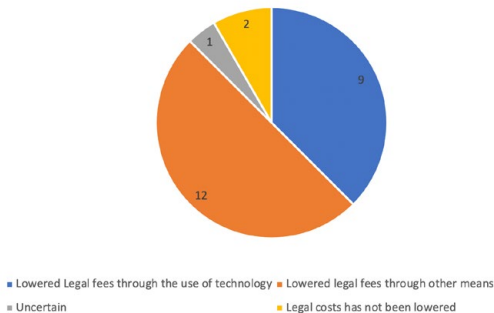


Figure 9: Cost and Technology

Accordingly, nine participants reported that technology has lessened legal cost especially through the use of automation:

Yes, there’s no doubt that that [the use of technology] reduces the legal cost. We’ve got

92 Interviewee 16.

*one client that has literally thousands of disputes, and through using a combination of people and machines, we have massively reduced their costs of dealing with those disputes.*⁹³

*We may charge clients a fee for access to that technology but then they save on the flip side in terms of the legal resources.*⁹⁴

Reducing the time taken to perform basic legal tasks has direct cost-saving benefits for our clients:

- *Adopting an AI platform for complex contract consolidation reduced our lawyers' review time by 30 hours, with the cost savings in billable time passed on to the client;*
- *Implementing eSigning has reduced turnaround time for witnessing documents from days or weeks to minutes;*
- *Adopting digital briefing platform eBrief Ready to create electronic briefs and automate court books has reduced the amount of time taken to assemble a brief to counsel from 2.5 hours to 15 minutes.*⁹⁵

However, other law firms have lowered their cost not through the use of technology necessarily but through the business models they adopted. As such, some savings have been achieved through simple initiatives such as the location of offices⁹⁶ and more complex strategies attached to the way they pay their lawyers.⁹⁷ Others have adopted different approaches such as outsourcing of certain administrative services,⁹⁸ seeking pre-trial resolutions,⁹⁹ having more senior lawyers to complete the job faster than junior lawyers¹⁰⁰ and promoting different fee structures such as subscription models and fixed fees.¹⁰¹ The use of fixed fees has motivated lawyers in a number of instances to complete things more efficiently:¹⁰²

because we are working to a fixed fee all the time, every time, we have to figure out how to make that feasible. Which means that we are incentivised to be more efficient, which means we come up with ways to do things, to do more with less, which in turn turns into less cost for legal services.

However, despite the lessening of cost, legal fees remain high from the perspective of the lay person:¹⁰³

So, I do not see it as us providing [the client] with a means of making it less expensive for them. I just see it as a true reflection of what we are providing.

This statement is a reminder of the importance of clients' perception. Without it, clients may view the cost as unreasonable and unfair.¹⁰⁴ Consequently, law firms have to define their pricing strategies by considering the clients' perceived value of the legal service they receive, rather than using traditional cost-based pricing strategies.¹⁰⁵ Discussion with the interviewees highlights a correlation between cost

93 Interviewee 1.

94 Interviewee 14.

95 Interviewee 15.

96 Interviewee 21.

97 Interviewee 7.

98 Interviewee 5.

99 Interviewees 11, 23.

100 Interviewee 10, 12.

101 Interviewees 8, 9.

102 Interviewee 17.

103 Interviewee 2.

104 Legal Fees Review Panel, *Legal Costs in New South Wales* (Report, December 2005) 3; Sarah Maxwell, *The Price is Wrong: Understanding What Makes a Price Seem Fair and the True Cost of Unfair Pricing* (Wiley, 2007) 3.

105 Robert Harmon et al, 'Pricing Strategies for Information Technology Services: A Value-Based Approach' (Conference Paper, 42nd Hawaii International Conference on System Sciences, January 2009) 1, 1.

and communication to influence perception regarding the value being provided. This is described in Figure 10.

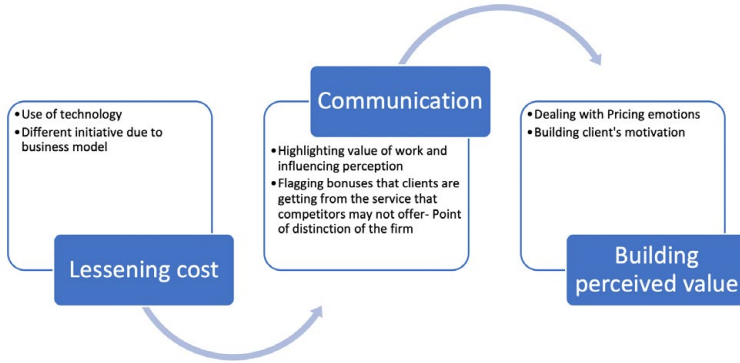


Figure 10: Communication as a bridge between cost and perceived value

COMMUNICATION AND ADVICE

To ensure the consolidation of this perceived value, lawyers have also been focusing on improving the way they communicate and advise their clients.

1 Communication with Clients

Randall Kiser, the author of *Soft Skills for the Effective Lawyer*, explained that research suggests one of the top qualities that all clients want in a lawyer is for the lawyer to be a ‘good communicator.’¹⁰⁶ The corollary of this is that communication (or lack thereof) is frequently a major cause of complaints made against lawyers as highlighted in Table 3.¹⁰⁷ For example, as noted previously, ‘[t]he typical complaints made of lawyers involve these “mundane” things, such as clients being shocked about fees, the lawyer apparently abandoning the client or other communication breakdowns.’¹⁰⁸ However, exhortations to lawyers just to communicate more are unlikely to address the problem.¹⁰⁹ There is growing interest in legal project management tools as a means of (among other things) improving communications with clients.¹¹⁰ This can be through shared portals, automated updates and greater ‘transparency’ in what the lawyer or firm is doing.¹¹¹ Ideally the client would have ‘increased clarity about the status of their matter, access to accurate tracking of progress and a reduction in “scope creep”’.¹¹² As discussed below, better communication is also a goal of legal design, the application of design thinking to legal services.¹¹³ Interviewees’ descriptions of their communications with clients coalesced around three themes:

106 Randall Kiser, *Soft Skills for the Effective Lawyer* (Cambridge University Press, 2017).

107 Rogers, Dombkins and Bell (n 14), citing Office of the Legal Services Commissioner, 2017–2018 Annual Report, 27

108 Rogers, Dombkins and Bell (n 14) 16.

109 Randall Kiser, ‘Peer Review, Client Evaluations and Law Firm Audits’ in Randall Kiser (ed), *Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients* (Springer, 2010) 397.

110 Rogers, Dombkins and Bell (n 14) 14.

111 Thomson Reuters Legal, *Three tips for using technology to communicate with clients (and one to make sure it’s working)* (Web Page, 13 November 2019) <<https://legal.thomsonreuters.com/blog/using-tech-for-lawyer-client-communication/> (2019)

112 Rogers, Dombkins and Bell, (n 14) 14.

113 Felicity Bell, *The Sustainability of Law and Lawyers – Legal Design: A Primer* (Law Society of New South Wales and FLIP Stream Report, 2020) 3.

listening, recognising, and responding.

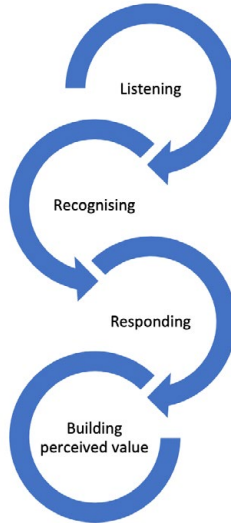


Figure 11: Communication as a means to promote value

i Listening

Listening focuses on reception and this form of communication allows lawyers to ‘see things from the client’s point of view’.¹¹⁴ Listening is equally important to speaking due to ‘the immense need humans have to be really listened to, to be taken seriously, to be understood.’¹¹⁵ As noted by Murphy:¹¹⁶

Listening is not the simple ability to decode information: it is a two-way exchange in which both parties involved must always be receptive to the thoughts, ideas, and emotions of the other. To be an effective listener, one must not only open the lines of communication and relax; one must compel others to do the same.

This is something lawyers have recognised and they have adopted different strategies to enhance listening. Three explained the importance of making time to listen:¹¹⁷

*[L]ook, we don’t have any whiz bang tools. I think this comes down to understanding what they need and then being able to do it and delivering it. I think each and every program and client is slightly different. I guess that comes back to my point about being adaptable and nimble. Is that you can really only give them what they want if you listen and if you’re not wedded down to certain ways of doing things so that you can just adapt and you can just align to whatever it is that they need.*¹¹⁸

114 D Brian Dennison and Winifred Tarinyeba Kiryabwire, ‘The Advocate-Client Relationship in Uganda’ D Brian Dennison and Pamela Tibihikirra-Kalyegia (eds), *Legal Ethics and Professionalism: A Handbook for Uganda* (Globethics.net, 2014) 72.

115 Michael Purdy, ‘What is Listening?’ in Michael Purdy, Deborah Borisoff (eds), *Listening in Everyday Life: A Personal and Professional Approach* (University Press of America, 2nd ed, 1996) 2.

116 Kevin Murphy, *Effective Listening: Hearing what People Say and Making it Work for You* (Bantam, 1987) 11.

117 Interviewees 17, 21, 10.

118 Interviewee 10.

Five firms we interviewed referred to using design thinking.¹¹⁹ Design thinking (or human-centred design) refers to putting the user at the centre of all design projects. Accordingly, the first phase of design thinking usually involves deep and empathic listening to users/clients. One interviewee explained:

I think [our design thinking system] has been fantastic, because we're able to look at the client's issues from the client's point of view. It's classic design thinking, and clients really like that, rather than us just being the law firm that says all we do is law.¹²⁰

Another said:

We also use design thinking to assist us both as a firm in terms of how we identify and develop and implement innovative ideas. With the basis that we are really looking to improve the experience for the people that we are designing for and that could be within [the firm] and we also work with our clients to use that way of thinking to help them to identify, develop and implement innovative projects as well.¹²¹

Accordingly, there is an interest within the profession to develop an understanding of the client's need and develop empathy in the process.

ii Recognition of Expertise

Linked to *listening* was an emphasis by some interviewees on *recognising* the expertise and knowledge of the client:

We work closely with the clients to, I suppose, recognise their expertise as well, rather than just talk down to them as we often see lawyers do. And certainly, feedback from clients is that lawyers often do talk down to them, "No, you can't do that, this is what the law says", rather than necessarily recognising their own expertise, particularly in their own organisation, about what might work and what might not work.¹²²

we really can understand all facets of their business. I think clients are attracted.¹²³

This recognition leads to developing a better understanding of clients' values and needs. It further reinforces clients' autonomy and participation as they may feel that their lawyer understands their underlying needs because they share similar values.

This sense of recognition is expanded through the use of different initiatives. For instances, two interviewees explained that they would go to their clients' businesses to learn more, and in more depth, about how their clients' operations worked.¹²⁴ For another participant, recognising was part of empathetic listening which involved showing understanding and awareness of other stressors and difficulties (beyond the immediate legal problem) in the client's life: 'Just kind of being really kind and empathetic, that's the thing that [clients] really, really love'.¹²⁵ This encapsulated a collaborative approach where the firm worked out, in conjunction with the client, exactly what the client needed: 'So, what we will say is, let us see what the work is that needs to be done and we will work with you to find out the best way to do that'.¹²⁶

iii Responsiveness

Listening and recognising do not fulfil the needs of clients if lawyers do not reflect responsiveness in their actions. Keeping clients informed is a big part of this responsiveness. Recognition may also

119 Interviewees 1, 2, 11, 15, 17. See Bell, *Legal Design: A Primer* (n 128).

120 Interviewee 1.

121 Interviewee 2.

122 Interviewee 23.

123 Interviewee 10.

124 Interviewees 2, 5.

125 Interviewee 17.

126 Interviewee 2.

enhance clients' satisfaction as they feel part of the story of their legal care.¹²⁷ Interviewees explained how their firms *responded* to clients. Some highlighted that responsiveness can lead to accountability:

*It becomes an accountability measure as well. It's demonstrating that we are accountable to them rather than the client merely being a passenger in the process.*¹²⁸

This accountability is achieved through the promotion of transparency in the way matters are put forward to clients.¹²⁹ Technology helps achieve this.¹³⁰ As one interviewee noted, one of the key things that they wanted to improve through using technology was to provide clients with 'updates and cost visibility':¹³¹

So a lot of work went into that around the way we report on progress. Portals so that clients can check the work in progress on a matter, estimates up front and reporting against those estimates to address all of those needs.

Technological developments have also assisted lawyers in enhancing their responsiveness when managing cases. For instance, interviewees¹³² discussed how the firm tracked the progress of matters and automatically updated the client. Legal Project Management (LPM) is, broadly, the use of methods adopted from project management for legal work. This might include 'for strategising, planning, costing, tracking and reporting upon legal work; within agreed constraints, involving teams; and [via methods] that capture data and feedback to improve future performance'.¹³³ Two interviewees explicitly referenced LPM:

*[W]e've got a project management system [...] As far as the clients are concerned, their experience is – there are similarities to a traditional service, but I think they'll get more updates, like automated emails on where a task is up to.*¹³⁴

*We have legal project managers who are embedded into teams and they, they do really improve the delivery because they are seeking to make sure there is, there is no waste and that we are reducing the cost and improving the responsiveness.*¹³⁵

Two described that they had a strong focus on improving the client's or user's understanding of their 'work product', so that it didn't require 'translating',¹³⁶ and responded clearly to the client's needs: '[W]e try and sell them an outcome that is tied to their business need as opposed to our legal education'.¹³⁷

One interviewee explained that the firm would go on a 'fact-finding exercise' to see what other issues or legal products the client might have or need.¹³⁸ In contrast, another interviewee referred to giving clients what they needed at the time, and not before:

I've had clients come to me, they might be wanting to sell [items] online, which was a real client, and she had been quoted \$10,000 for this whole setup package, documents and distribution agreements. And it turned out she really wanted to handmade them at the start and put them online. She probably just needed website terms of conditions

127 Milton Zwicker, 'What Clients Really Want from Their Lawyers' (September 1994) 20(6) *Law Practice Management* 24, 27.

128 Interviewee 13.

129 Interviewee 15.

130 Anurag Bana, "'Times are a-changing": Disruptive Innovation and the Legal Profession' (2017) 2 *Manupatra Intellectual Property Reports* F-49, F-53.

131 Interviewee 4.

132 Interviewees 3, 6, 8, 13, 16, 18.

133 Rogers, Dombkins and Bell (n 14) 2.

134 Interviewee 8.

135 Interviewee 3.

136 Interviewee 4.

137 Interviewee 5.

138 Interviewee 5.

*and an eCommerce store. And if she wanted to, you know, they took off, and she wanted to manufacture them, then she would have needed all those other documents, but she just didn't need that huge sell.*¹³⁹

These approaches respond to the needs of the clients and do not attempt to control the narrative but give the clients what they need. One firm explained that, following legal design principles, they were 'always tweaking' their offerings. They solicited feedback from all their clients, and 'we act immediately on that feedback... we listen, and we let people know, hey, that's a great idea. We've implemented that'.¹⁴⁰

2 Advice

As part of this need for responsiveness, law firms have been reconsidering how they are delivering their advice.

i Focus on Output Rather Than Input

The development of communication skills across the spectrum has helped provide clients with what they are looking for as their narrative is being incorporated in the solution being put forward by lawyers. This builds value in the eyes of the client. As some of the interviewees noted:

*Law firms traditionally would just sell their advice; they would basically take a problem, apply a whole series of hypothetical laws to that problem and give the client a whole range of options. Whereas for us, we are finding that in 2021, that is no longer acceptable to clients. Clients basically want to have their problem turned into a solution. And that means that for us - a number of things - but our advice must have a clear recommendation, it cannot just be broad and a range of options that they must choose from.*¹⁴¹

*They're really sick of not getting the answer. That is, you know, lawyers love to couch their advice with millions of assumptions and caveat everything. So in actual fact, whatever they hand over in terms of work product is not that useful for a client. I mean our clients trust us that we know enough about their business to give them an answer, and it's a commercial answer. Of course if they want a 12 page advice to the board, we can do that. But it's about taking away some of the formality and talking to people in a way that they want to be advised.*¹⁴²

Accordingly, there is a shift by newer providers of legal services from a focus on input to a focus on output. Further, a number of interviewees noted the importance of providing advice that can be understood by the target audience.¹⁴³ Some law firms have avoided the use of legal jargon and others have adopted more innovative approaches to the delivery of legal advice which included, in one instance, the use of cartoon strips to relay the message to the client and its workforce.¹⁴⁴

Additionally, quick and efficient legal services are being promoted by a number of lawyers. For instance, one interviewee noted:

And you know it also in the way we design our law firms, [clients] are also requiring those outcomes much quicker. So, it is no longer okay to give someone a lead time of 14 or 21 days for a project. They are asking for numbers of hours now as opposed to a number of weeks. And certainly, in the 12 years I have been legal practice, things have changed drastically. Twelve years ago, we would send a letter that was quite theoretical

139 Interviewee 21.

140 Interviewee 6.

141 Interviewee 5.

142 Interviewee 10.

143 Interviewees 4, 5, 11, 12, 15, 17, 20, 23.

144 Interviewee 1.

*in nature. It would give a whole series of conclusions and options and we seldom got an email between 5 pm and 8 am, the next day; whereas that is all totally changed.*¹⁴⁵

Some law firms have implemented different measures to ensure speed of delivery of service by removing red tape that may be faced in large law firms such as duplication of work being done.¹⁴⁶ Some have also incorporated speed through their business model as they were structured as boutique law firms and their focus on a particular area allowed them to provide quick advice.¹⁴⁷ In terms of the way the law firm is set up, another interviewee has noted:¹⁴⁸

If you've got a client problem, we can do that very efficiently compared to any other chambers or contract lawyer practice because we're much more dedicated together as one firm structure, so we can actually immediately engage two or three lawyers or ten if we wanted to, on projects. But typically, one or two lawyers, like an employment lawyer with a commercial lawyer. So, when you look at a client problem, I've always felt there's no one skill that is a complete solution to that. And if you want to solve a client problem, you need to have some ability to call in what you need as and when you need it – that complementary skill set. So, that's certainly one of the ways our model assists in meeting client's needs. So, it's probably two things, money saving is one of them, the other is the ability to join complementary skill efficiently.

ii Promotion of Holistic Advice

Furthermore, another theme that appeared from the interviews is the importance of providing the client holistic advice that goes beyond legal advice. This is a representation of a number of law firms' commitment to developing a client-centred practice.¹⁴⁹ For instance:

*the clients know that they can come to us for more than just legal advice and they get broader commercial advice, and also input on strategy, and things like that as well.*¹⁵⁰

*So if we have got clients who want advice from us in certain areas, in terms of the legal side of it we can do that, but we can also assist them with the operational part of the processes that might be involved in implementing that advice. That for me is the sweet spot and I see as the as the future of legal services and this is me speaking. I think that that is where we are going where we actually starting to see more of the concept of blended services or hybrid services.*¹⁵¹

The thing is that clients increasingly have an appetite for a 'one-stop shop' when it comes to their problems, being solved in terms of risk.¹⁵²

Clients don't want to buy lawyers. They definitely don't want to buy document review. I've never met a client in my life that wanted to buy document review. What they want is a solution to a business problem, not even often a legal problem. If you're looking at it from a perspective of solving a client problem, then all of a sudden, it's not just about law. All of a sudden it becomes much broader than that. We definitely use multidisciplinary teams, including people who have legal project management skills, people who have legal operations consulting, people who have digital and legal

145 Interviewee 5.

146 Interviewees 10, 22.

147 Interviewee 22.

148 Interviewee 7.

149 Robin Steinberg, 'Beyond Lawyering: How Holistic Representation Makes for Good Policy' (2006) 30 *New York University Review of Law and Society Change* 625, 630.

150 Interviewee 20

151 Interviewee 2.

152 Interviewee 11.

*technology skills to solve our clients' problems.*¹⁵³

*We truly give them advice. Advice. Our job is probably 25% law, 75% counsellor and consultant.*¹⁵⁴

Accordingly, one interviewee noted that they view themselves as doing more than providing advice. It is more about 'delivery of service as part of the bigger picture involving different practices.'¹⁵⁵ Lawyers have achieved the provision of advice though either embedding this within their law firm or having a reliable referencing system that the lawyers bring into the matter when needed. Additionally, with the referencing system, law firms have acted as a conduit between the clients and the providers of the additional services, and this has meant a seamless experience to the clients where they do not have to explain once again their needs to access additional services.¹⁵⁶

Figure 12 provides a breakdown of how our interviewees who have adopted a holistic setting have incorporated or outsourced these services.



Figure 12: Managing holistic advice

The decision on how law firms adopted an in-house or an outsourced approach depended on the size of the law firm with smaller law firms more likely to outsource these services by relying on their networks and larger law firms more likely to have in-built services.

iii Building Value to Clients through Advice

Additionally, some law firms have highlighted that the way their business model is structured ensures that they can leverage the advice to provide more value to their clients. This meant that, in a subscription model law firm, if the organisation 'improved' an agreement for one client, other clients were notified about the 'improvement' and could benefit from it. This provides ongoing value to clients.¹⁵⁷

Additionally, other law firms provide a range of free services to clients when providing them with legal advice. For instance, law firms offered free training sessions¹⁵⁸ and free tutorial videos to clients on concept matters they face.¹⁵⁹ Other law firms provided certain services at a loss, including contract reviews.¹⁶⁰

153 Interviewee 16.

154 Interviewee 5.

155 Interviewee 14.

156 Interviewee 10.

157 Interviewee 9.

158 Interviewee 1.

159 Interviewee 20

160 Interviewee 6.

iv Recap

In the past, it may have been appropriate to provide legal advice and no more without considering the impact that narrow legal advice may have on different part of the clients' interests and other stakeholders.¹⁶¹ However, several law firms have moved toward providing more holistic advice that meets clients need.



Figure 13: Enhanced client advice

Further, as summarised in Figure 13, creating value to clients through advice is very importance and may be viewed as a point of distinction of a law firm. The message is that quick, affordable and simple legal advice is crucial to building perceived value in clients' minds.¹⁶² As one lawyer noted:¹⁶³

I think that all clients expect lawyers to know the law and to deliver a solution to their problem or an outcome they are seeking. I mean the other aspects obviously of client experience just in terms of whether you're delivering value, so whether - I think things like providing accurate estimates on fees and those sorts of things and keeping communication up to date with that, asking clients what format they need advice in, what they're going to use their advice for, which could be different - a CEO might want something different to in-house counsel or an owner of a business. So those sorts of things, I think.

A. Technology for Clients' Services

Technology has also been used to enhance the delivery of legal services and to further build client value. However, law firms have incorporated technology in different ways with some entities establishing a technological department within the law firm while others have outsourcing these services and either use them regularly or when there is client value in its use. Some law firms have not adopted any technologies as they may have viewed that it does not fit within their business model. Accordingly, the use of technology may vary from basic use to more sophisticated and unique use.¹⁶⁴ This reality is also illustrated within the sample of people interviewed, as noted in Figure 14.

161 Robert Visher, 'Legal Advice as Moral Perspective' (2006) 19(1) *Georgetown Journal of Legal Ethics* 225, 227.

162 Interviewee 8.

163 Interviewee 18.

164 Tale Skjolscik, Karl Joachim Breunig and Frida Perner, 'Digitalization of Professional Services: The Case of Value Creation in Virtual Law Firms' in Karl Wennberg et al (eds), *Managing Digital Transformation* (Stockholm School of Economics Institute for Research, 2018) 155, 163.

Did the firm use technology for client needs?

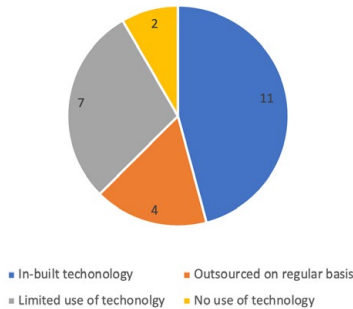


Figure 14: Use of technology to meet clients' needs

The law firms with in-built technology are large law firms who can afford to create such departments and NewLaw firms that are heavily invested in technology based on their business model. Embedding technologists within the law firm may help the law firm to provide better and more innovative services to clients.¹⁶⁵ But other smaller entities, while they may not be able to afford to build in these services, have developed relationships with technologists:¹⁶⁶

We continue to look at what we can do in that tech space; and as I said stay, stay close with and collaborate alongside legal technologists as well in the Australian community; oh and, and, internationally as well.

1 The Use of Technology and Its Benefits from Clients' Perspective

While technology may not be fundamentally changing the core of what lawyers do, it is providing a range of value to clients. One interviewee noted that they reflect on the following question when providing a legal service to clients:

It's about how we can use people, process, and technology better to create efficiencies, and better service for our clients.¹⁶⁷

Some law firms have noted that they will outsource legal services when it makes sense from a cost-benefit-analysis point of view. As one interviewee noted:¹⁶⁸

[I]t's usually a cost benefit analysis, it usually also would involve in many cases a discussion with our client [...].

Accordingly, lawyers are having discussions with clients regarding technologies that may be used to save cost and enhance efficiency of services. One of the common tools used relates to automation of documents. This is especially relevant in areas where large volume contracts need to be processed regularly.¹⁶⁹ As one interviewee noted:¹⁷⁰

They basically help reduce the cost, they make things more efficient, they reduce rework,

165 Interviewee 1.

166 Interviewee 2.

167 Interviewee 1.

168 Interviewee 19.

169 Interviewees 4, 8, 9.

170 Interviewee 3.

and, and make and I guess make things perhaps a bit clearer and easier for the for the client to follow.

Another common technology used relates to machine learning tools that are mainly used for large-scale document reviews. This was especially relied on in instances for discovery, due diligence reviews and large-scale investigations.¹⁷¹

Further, management tools have been relied on as noted previously. This ranges from e-portals that allow clients transparency regarding the progress of their case¹⁷² to more complex project management systems.¹⁷³ These systems not only provided an extra level of accountability¹⁷⁴ but also free legal resources to ensure clients are provided with regular updates.¹⁷⁵

I suppose I see it as freeing the legal resources up from doing some of... they are not administrative tasks, but their project management tasks at the transaction that do not necessarily require that expertise.

Additionally basic tools are also relied on to communicate with clients such as the use of email and online conferencing. As one interviewee noted:¹⁷⁶

We use technology where it's possible and where it's actually going to help the client experience, and some of these things aren't as remarkable as they were seven years ago. They're probably old hat, post-COVID, but electronic signing, electronic bookings, web forms to collect instructions wherever possible, videoconferencing, free 10-minute chats on our website.

While this by itself is not innovative nowadays, one interviewee has relied on videoconferencing to develop 'a lawyer tech high justice access model.'¹⁷⁷ Others have used online portals to populate clients' information which allows them to focus on the matters that really count, which is focusing on the substance of the matter:¹⁷⁸

It's making the bits that aren't client facing as efficient and as streamlined and as robotic as possible so you can really focus on that human element.¹⁷⁹

However, collecting the information online has faced some trouble depending on the platform used. As one interviewee observed:¹⁸⁰

[L]ook, [the technology used to collect client information] has probably been one of the least successful areas or innovations that we've implemented. Largely not because the demand wasn't there but because the platform just kept having issue, upon issue, upon issue. So we found that we spent more time trying to figure out, dealing with the third party provider, and trying to problem solve the platform and then liaising with the client. By that stage, you've already lost all the money and because the whole point of that is that it's meant to be an automated process, you just input it and then off you go, whereas by the time that you've problem solved the form and gotten the form filled out, well you've spent an hour and a half. So we've actually just pulled that [...] largely due to provider.

171 Interviewee 4.

172 Interviewee 4.

173 Interviewee 8, 12, 13.

174 Interviewee 13.

175 Interviewee 14.

176 Interviewee 6.

177 Interviewee 6.

178 Interviewees 6, 17, 20, 21.

179 Interviewees 6.

180 Interviewee 12.

Other law firms have used more sophisticated communication tools such as cloud-based collaboration platforms¹⁸¹ 'to allow for real-time file access, collaborative document review and reporting, efficient project management, transparency, knowledge share, data access and visualisation. [The technology] enhances our client relationships as it promotes better collaboration and visibility on matters'.¹⁸²

The key technological tools that were referred to by clients are summarised in Figure 15.



Figure 15: Technology tools designed to add value for clients

As observed previously, the use of technology may lower legal cost. It may also further enhance communication, advice and even legal representation:

*So it mainly comes down to client need. [...] Really, for us, that's about client outcomes. So we absolutely embed the capability and invest in the technology and the cultural and behavioural and mindset and practice piece around that. But we know from surveying our clients and talking to them, that for them it's all about outcomes. So they're not too fussed about the how, how we innovate, they want to know really what's in it for them, which makes sense, and for them it is about ease of doing business and cost consciousness. So making sure that we're spending every dollar wisely and technology and innovation play a big part in our ability to do that.*¹⁸³

One common theme which appeared in our interviews is that technology should be used when needed to enhance the delivery of the legal service:¹⁸⁴

[W]e don't really see tech as the full story either. That's where the imagination and heart comes in, to fill the gaps, to help people who would otherwise go without that. Tech isn't necessarily the tool that's going to fill that gap there.

181 Interviewee 15, 17.

182 Interviewee 15.

183 Interviewee 4.

184 Interviewee 6.

It has for instance provided a solution to clients:¹⁸⁵

[H]ere is an advantage for our clients, from a privileged perspective, being able to give the legal advice wrapped up together with some of the other kind of resourcing to support that. A lot of it can be technology driven. [...] from a client solutions piece... for example in our tax practice, we had to give an advice to a client, which was based on their incorrect, allocation of a type of employee. So one of the kind of other solutions that we have looked at is then, okay, well, how do we help that organisation improve their systems, or provide them with a technology solution within their legal team, to make sure that those classifications are correct going forward?

Further while technology may enhance services, it is not the answer to everything:¹⁸⁶

we still use some chatbots in certain restricted areas but for the bulk of the things that people want help with, we've found that still the real value that we add as a law firm as opposed to say a document generator is that we have humans. On the client end, they just want to deal with a person, whether it's a phone call or Zoom call.

Sometimes, there is a risk that people can become a 'bit starry-eyed about platforms and automation and time saving' and not focus on the clients' need'.¹⁸⁷ A key message from most of the interviewees is to use technology only when it will actually provide value to clients.

2 Cybersecurity and Confidentiality Issues

As law firms are increasingly reliant on cloud-based technologies, more risks appear, and some relate to confidentiality and cybersecurity.¹⁸⁸ Confidentiality is a bedrock of the legal profession. In the past, it was easy to safeguard by locking the office door or the record room. However, the reliance on cloud-based technology, including storage, may threaten confidentiality by creating volumes of confidential data that may be transferred or accessed by unauthorised parties.¹⁸⁹ Law firms in fact may be vulnerable to cyber-attacks for the following reasons:¹⁹⁰

- They hold valuable, sensitive client information;
- They are more vulnerable than clients to cyberattacks; and
- Lawyers and law firms are taking advantage of technological developments but without considering the risks attached to the use of the technology.

One interviewee reflected this by stating:¹⁹¹

it's a perennial problem and, you know law firms I think are being, you know, attacked, really, now targeted by cyber security experts or, you know, cyber hackers because we're an easy target and people are trying to emulate our identities and send out invoices, and all manner of stuff happens. It's quite confronting in this day and age.

This reality has meant that law firms must be careful when it comes to the technology in which they are investing, to ensure that confidential information is protected. Interviewees reported that this has in certain instances slowed innovation in the profession.¹⁹²

185 Interviewee 14.

186 Interviewee 8.

187 Interviewee 21.

188 Natasha Babazadeh, 'Legal Ethics and Cybersecurity: Managing Client Confidentiality in the Digital Age' (2018) 7(1) *Journal of Law & Cyber Warfare* 85, 90; Lauren Jones and Ashley Pearson, 'The Use of Technology by Gold Coast Legal Practitioners' (2000) 2(1) *Law, Technology and Humans* 57, 58.

189 Timothy Toohey, 'Beyond Technophobia: Lawyers' Ethical and Legal Obligations to Monitor Evolving Technology and Security Risks' (2015) 21(3) *Richmond Journal of Law and Technology* 1, 2.

190 Babazadeh, (n 203) 90.

191 Interviewee 7.

192 Interviewees 4, 19.

Others had less aversion to the risk attached. For instance, one observed:¹⁹³

I suppose, with anything online, we have some confidentiality, things in our privacy policy and client agreement. And you've just got a risk but it's the same as using email, really. And then I remember that – I've been practicing for 21 years, I remember that there was a big thing about email when it came out. And then last year, the Zoom issues with security. So, look, I think you've just got to be careful, look at those kind of things. It comes back to my email, it is how I receive it. So, for me, I think it's no different to them doing an email and sending it to me, or uploading a Word document to email. I think we all need to be mindful of that. But if we had thought that, we wouldn't have email and those kinds of things – yes, being an early adopter, I know there is a lot. And we get scared, look, I come to these events and they scare the life out of us about cybersecurity. I think you've just got to make that reasonable judgment and be really careful and mindful.

Law firms have adopted different strategies to mitigate the risks that may arise from the use of certain technologies. One interviewee noted:

The way we manage it particularly in this area is we obtain access to a platform with end-to-end encryption and with private keys. So, what that means is, even though our client confidential data is leaving our environment, it's being uploaded to this platform, we have complete control over it, so at any time we can prevent even the vendor of the platform accessing the data that's on it.¹⁹⁴

This does of course restrict the type of technologies that can be used¹⁹⁵ and may curtail innovation to a certain extent. The same interviewee went on to explain:

[Cybersecurity concern] really does restrict – as I said earlier in this discussion – the types of technologies we can use. I mean I look around at what's now available – there are many technologies and platforms I would love to introduce to our organisation but because either they're not offering the appropriate security level or they would provide it with the appropriate security level at quite a high cost, unfortunately we're just not able to use those platforms. Our obligation to maintain the confidentiality of our clients' information is obviously taken a lot more seriously than maybe a non-legal organisation, but we have that duty. We have to adhere to it.¹⁹⁶

Accordingly, choosing the right vendor is very important.¹⁹⁷ For instance, one lawyer noted:

Obviously, all of our connections, we have WebEx technology, I think it was at the time the most secure form of video conferencing technology that there was.¹⁹⁸

Law firms have also implemented protection measures.¹⁹⁹ Some have outsourced their IT system and engaged cybersecurity experts to ensure proper coverage is in place. Others have in-built IT teams and cybersecurity experts within their organisations.²⁰⁰ Some firms have virtual data rooms on their premises and software which further mitigates risk.²⁰¹

Law firms have also implemented education and training for their staff regarding cyber risk.²⁰² Addi-

193 Interviewee 21.

194 Interviewee 19.

195 Interviewee 19.

196 Interviewee 19.

197 Interviewee 13, 18, 20.

198 Interviewee 18.

199 Interviewee 17.

200 Interviewees 14, 18, 24.

201 Interviewee 4.

202 Interviewees 2, 8, 13.

tionally, some law firms applied and received certification such as ISO 27001 certification to ensure that security is managed appropriately.²⁰³ One interviewee explained that it is about building a culture of cybersecurity safety within the firm.²⁰⁴

Additionally, in a number of instances clients have become involved in promoting cybersecurity too, as they also want to ensure their information is protected. For instance, some interviewees noted:

When we're using third parties, we enter into agreements with them. We are working on a project at the moment where cloud consents is a bit more streamlined and embedded in how we operate. So current state of play is that for particular clients, which is probably all of the large banks and more sophisticated larger corporates, require us to ask for cloud consent before we use any sort of online collaboration platform or any other platform. So that can be a few steps for them, they need to go through hoops as well, and can often have the effect of stalling the use of those tools for a matter.²⁰⁵

We work for banks, so we actually had to ratchet it up a whole notch, we do two-factor authentication, we send, you know, emails that are password protected with another password. So, we actually do a whole bunch of stuff because we were forced to do so by these banks.²⁰⁶

We have quite a rigorous approach to security. Everything requires a security assessment, so any technologies that we're using. A lot of that comes through from our client base, so we have a lot of requirements that we need to ensure are met with any software that we use.²⁰⁷

Clients have also been involved in auditing the security within law firms.²⁰⁸ Other law firms have been looking at different ways to manage the risk and allow the use of different technology in a systematic way:

We do have a consent notice that [clients] need to sign, so all of the details are in there. I think too our clients are across the issues because that's the legal team of the corporate, so they are dealing with those issues for their own corporation. Often, it's not so much the legal team that has too much of a problem, it's the IT security team. Often what we'll do is we'll have our IT security, head of IT security, meet with their head of security and will ensure that the correct processes are used, and boxes are ticked from a security audit perspective.²⁰⁹

As a recap, Figure 16 summarises the different initiatives discussed in this section.

203 Interviewees 13, 18.

204 Interviewee 20.

205 interviewee 4.

206 interviewee 7.

207 Interviewee 15.

208 Interviewee 10.

209 Interviewee 4.



Figure 16: Managing cybersecurity risks

These different initiatives permit law firms to perform vulnerability assessments to manage the risk involved.²¹⁰

210 Mandy Stanton, George Ernst and Anton Janik, 'Cybersecurity Best Practices' (2016) 51(4) *The Arkansas Lawyer* 12,13.

INNOVATION AND CULTURE OF THE ORGANISATION

In *The Lost Lawyer*, Professor Anthony Kronman famously stated:²¹¹

[...] the profession now stands in danger of losing its soul. The crisis is, in essence, a crisis of morale. It is the product of growing doubts about the capacity of lawyer's life to offer fulfilment to the person who takes it.

An established positive culture is one way to tackle the issue raised in the above quote. Professor Elizabeth Chambliss defines organisational culture as: 'a shared understanding about how things are done'.²¹² Hill and Jones put it as: 'the specific collection of values and norms shared by people and groups in an organization that control the way they interact with each other and with stakeholders outside the organization'.²¹³ Culture may have many different facets, and indeed research studies have tended to focus on different elements of law firm culture: ethics, work habits and social relations. Chambliss has also noted that the 'unit of analysis' is important: are we thinking about whole of firm culture, or the culture of a particular office, practice group or team?²¹⁴

There are questions about how culture is created and how it is sustained or transmitted. Studies of the organisational culture of Australian law firms have tended to focus in particular on wellbeing issues and how firms or workplaces may contribute to, or decrease, lawyer stress and depression.²¹⁵ It is suggested that 'poor work-life interaction' is primarily influenced by organisational culture,²¹⁶ including overwork.²¹⁷

This may also be affected by different generational expectations.²¹⁸ However, the focus on this matter may disguise 'a spiritual crisis that strikes at the heart of their professional pride'.²¹⁹ The importance of law firm culture is evidenced by a Lawyers Weekly and Momentum 2020 survey which found that 'a firm's quality of leadership and culture were deemed as the most important drivers of satisfaction legal professionals considered when choosing to stay with their current firm, or to start looking elsewhere'.²²⁰ This was rated as of greater importance than pay and reward.

211 Anthony Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press, 1993) 1.

212 Elizabeth Chambliss, 'Measuring Law Firm Culture' in Austin Sarat (ed), *Special Issue Law Firms, Legal Culture, and Legal Practice* (Emerald Group Publishing Limited, 2010) 1, 18.

213 Charles WL Hill and Gareth R Jones, *Strategic Management: An Integrated Approach* (Houghton Mifflin, 2014) 486.

214 Chambliss (n 227).

215 Suzanne Poynton et al, 'Assessing the Effectiveness of Wellbeing Initiatives for Lawyers and Support Staff' (2018) 41(2) *UNSW Law Journal* 584; Natalie Mei-Chuen Drew, Doita Datta and Jill Howieson, 'The Holy Grail: Work-Life Balance in the Legal Profession' (2015) 38(1) *UNSW Law Journal* 288.

216 Natalie Skinner and Barbara Pocock, *Work, Life & Workplace Culture: The Australian Work and Life Index 2008* (Report, Hawke Research Institute for Sustainable Societies, University of South Australia, July 2008) 61.

217 David Marin-Guzman and Hannah Wootton, 'The perfect storm inside top law firms', *Financial Review* (online, 23 January 2020) <<https://www.afr.com/companies/professional-services/law-firms-business-model-faces-perfect-storm-20200123-p53u1x>>.

218 JL Jacobowitz et al 'Cultural evolution or revolution? The millennials' growing impact on professionalism and the practice of law' (2016) 23(4) *The Professional Lawyer* 20; Lydia Bleasdale and Andrew Francis, 'Great Expectations: millennial lawyers and the structures of contemporary legal practice' (2020) 40(3) *Legal Studies* 376; Marin-Guzman and Wootton (n 232).

219 Kronman, (n 226) 1.

220 Emma Ryan, '12 months on: How satisfied are lawyers with their firms?', *Lawyers Weekly* (online, 31 August 2021) <<https://www.lawyersweekly.com.au/biglaw/32346-12-months-on-how-satisfied-are-lawyers-with-their-firms>>.

Self-determination theory (SDT), developed by Deci and Ryan, is recognised as a useful means of analysing wellbeing conditions, by reference to people's innate needs.²²¹ These needs are summarised as autonomy (sense of control), competence, and relatedness (feeling connectedness and affiliation with others). Duncan, Field and Stevens propose several strategies for SDT-informed wellbeing curricula for law schools, which could also be applied to mechanisms in law firms to address poor workplace culture. The first is to create a sense of meaning and purpose, achieved by connecting everyday responsibilities to longer-term career goals. The second is to promote belonging, achieved by explicitly stating and adhering to the values held by a given institution/firm to ensure inclusion and diversity. The third is to promote relationships, achieved by facilitating student-faculty (or indeed junior lawyer-senior lawyer) social interactions and expressing an interest in others. The fourth relates to enabling autonomy, achieved by issuing justifications for the tasks assigned and providing choice in the method of carrying out that task. The fifth and final is to foster competence, achieved by using informative or educative language rather than prescriptive or demeaning language when instructing, and then later providing meaningful feedback for improvement. As explained below, it was apparent that many of the firms interviewed for this study were using some or all of these methods to support a strong, positive workplace culture.

CULTURE AND INNOVATION

Studies have examined how the culture of legal organisations may affect innovation and change.²²² Rogers and Bell noted how cultural opposition to change was 'entangled' with other, structural barriers, such as partnership and billing practices.²²³ Accordingly, a number of law firms have set up their business model to directly combat these issues:²²⁴

*Essentially, [the founders of the law firm] thought that the traditional approach to law wasn't really in the best interest of anyone, really, except perhaps equity partners. But it certainly wasn't necessarily in the client's best interest, or the lawyers. So, they wanted something that was more flexible, more diverse, with a bit more of a non-hierarchical structure.*²²⁵

*I worked in traditional practice for about 10 years, and I was really frustrated with the old way of doing things, both from a lawyer perspective, and how it impacted my well-being. But also, the way that the traditional firms interact with clients.*²²⁶

The fact that a number of NewLaw entities are being set up with the purpose of altering the status quo, may address some of the challenges that arise in changing culture, including the need to get buy-in from all levels (leadership right down to junior lawyers), confronting entrenched ideas about lawyers' work and culture, and generally overcoming institutional inertia.²²⁷ However, culture is challenging to define and as such, some of our interviewee have noted that their law firm have had to 'work at it' to ensure that their values are embedded within the organisation:

I certainly think positive firm culture has a huge part to play and I missed that when I first started [my law firm]. I came around to that realisation about having a really

221 Edward L Deci and Richard M Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior' (2000) 11(4) *Psychological Inquiry* 227; Nigel Duncan, Rachael Field and Caroline Stevens, 'Ethical Imperatives for Legal Educators to Promote Law Student Wellbeing' (2020) 23(1-2) *Legal Ethics* 65.

222 Waye, Verreyne and Knowler, (n 20) 213-242; Rogers and Bell, 'Transforming the legal profession' (n 44).

223 Rogers and Bell, 'Transforming the Legal Profession' (n 44) 16.

224 Interviewees 6, 10, 21, 23.

225 Interviewee 23.

226 Interviewee 20.

227 Rogers and Bell, 'Transforming the legal profession' (n 44); Justine Rogers and Felicity Bell, *Change Leadership for Lawyers: A Primer* (Law Society of NSW and FLIP Research Stream, 2020).

*positive culture and having people engage with the model with an aligned thought process.*²²⁸

The employees' engagement with the business model is important to maximise its success. Creating a positive culture would help as it will heighten retention of staff.²²⁹

1 Culture and Business Model

While law firms' foundation in many instances is based on building relations between lawyers and clients, a new business model of law firm is emerging that focuses on promoting the brand of the firm.²³⁰ One of the reasons behind this is to overcome the traditional reliance on personal connections and fealty:

*That's a very important business decision for us because as you might know, with professional services when it's so heavily based on people, when the key person leaves a lot of clients leave with them. That's not really our business model. We're really about creating equity in the brand.*²³¹

*...what we want is clients to feel like the firm as a business is delivering the service to them; and what that means is we can have five or six lawyers servicing one client who are each experts in their own area of law, as opposed to in a traditional law firm where if a partner has a good client, they will try to hold on to all of the work from that client because they're scared [...]*²³²

These firms are essentially trying to build equity in their brand. But if they do so without developing the right culture, they risk facing problems with, for instance, retention of lawyers.²³³ As one interviewee noted:

I think when you're very clear about that purpose and then all your values that support that purpose, people are I think more motivated to want to work for your company and they're on the mission.²³⁴

Accordingly, it is important for them to be clear about their mission which tends to be intricately attached to the culture of the organisation.²³⁵ In these models, the brand is at the core of the organisation, as highlighted in Figure 17.

228 Interviewee 7.

229 Interviewee 7.

230 Interviewees 8, 9, 20.

231 Interviewee 8.

232 Interviewee 9.

233 Interviewee 1

234 Interviewee 8.

235 Interviewee 8.



Figure 17: Brand shifting the narrative in the law firm

2 Culture, Values, and Trust

Other newly established law firms focused on more traditional forms of connecting with clients, namely building relations. They have found that building culture requires patience, commitment, and time.²³⁶ Further, the successful foundation of culture is a close alignment with organisational values.²³⁷ One interviewee identified culture as an ‘expression of values’, explaining: ‘So fundamentally it’s about the values that we share and we’re really rigorous about how we express our values.’²³⁸ One law firm identified its values as ‘centred around kind of the caring model. So it’s all about kindness, positivity, pragmatism, and respect really.’²³⁹ Others have ensured leadership led by example through a focus on promoting values attached to work-life balance, connectiveness, collaboration, and openness. For instance, in terms of connectiveness, one interviewee noted:

*We’re now much more focused on the culture piece and the mentality of connection. We can’t have a solo ‘lone wolf’ who wants to do everything their own way – we must be a team. That sort will never engage well with anyone anyway, so they should go and be a sole practitioner.*²⁴⁰

Other interviewees felt that promoting connectiveness could balance the hard work being conducted by lawyers as individuals. For instance, a ‘work hard, play hard’²⁴¹ culture is embedded in some of their organisations: ‘we are a very fun and young culture in the sense that we work really hard, but we also go on a lot of group functions and have a lot of fun as well’.²⁴² In a similar vein, one interviewee emphasised the importance of knowledge sharing and having common goals to building connectiveness.²⁴³ Technology has played a role in helping build this connectiveness:

236 Interviewee 13.

237 Sam McKeith, ‘How to Build a Great Law Firm Culture’ [2020] (73) *Law Society of NSW Journal* 34.

238 Interviewee 24.

239 Interviewee 10.

240 Interviewee 7.

241 Richard Collier, ‘“Please Send Me Evenings and Weekends”: Male Lawyers, Gender and the Negotiation of Work and Family Commitments’ in *Men, Law and Gender: Essays on the ‘Man’ of Law* (Taylor & Francis Group, 2007) 152, 177.

242 Interviewee 5.

243 Interviewee 16.

*I think of tools where we use technology not just as a work tool, but we use it as a connecting tool as well. So, we've got a social media WhatsApp channel, and that is not for work chat its that's more for personal/social things. So we, celebrate, different things that people want to share and there is no obligation to share so it might be weddings, births, birthdays, accomplishments, holiday snaps. We use Teams to chat.*²⁴⁴

However, to promote the above values, a number of law firms have highlighted the important role leadership plays in modelling the desired behaviour, for example, by promoting reasonable hours of work: 'Traditionally, I guess, [we] promoted the concept of "lights off at 5.30".'²⁴⁵ To ensure this, some of the firms have recognised the need to change structural elements in order to enliven values. One explained how their law practice had overcome the more 'toxic' elements of partnership by using a different method of remuneration:

*[A] very large portion of the remuneration that goes to the owners of the firm is not paid based on a mathematical formula, and it's not paid just based on contribution to profit, or any of the other ways traditionally done in law firms. We just, as a group, sit down, discuss it, and work out how that remuneration should be split, depending on contribution. One factor of which is profit contribution, but there are many other factors, cultural, behavioural, business development, mentoring, teaching, problem solving. I think this is a more significant innovation than it seems to be at first glance, because it drives a complete culture in our firm, where each of the partners is not competing in a toxic way with their other partners in order to earn more money, each partner instead realises that how much money they earn is a function of their total behaviour.*²⁴⁶

Accordingly, it is important to have a culture where feedback is regularly sought from the lawyers/employees.²⁴⁷ To this end, a number of interviewees described their firm's culture as collaborative or non-hierarchical. This was seen as innovative because it differed from the traditional law firm 'hierarchy' and internal competitiveness:

*[T]raditionally, law firms have been quite conservative and, the hierarchy is important however we are trying to create a collaborative organisational structure that is really focused on getting the work done, collaborating, being open in communication and kind of creating that learning environment where there's open conversations...*²⁴⁸

*[I]nternal collaboration is a big thing. Like I said it's very rare that law firms collaborate internally. Everyone says that they do. I've worked at many a firm, not one collaborated in the way that we collaborate here.*²⁴⁹

*Regardless of the level of status that you're in at the firm, everyone is actively able to contribute to the direction of the firm as well as innovation.*²⁵⁰

All this creates trust in the organisation and promotes social capital.²⁵¹ Technology has also helped build collaboration:

the collaborative whiteboard tool MURAL [allows] the team users to share ideas and

244 Interviewee 2.

245 Interviewee 11.

246 Interviewee 22.

247 Interviewee 9.

248 Interviewee 11.

249 Interviewee 12.

250 Interviewee 15.

251 Fiona Kay and John Hagan, 'Building Trust: Social Capital, Distributive Justice, and Loyalty to the Firm' (2003) 28(2) *Law & Social Inquiry* 483.

*develop programs and initiatives.*²⁵²

Culture was also discussed in terms of benefits for clients.²⁵³ For instance, one interviewee said:

*[Having a positive culture] is a really big thing in terms of service delivery for clients because if people are disconnected or at odds with each other, it doesn't work very well.*²⁵⁴

Another felt that using 'alternative' billing methods meant that the firm's values and the client interest were in better alignment:

*[T]here's a real fundamental problem with charging by the hour in that it has no alignment to value and it motivates all kinds of weird behaviours by lawyers which are not in their client's interest. Whereas for us none of that is – none of that exists, so there's no sort of friction points between how we operate and how staff are managed and recognised and rewarded as against what is in the best interests of the client.*²⁵⁵

However, upholding the culture of the organisation is challenging, and a major challenge was COVID-19.

3 Culture and COVID-19 – Sustaining Culture

Having or aspiring to a particular kind of culture was one thing; how to foster, maintain and support the desired culture, was another. With COVID-19, the challenge had become how to maintain a workplace culture in the absence (in some cases) of any shared physical workspaces or with greater numbers of employees being dispersed or working from home. Thus, two interviewees explained:

*We were well and truly working this way before COVID; so we knew it takes a lot of investment of time and effort to establish and continue to build and maintain a culture where you have a dispersed workforce.*²⁵⁶

*I think it's easier to develop a culture when everyone is in the office. But that's not going to work for everyone.*²⁵⁷

Accordingly, law firms had to adapt and implement different initiatives to try to keep the values of the law firm alive. For example, one law firm noted that it had to adapt quickly to 'build' virtual avenues for communication. This included platforms both for work and for social chat:

*We just realised, we can't leave anything up to chance at the moment. There's not going to be the serendipitous meetings, so we created a bunch of spaces. So we had a videoconference huddle at the start of each day, just to check, to look everyone in the eye, check they were okay. Some people weren't okay, but it meant they had to get out of bed and be okay, and that got them started. We could measure that they were a bit cactus that day and call and check in, and it was hard for a lot of people in Melbourne last year. We created the WhatsApp channels.*²⁵⁸

Another interviewee explained that the law practice had significantly expanded its induction processes and mentoring as part of educating newcomers about the firm's values.²⁵⁹

252 Interviewee 2.

253 Interviewees 4, 6, 7, 24.

254 Interviewee 7.

255 Interviewee 24.

256 Interviewee 2.

257 Interviewee 10.

258 Interviewee 6.

259 Interviewee 13.

FLEXIBLE WORK

Flexible work can mean several different, interrelated things – it might include working outside traditional business hours; working from a location outside the office (whether that be home or elsewhere); and using technological means to connect with colleagues and clients rather than conducting meetings face-to-face. There had already been a shift toward working flexibly when it gained further momentum following stay-at-home orders and other pandemic restrictions. Virtual law firms have moved further toward fully distributed workforces.

1 Promotion of Flexible Work

Previously, law firms have promoted flexible work to their lawyers.²⁶⁰ However, the literature has highlighted its hidden problems, for instance in work intruding into home life, and its gendered aspects.²⁶¹ Working from home has been described as a double-edged sword: it can facilitate flexibility but it also increases surveillance, blur the home/work distinction, and lead to overwork.²⁶²

In the context of the United States, Jacobowitz et al had suggested that younger (millennial) lawyers might already have a greater predisposition toward ‘remote’ working.²⁶³ This has been suggested in relation to young lawyers in Australia, too.²⁶⁴ In any event, the legal profession has been compelled to make significant changes during the COVID-19 pandemic around working from home and engaging, for instance, with online court hearings rather than attending in person.²⁶⁵

i A Move Toward More Flexibility

Several law firms have had flexible work policies for some time including the 9-day fortnight.²⁶⁶ However, before COVID-19 despite the support provided for them, there was a low uptake of it by employees.²⁶⁷

*I think before COVID ... we had in a reasonably supportive policy to deal with flexibility, but it was not used all that much.*²⁶⁸

We always had flexibility and we were always paperless. We were always cloud based

260 Victorian Women Lawyers, ‘Flexible Work Protocols: A Best Practice Guide for Productive and Engaged Legal Workplaces’ (Report, 2015); Law Council of Australia, ‘National Attrition and Re-Engagement Study’ (Report, 2014) (*‘NARS Report’*); Amelia J Uelmen, ‘The Evils of “Elasticity”: Reflections on the Rhetoric of Professionalism and the Part-Time Paradox in Large Firm Practice’ (2005) 33(1) *Fordham Urban Law Journal* 81.

261 Margaret Thornton, ‘The Flexible Cyborg: Work-Life Balance in Legal Practice’ (2016) 38(1) *Sydney Law Review* 1; Margaret Thornton, ‘Work/life or work/work? Corporate legal practice in the twenty-first century’ (2016) 23(1) *International Journal of the Legal Profession* 13.

262 Collier (n 256).

263 Jacobowitz et al (n 233).

264 Jerome Doraisamy, ‘Culture of “Hierarchy and Fear” Must Be Discarded by Law Firms’, *Lawyers Weekly* (online, 26 August 2019) <<https://www.lawyersweekly.com.au/biglaw/26362-culture-of-hierarchy-and-fear-must-be-discarded-by-law-firms>>.

265 LexisNexis, ‘Lawyering in the time of COVID-19: a NewLaw perspective’, *Blogs and Articles* (Blog Post, 3 June 2020) <https://www.lexisnexis.com.au/__data/assets/pdf_file/0005/328757/Lawyering-in-the-time-of-COVID-19-A-NewLaw-Perspec_Russell-Port.pdf>; Jerome Doraisamy, ‘How COVID-19 has changed #auslaw’, *Lawyers Weekly* (online, 2 July 2020) <<https://www.lawyersweekly.com.au/biglaw/28785-how-covid-19-has-changed-auslaw>>; Michael Legg, ‘The future of dispute resolution: Online ADR and online courts’ (2016) 27(4) *Australasian Dispute Resolution Journal* 227; Michael Legg, ‘The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality’ (2021) 49(2) *Federal Law Review* 161; Michael Legg and Anthony Song, ‘The Courts, the Remote Hearing and the Pandemic: From Action to Reflection’ (2021) 44(1) *UNSW Law Journal* 126.

266 Interviewee 12.

267 Interviewee 4.

268 Interviewee 3.

*and I never insisted on people being in the office. Because our model is so dependent on being effective and getting to the essential, I always encourage deep work in our team, distraction free work and I often said to people I don't think you can do that in an open plan environment in an office. So my expectation is there would be times during a week where you would spend out of the office in order to have focused deep work. So we had that principle before COVID and our transition with COVID was very simple. It was really just lock the door and everyone was able to continue to work. The strange thing was that before COVID, people didn't necessarily take up the opportunity to work from home. That was the bizarre thing. So whilst we had flexibility, whilst we had leadership encouraging flexibility, we didn't actually have that many people taking it up. Most people still were in the habit of coming in. So the biggest change from COVID was they had to stop.*²⁶⁹

However, in some law firms, the event of the pandemic meant a shift in the way flexible work is approved. For instance, one interviewee noted:

*We had a flexible workplace prior to COVID. It was a little more structured in that you applied for that flexibility to be a part of your role. If you wanted to work every Wednesday at home, there was an application and approval process. It was a bit more structured in that it was every Wednesday. Whereas now I never know what days I'll be in from week to week. I normally will just notify my team on a Friday to say next week I'll be in Tuesday, Friday. The structure is gone. There's no requirement to get approval at all.*²⁷⁰

*So it used to be that if you wanted to work flexibly, you had to fill out the form to say on Tuesday I will be in the office, on Wednesday I'll be at home, I'm doing this time on this day, that kind of thing. Now what we say is you don't need to fill out a form with every hour of the week.*²⁷¹

ii Embedding Flexible Work within the Culture of the Law Firm

Other law firms have set up their organisation with the goal of promoting a culture of flexibility within the organisation:

*The firm was really created out of - for a couple of reasons. The first was that we felt that the traditional leveraged model of law firms was not serving our clients' best interests and we wanted to create a firm where we could truly meet their needs in terms of costs and service delivery. But also meet our own needs. So it was partly selfish in terms of the latter reason because we wanted a way that we could work genuinely flexibly. The way that we decided to do that was obviously by setting up a non-leverage model in essence which is a team of really cohesive senior practitioners who don't require day to day supervision but collaborate and are happy to work together.*²⁷²

*And so, the assumption was that everyone would want to work flexibility, rather than it being the outlier... it was the norm, basically.*²⁷³

Additionally, another participant commented that their law practice had always had remote working as 'the norm', even though they were not a 'virtual' firm, as such.²⁷⁴ This was contrasted to a traditional

269 Interviewee 13.

270 Interviewee 15.

271 Interviewee 18.

272 Interviewee 10.

273 Interviewee 23.

274 Interviewee 7.

firm where ‘flexible’ work might be possible but was not necessarily the standard nor encouraged.²⁷⁵

iii Distributed Workforce

With the rise of virtual law firms, the distributive workforce has been promoted. Accordingly, ‘work-from-anywhere policy’ is the norm in certain entities.²⁷⁶ One interview noted that when adopting such an approach:

You need to have proper purpose-driven goals, you need to have proper infrastructure, you need to have a culture that doesn’t rely on human interactions day to day.²⁷⁷

Some of the advantages of a distributed workforce include business agility which has allowed a law firm to adapt and deliver services anywhere, anytime, and anyplace. This would also increase workforce diversity.²⁷⁸

2 Challenges with Flexible Work

A number of comments about flexible work indicated that those interviewee’s law practices supported it, but that it was difficult to maintain a workplace culture without a shared physical space:²⁷⁹

[M]anaging a remote workforce is a lot tougher on leaders. So, we recognise that leaders need to work harder to keep up that level of cohesion within the team...²⁸⁰

We run all cloud-based systems so we can work completely remotely. So, when COVID hit us, it really had zero impact because we already worked that way. We’re not a virtual firm, we have physical offices that these people come to. So, we’ve never suggested or acted like a virtual firm, but the fact is, we run systems that means that people can work remotely whenever they want ... it’s a real challenge I would say for our business model. And the way – just, face to face interaction is just so important and people forget that.²⁸¹

That can present challenges because people can become a bit exhausted when they’re in Zoom or [Microsoft] Teams meetings all day. ... Now that some of our offices are reopened and people are back in the office, I think we have acknowledged that there are times where it just makes sense and it’s a better experience for people when they’re face-to-face and in person.²⁸²

Maintaining a remote workplace culture required more effortful work on the part of the firm:

You have to be very deliberate about it in a remote world. So, we would organise remote trivia nights, remote coffee catch-ups, remote cooking classes, all sorts of things just to keep the team connected.²⁸³

Further, there is a tension between allowing individuals to choose the workplace set-up that worked best for them, and maintaining a cohesive collective culture, which might necessitate people coming into the office:

How we maintain the culture of the firm, its social cohesion when we’re less physically connected to each other than we used to be. So that’s an ongoing and really interesting

275 Interviewee 8.

276 Interviewee 8.

277 Interviewee 8.

278 Vikas Gopal, ‘9 Financial Benefits of Retaining the Work-from-Anywhere Distributed Workforce Model’, *TaTa Consultancy Services* (Blog Post, 2020) <<https://www.tcs.com/content/dam/tcs/pdf/perspectives/covid-19/9-financial-benefits-of-retaining-the-work-from-anywhere-distributed-workforce-model.pdf>>.

279 Interviewees 1, 7, 8, 13, 16.

280 Interviewee 1.

281 Interviewee 7.

282 Interviewee 4.

283 Interviewee 16.

*experiment from our perspective to see how that plays out and – now that may cause us to make different decisions going forward as a group. Our commitment or our philosophical commitment is that we don't want to impose choice – impose restrictions on each other as individuals in terms of how we work and how we live. But as a collective, as a community of people, then we have a collective responsibility to each other and part of that is working out together what works best, like how do we get the best out of this business that we put together and are running together. We want it to deliver maximum benefit to all of us as individuals. So how do we do that?*²⁸⁴

*After that, I mean the hardest part has been COVID and how you create connection in a – firstly a completely distant environment and now how do you do it in a hybrid environment where some people are coming in and some people aren't. I've got no magic answers to that. It's our biggest challenge at the moment from a performance wellbeing perspective.*²⁸⁵

*As well as working in an intentional way to maintain everybody's connections, two participants explained that trust and communication were key when the workforce was working remotely.²⁸⁶ This could be harder with new starters or with junior staff. Another interviewee set out three reasons why working from home was challenging, and explained that for those reasons, their law practice would never be 'fully' remote:– Three main challenges present themselves immediately; firstly, and this is a critical one, the ability to develop the skills and the careers of junior lawyers. Much, much harder to do when you don't have a lot of face-to-face time. That's certainly one issue. A second issue is collaborating together, working on matters – again, a lot harder when you're not in the same location. Notwithstanding the technology that's available, it is harder and still, particularly on large transactions and time-pressure transactions, there's still great advantages to being in the same location. The third challenge which mitigates against a fully remote workplace is marketing. It's crucial to an organisation such as mine that my colleagues are out in the city meeting clients, networking, making connections, winning work, particularly the more senior colleagues who are required to originate work. That is a lot harder if you're based back in your residential suburb. It's a lot easier if you're in the office.*²⁸⁷

Two other participants also noted that remote working was easier for more senior lawyers, and trickier for juniors: 'So, it definitely can be a challenge with junior lawyers, and I actually think senior lawyers are more suited to it because you do probably need that greater level of someone there overseeing far more – you work less independently [as a junior]'.²⁸⁸ Another said:

*The problem with the junior lawyers is, they're learning. They learn by example, they learn by being involved in meetings and phone calls. When things are remote, it's just human nature that the senior lawyers forget to include them, or it's too much trouble to include them, so they don't get included as much. So, their experience of being a young lawyer really took a dive down remotely.*²⁸⁹

Accordingly, law firms have adopted different initiatives to deal with supporting staff's flexible work arrangements. Three of the four key strategies are focused on elements of the culture of the organisation as highlighted in Figure 18.

284 Interviewee 24.

285 Interviewee 13.

286 Interviewees 21, 23.

287 Interviewee 19.

288 Interviewee 21.

289 Interviewee 22.

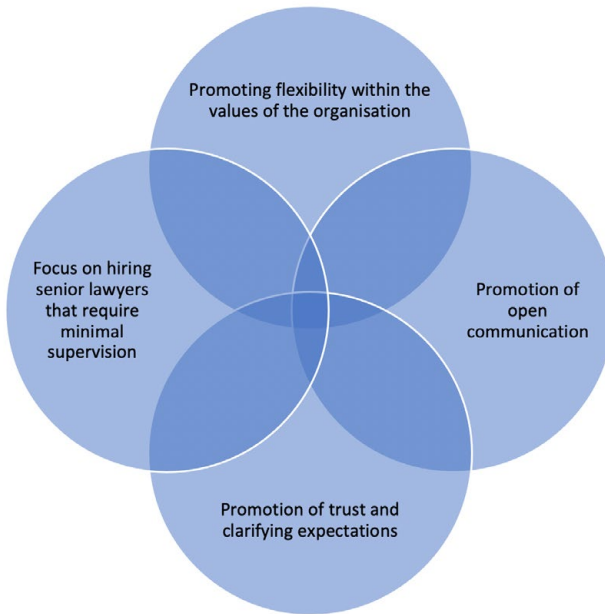


Figure 18: Strategies to promote flexibility

WELLBEING

The wellbeing of the legal profession has been a hot button issue for some time, given studies showing high levels of stress, anxiety and depression among both members of the practising profession and among law students.²⁹⁰ Wellness is a focus for professional associations²⁹¹ and increasingly for law practices generally, and of course, for lawyers themselves.²⁹²

According to the American legal profession's National Task Force on Lawyer Wellbeing, wellbeing is:

a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavours, sense of spirituality or greater purpose in life, physical health, and social connections with others. Lawyer wellbeing is part of a lawyer's ethical duty of competence. It includes lawyers' ability to make healthy, positive work/life choices to ensure not only quality of life within their families and communities, but also to help them make responsible

290 Beaton Consulting, *Annual Professions Survey* (Beyond Blue Research Summary, April 2007); and Norm Kelk et al, 'Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers' (Brain and Mind Research Institute, University of Sydney, Report, January 2009); see also Christine Parker, 'The "moral panic" over psychological wellbeing in the legal profession: A personal or political ethical response?' (2014) 37(3) *UNSW Law Journal* 1103.

291 Richard Collier, 'Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about wellbeing?)' (2016) 23(1) *International Journal of the Legal Profession* 41.

292 Deborah Hartstein and Justine Rogers, 'Professional associations as regulators: an interview study of the Law Society of New South Wales' (2019) 22(1-2) *Legal Ethics* 49-88, DOI: 10.1080/1460728x.2019.1692472

*decisions for their clients.*²⁹³

Nevertheless, there are cautions against seeing wellbeing issues only as individualised or medicalised problems, and a general acceptance that legal workplace cultures or environmental factors have a key mediating role to play.²⁹⁴ Collier has included within this category issues around work-life balance, low decision latitude and lack of autonomy, cultures of presenteeism, and job insecurity. He concludes:

*The combination of a high pressure/high stakes working environment and the dominant structure, organisation and form of the billing of legal work, in particular, has been seen within the context of an increasingly hypercompetitive and business-like profession to heighten pressure on lawyers in ways that have implications for experiences of social connectedness, subjective wellbeing and understandings of professional commitment.*²⁹⁵

In Australia, Bergin and Jimmieson found high levels of depressive symptoms and reports of hazardous or harmful drinking in their survey of lawyers. Interestingly, these symptoms were most prevalent among 'high billers' who experienced more demands, fewer resources, and worse psychological outcomes.²⁹⁶ Collier notes, though, the tendency to ascribe responsibility for wellbeing to individuals, by addressing wellness through what he terms the 'corporate lifestyle package'.²⁹⁷

Given the salience of the wellbeing discussion for lawyers and law practices, and the timing of interviews, which took place during the COVID-19 pandemic in early 2021, most interviewees referred to multiple firm initiatives related to wellbeing. There was a recognition that things can be addressed and improved in this area:

*I suffered from anxiety for most of my legal career, until I started [this practice]. And then I just felt a complete weight off my shoulders because I realised the legal industry is renowned for, you know, poor mental health and it does not need to be that way.*²⁹⁸

Seven participants mentioned that their practice had or was setting up an employee assistance program that offered confidential counselling.²⁹⁹ Likewise some commented that they had a staff member in charge of wellbeing and mental health.³⁰⁰ In one case this was a full-time, dedicated role:³⁰¹

*[O]ne of our early staff, we appointed her as employee wellbeing officer, so we've got a person who's not one of the founders or the bosses to go to. That's had a pretty positive effect on the company because things that people don't find easy to raise, we're all aware of those issues and we deal with them. We've just got a very open and transparent culture, and I think that's not just lip service. We've put in place processes so that that's the case.*³⁰²

However, most also tended to leave wellbeing activities up to individuals, with some offering an array

293 American Bar Association National Task Force on Lawyer Well-Being, 'Creating a Movement to Improve Well-Being in the Legal Profession' (Report, 14 August 2017).

294 Janet Chan, Suzanne Poynton and Jasmine Bruce, 'Lawyering Stress and Work Culture: An Australian Study' (2014) 37(3) *University of New South Wales Law Journal* 1062.

295 Collier (n 306) 44.

296 Adele J Bergin and Nerina L Jimmieson, 'Explaining psychological distress in the legal profession: The role of overcommitment' (2013) 20(2) *International Journal of Stress Management* 134; see also Adele J Bergin and Nerina L Jimmieson, 'Australian Lawyer Well-being: Workplace Demands, Resources and the Impact of Time-billing Targets' (2014) 21(3) *Psychiatry, Psychology and Law* 427.

297 Collier (n 306) 51; see also Parker, 'Psychological wellbeing in the legal profession' (n 305).

298 Interviewee 20.

299 Interviewees 2, 3, 9, 10, 11, 18, 24.

300 Interviewees 4, 20.

301 Interviewees 8, 14.

302 Interviewee 8.

of resources, from seminars, coaching, gym, yoga and mindfulness training through to helpful suggestions and links to additional resources. One explained:

*... gym memberships are sponsored and we have a subscription to a mindfulness app, that's another example. Then regularly the different committees organise – and this is a little bit more when we were all in the office, but seminars, so nutrition seminars, resilience seminars... I think we had another one actually after resilience about avoiding burnout and keeping your energy up. That's really important in a law firm because people do such long hours at time, it can be stressful.*³⁰³

Some felt that perhaps their law practice could be doing more,³⁰⁴ noting the challenges of improving mental health. One commented: 'That's not something they teach at law school, but that became part of the job of managing people last year.'³⁰⁵ The individualised nature of the supports that were available was apparent. For instance:

*This is about giving them the tools to be able to manage their professional lives effectively because they are, in effect, running their own practice in many ways.*³⁰⁶

*I suppose to some extent we kind of really rely on those individuals managing their own wellness.*³⁰⁷

On the other hand, some interviewees described the importance of firm leaders demonstrating the behaviour they expected from lawyers. One said: 'Modelling it is key.'³⁰⁸ Another explained:

*I think as leaders, you have to demonstrate that. So I try to work from home at least one day a week so that other people feel like they're allowed to, that kind of thing. You know, encouraging people to – and talking about your other commitments that you might have to get your car serviced or your family, you've got to pick up the kids.*³⁰⁹

Several talked about the importance of openness among firm leaders about mental health struggles, in particular:

at the core of all that is we have partners and leaders who are raw and vulnerable and talk about their own [mental health] journey...³¹⁰

*We're very transparent around mental health in that both [practice partner] and I have had our struggles and we do whatever we can to support people in that space. It's really prevalent in the legal industry and so the odds are that some of our staff, if not all of them, are going to have that.*³¹¹

One structural thing that firms could do was to try to reduce lawyers' overwork. Two interviewees explained the steps that their practices had taken to do so:

*[Describing multiple wellbeing initiatives] ...leading up to the biggest one, which has always been the feature of our firm, which is resist the temptation to require the lawyers to do six, 6.5, seven, 7.5 hours a day, as some law firms to. I think it starts to get quite difficult, and even inhumane once it gets above six.*³¹²

Beyond that you know, it is like with these issues often it comes down to if lawyers are

303 Interviewee 4.

304 Interviewees 5, 7.

305 Interviewee 6.

306 Interviewee 7.

307 Interviewee 3.

308 Interviewee 23.

309 Interviewee 18.

310 Interviewee 11.

311 Interviewee 12.

312 Interviewee 22.

feeling under pressure and stress and so on so forth the main reason that they, 90% of the time it is because of overwork, right? And so, ... the biggest thing we can do with that is model our hiring needs as well as we can and be hiring slightly ahead of the curve. So, what we try and do is we try and always be hiring, you know a month or two ahead of the curve in terms of our revenue growth.³¹³

Another structural element was billing practices and two connected this squarely with wellbeing. One explained:

Okay so the wellbeing thing is interesting because I actually think the business model itself is generated towards lawyer wellbeing by the very contrast to the traditional legal model. So, because we don't have a model where our profitability is built around hours, that in itself creates an environment that promotes greater wellbeing. So, in terms of our wellbeing initiative, I always say our biggest initiative is our business model. I keep reiterating to the team that our way of making money is not for people to work harder, it's for people to work more effectively. And the more effective you work, the better you feel about your work... Therefore your wellbeing at work is better. ... It's also why we say our billing model – our pricing model actually incentivises innovation because it doesn't cannibalise revenue. It actually creates revenue. On wellbeing that's my first and foremost answer. People feel better about the contribution they're making because they're judged on it rather than on the time they've spent.³¹⁴

Several others echoed the research literature when they described more nebulous cultural factors as contributing to wellbeing: 'I think the culture is a little bit of it. The autonomous high trust kind of culture. So people feel they're in control'³¹⁵ Another said:

If that difficulty is any way related to work, then we will do everything in our power to deal with that and address and fix the problem whatever it is. That's not something you can write a policy for. It's just – that's just our approach.³¹⁶

Some law firms have implemented community support initiatives to promote wellbeing:

We then have our community initiatives I think contributed a lot to our wellbeing as well. So, we have a pro bono program where every quarter we do a specific community type initiative. So, one quarter we nominated each nominated a charity that were passionate about and we donated two percent of our clients' invoices to one of those charities that they would choose when we invoice them. So, we just did that last quarter, we raised close to \$5,000 towards what charities. And we also do volunteer activities. So more recently, we volunteered at a community kitchen garden which harvests vegetables and food for homeless people and people in domestic violence shelters. And I think that is really nurtured wellbeing because it gives our staff and our team, a sense of purpose and a sense of satisfaction that they are also giving back to the community.³¹⁷

313 Interviewee 9.

314 Interviewee 13.

315 Interviewee 10.

316 Interviewee 24.

317 Interviewee 20.

As summarised in Figure 19, law firms have implemented different initiatives to tackle wellbeing issues.

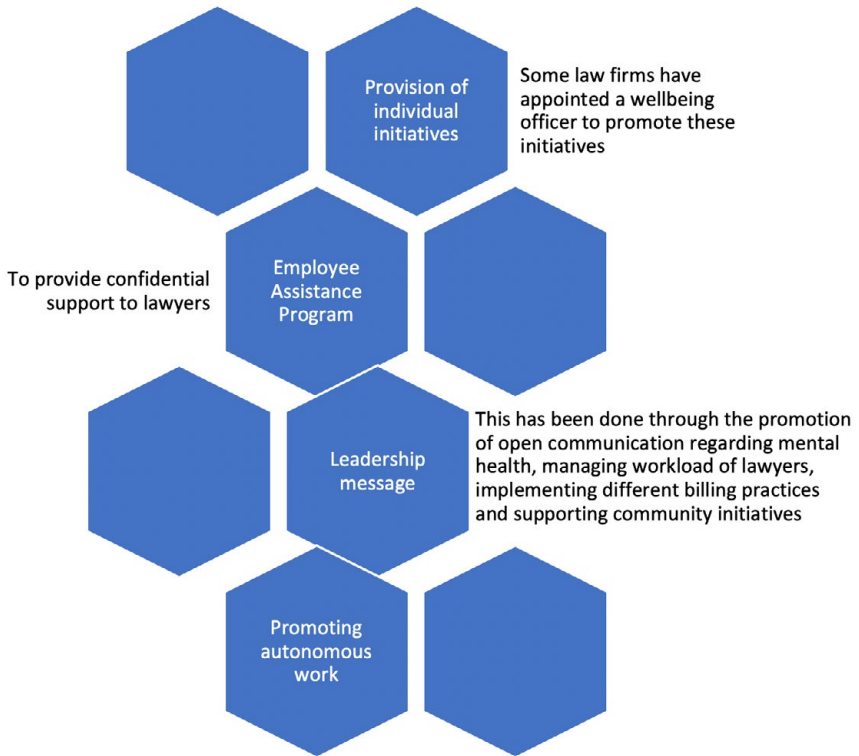


Figure 19: Wellbeing initiatives

CONCLUSION – CHANGING TRENDS AND TAXONOMY

In many ways, innovation in legal practice is being prioritised more than ever before. Interviewees in this study, coming from solo or small practices, right through to ‘BigLaw’, indicated that this was the case. The findings revealed that the primary driver of most of the changes that had been implemented was the client, representing an external pressure, but changes were also being self-generated.

Turning to the changes themselves, the type of business structure which firms had adopted was, in part, a signifier of the broader values which the law practice wished to embed. Those law practices which were not partnerships felt strongly that partnerships were less preferable and that the incorporated form was better suited to their goals. In particular, reinvestment of profits combined with the ability to raise capital – especially for investment in technology – was seen as critical. However, those firms which used a partnership structure, generally because they were established practices, had found ways around the trammels of partnership. This was mainly through either outsourcing innovation by investing in different, more inventive entities; or creating internal mechanisms for innovation, though this latter method could be challenging.

When it came to the types of change, ‘client service’ was the predominant theme which emerged from the interviews. Clearly, client relationships have always been important, but there was a sense that lawyers were more willing to let go of the way things had been in the past and strive harder to understand, and fulfil, client expectations. For example, around advice giving, interviewees recognised that there was a ‘traditional’ way of giving advice – it was typically in writing, lengthy, and covered many different permutations and possibilities. Some firms were working hard to change the advice they gave to something much more to-the-point, definitive, and business oriented. Similarly with communication, there was much greater willingness to be in regular or even constant communication with the client, sometimes aided by technology, such as shared portals. The other key area where shifts had occurred was around fees and billing. The nature of fees charged was central to some firms’ philosophy. They felt that (for example) fixed fees were better not only for clients but for lawyers’ wellbeing and creating a positive firm culture. On the other hand, many firms did use time billing at least sometimes.

Nearly all firms were engaged in efforts to try and support their employees’ wellbeing. These ranged from individualised offerings (courses on yoga, mindfulness, and EAP programs), to leadership efforts (firm leaders trying to set an example by being open about their own struggles and their commitment to things outside of work) and even structural initiatives (hiring new staff as soon as work exceeded a certain level, and billing practices). Flexible work had become normalised during COVID-19 but at the time of interview many interviewees were grappling with the challenges of whether to compel a return to the office for the sake of cohesiveness; or to permit a continuation of remote working. Interviewees discussed the methods they were adopting to try and maintain a sense of collectivity even among a dispersed workforce. All this can be summarised in Table 5, which highlights the taxonomy of innovation in law firms.

	Traditional law firms	Newly established law firms within the last decade
Business structure	More focused on sole trader and partnership models.	Incorporated legal practice.
Technology	Move toward adopting new technologies as clients are now expecting this. There is focus on the value to client. Three possible models are adopted: In-house technology department; Outsourcing of technology; and/or Investment in NewLaw organisations.	Adoption of technology with a focus on adding value to clients and making legal services accessible to all members of the community. Two models are generally adopted: In-house technology including the rise of tech law firms: While investing in technology is expensive, some law firms have overcome that through external investment; and Outsourcing of technology.
Client and lawyer relations	Personal relations between lawyers and clients. Firm leaders are expected to generate new business.	Two different approaches: Personal relations between lawyers and clients; or Focus on developing the brand and accordingly, focus on client-law firm relations.
Pricing	Time-based billing remains the default. However, there is a move to charge fixed fees (in some matters) for the use of technology and also renting out technology to clients' in-house counsel.	Variety of billing practices ranging from time-based billing to fixed fee to subscription to value billing.
Communication with clients	Traditionally very lawyer-centric but move toward client-centric.	Client-centric with emphasis on developing communication skills of lawyers and building perceived value for clients.
Advice	Focus on legal advice. However, with BigLaw, there is diversification through investment in non-legal services and promotion of non-legal initiatives. More attention paid to what clients want from advice.	More holistic advice that in many instances goes beyond legal advice.
Structure of the law firm	Hierarchical structure	Move away from hierarchical structure to a flat/flatter structure where promoting communication and openness between lawyers is paramount. Cooperation and working in teams are the norm.
Flexible Work	Move toward less structured work arrangements, but still a preference for most people in the office most of the time.	Flexible work in many instances is embedded within the culture of the law firm. Use of technology to build team cultures and ensure cohesion and oversight.
Wellbeing initiatives	Different wellbeing initiatives within all law firms seems to be the norm. Differences as to whether firms engaged in structural changes (eg taking on new staff when work reaches a certain level, to prevent overwork) or focused on individuals (eg offering sessions, courses, and EAP schemes which employees choose to access or not).	

Table 5: Taxonomy of law firm innovation

The findings reported on here show that while there is an excitement around new possibilities, law is a profession and therefore there is also a cautious approach to innovation to ensure that the changes that are taking place build value from both clients' and lawyers' perspectives. Most of the approaches the firms had adopted could be described as a steady progression rather than radically innovative. Nevertheless, even the openness to change, and the willingness of some firms to move away from seemingly long-held assumptions about how legal practice must be done, marks a significant shift from a decade ago. For more recently established firms, a commitment to innovation signified more than wanting to use new technology in their practice. It involved a different type of mindset and firm culture – a move away from the 'if it ain't broke, don't fix it' way of doing things. Generally, it seemed that firms were much more attuned than they may have been in the past to the importance of firm culture and what that meant for both clients and the firm's workforce. This had been especially heightened with pandemic restrictions compelling remote work, in some instances for lengthy periods of time. We have already heard a lot about COVID-19 compelling changes to the practice of law. This report illustrates both that the changes had already begun, but also that critical issues around technology, trust, communication and wellbeing are here to stay.



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