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THE LEGAL INDUSTRY'S HOT LIST

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AGENTS OF CHANGE

Lawyers in TMT practices are confronting some of the most challenging issues of our time, while navigating the fast-changing demands of clients in search of more value. **Ben Abbott** reports

THE NATURE of the full-service law firm business model is that all legal practice areas eventually have what Ashurst technology partner Tim Brookes calls a “turn in the sun”, as trends in society, the economy and the law combine to fortuitously push certain lawyers into the spotlight.

It appears to be TMT’s turn – again. It is an area getting a lot of exposure, and is at the vanguard of developments that affect the economy, from the growing reach of cloud technology and the ongoing NBN rollout, to those affecting the legal industry, such as the threat of smart contracts.

“Technology has had its turn in the sun a couple of times over the last 15 years,” Brookes says. “Now there is another burst, where the legal issues facing society generally driven by technology mean it is an area of interest for the business community and for lawyers practising in the area. What we are really seeing is another wave of change through the global economy that reminds me very much of the original rise of the internet through the 1990s, and we are very much at the start of this,” he says.

So what are TMT lawyers working on? *Australasian Lawyer* asked three top TMT

lawyers to name the current drivers of their practices, the challenges they face and their future predictions.

THE DRIVERS

1 Telecommunications

The National Broadband Network continues to drive work for TMT practices across Australia, with Webb Henderson calling NBN Co “a highly dynamic company” that is involving law firms in the launch of “new technologies and the introduction of new products”.



“The rise of automation and cognitive computing is starting to produce some useful tools for legal analysis, which will enable both law firms and in-house teams to carry out complex legal analysis more efficiently”

Bernadette Jew, GILBERT + TOBIN

Brookes says Ashurst, likewise, is benefiting from NBN work.

“We are doing ongoing work with them, particularly around the rollout of the NBN, and the associated infrastructure arrangements with Telstra.”

Firms say that, due to changes in the industry structure locally for the telecommunications industry, there is also a high level of activity at the retail level, which is driving M&A advice for law firms.

However, both Webb Henderson and Ashurst are also benefiting from global instructions. Henderson says regional transactional and project work has become increasingly important, with regulatory projects a key area of focus in Southeast Asia and the Middle East.

“We’re currently advising on one of the most ambitious smart cities projects in the world. It brings together a major PPP transaction with elements of a complex ICT project, including a systems integration and network deployment dimension.”

Ashurst, meanwhile, is advising as part of its global network on wholesale service contracts in Europe, led by London, as well as projects in Papua New Guinea.

2 Media

Ashurst partner Sophie Dawson says the wave of licence work that followed the introduction of additional subscription video-on-demand services has now given way to disputes and day-to-day advice work for lawyers with practices in the media sector. Key matters for the firm over the past year have included a copyright dispute over TV formats, defamation claims (including novel claims with regard to the internet), and being consulted for prepublication advice.

3 Technology

Blockchain technology is already creating work for some law firms at the cutting edge. “Blockchain technologies and smart contracts are gaining considerable interest as the next big disrupter, particularly in financial services,” says Gilbert + Tobin partner Bernadette Jew.



“I would say smart contracts are more opportunity than threat, because they open up a whole complex area that people have to wrestle with”

Tim Brookes, ASHURST

“We have been actively involved in the nascent developments around contract automation and blockchain.”

There are other areas generating more ongoing legal work, such as the software-as-a-service economy. “The software-as-a-service economy is leading to a new kind of outsourcing for the masses, enabling corporations to acquire services on demand as inputs for business operations,” Jew says.

Brookes argues corporates are increasingly choosing their own version of the cloud – or the private cloud – which gives them flexibility, control and security while unlocking the cost benefits. “Corporates are now marching heavily into the private cloud, and are trying to take sensible advantage of the economies of the cloud through this slightly different cloud model,” he says.

This also means cyber security is a concern. “There’s a growing recognition

that cyber security is a whole-of-business challenge, not just a technology issue,” Jew says, citing the security of corporate data and potential disruption to business processes and operations. Brookes says as more business is conducted virtually, organisations looking to start operations in Australia are often more likely to orient decisions around data protection rules than tax.

THE CHALLENGES

1 Commoditisation and competition

Webb Henderson is one firm that thinks strong boutique credentials will help it grow its market share in future.

“It remains a challenge for all law firms to keep moving up the value chain,” says partner Angus Henderson. “In our view, clients are looking to partner with law firms that offer something that complements their highly

skilled in-house teams, because sophisticated in-house counsel want meaningful access to deep expertise. People are less interested in buying a law firm brand or a one-stop shop and are interested in depth of expertise and global experience,” he says.

Jew argues that firms need to stay on the front foot if they are to best competition from alternative legal service providers that are shaking up the way some TMT clients are now buying their legal services.

“Alternative legal services providers can provide a viable, cost-effective option for our clients in relation to more commoditised legal services,” she says.

“Our firm has an equity stake in LegalVision, an Australian law firm start-up that can bring lower-cost resources and technology to bear in delivering standardised legal services.”

2 Keeping up with change

Technology is changing fast, and to thrive lawyers need to stay focused and keep up. For example, Jew says the rise of automation will have direct effects on legal practices. “The rise of automation and cognitive computing is starting to produce some useful tools for legal analysis, which will enable both law firms and in-house

INTO THE BREACH

Lawyers are still closely watching the long-awaited Privacy Amendment (Notification of Serious Data Breaches) Bill, which is yet to be introduced into Parliament. Requiring all APP entities – or those subject to Australia’s Privacy Principles – to notify the Office of the Australian Information Commissioner and affected individuals in the event of a serious data breach, it is designed to ensure that unauthorised access or disclosure of personal information that presents a real risk of serious harm is brought to light. However, some corporations fear the mandatory disclosure of breaches could highlight deficiencies in their internal systems and controls, which could actually make them more vulnerable than ever. The bill has so far managed to achieve bipartisan support, but the new make-up of the Senate leads lawyers to question how easy its passage will be this year.



teams to carry out complex legal analysis more efficiently.” Gilbert + Tobin has moved to build an in-house innovation unit that includes specialists in automation technologies, process improvement and smart contracts. Current projects of the unit include preparation of document review reports, creation of multiple documents



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Angus Henderson, WEBB HENDERSON

from a single set of inputs, and the creation of tools to aid the analysis and application of legislation.

Jew says big data and the Internet of Things (IoT) is one big change reshaping the sector.

“The number of connected IoT devices globally is growing at an incredible pace, notwithstanding lack of standards as to interoperability or effective government and industry collaboration,” she says. “These devices carry, exchange and enable remote analysis of data and can be embedded in traditional machinery or in new technology, like those found with commercial drones. There are significant opportunities through effective data management and analytics.”

Lawyers also need to stay on top of dynamic change in both local and international legal regimes, according to Henderson. “In Australia, we’ve seen the data retention laws place new obligations on telcos, and spectrum reform is also on the horizon. New Zealand is undergoing a root and branch regulatory review, while Malaysia is witnessing a significant overhaul of its core sector legislation, the Communications and Media Act. Smaller city states in the Asia-Pacific and the Middle East are undertaking transformative smart city projects. There will be plenty more activity in this space.”

3 Thinking differently

Ashurst’s Tim Brookes says new types of technology may require lawyers to come up with new ways of approaching legal problems, beyond what the globalisation of markets and the wave of disintermediation characterised by Uber have so far required.

“Behind that is an AI and smart

contracting wave, and the big challenges will not so much be about our profession being made redundant, but the impact on society and what we actually face collectively, like the impact on jobs, how driverless cars or drones will be controlled, and how much people will want what they are being marketed when controlled by organisations that can predict things like their interests or voting patterns.”

This may involve some upheaval for the legal profession, Brookes says, as it comes to grips with understanding what technologies can do and whether it requires the application of entirely new legal principles.

THE PREDICTIONS

1 Flexibility and flux

Agile contracting arrangements are likely to be an area of focus for technology lawyers in the year ahead, as companies seek more flexibility in the way they procure IT for larger, complex projects. “We are seeing a trend towards implementing agile contracting methodologies,” Jew says. “To meet this need, we are working with clients to develop rapid, agile procurement processes.”

Likewise, financial technology, or fintech, will continue to challenge lawyers, with 2016 bringing new mobile, social and digital technologies that allow customers to access and use financial products on the go.

“Financial technology primarily involves the promotion of disruption in the financial services sector through the arrival of crowd-funding platforms, third-party wallet payment systems, and other new innovative products and services digitising money for consumers,” Jew says.

2 Smart contracts

Digitised smart contract technologies pioneered by cryptocurrency Bitcoin will continue to develop, although Brookes says the technology is still in a very early stage of development: “There are some possibilities in new areas such as distributed ledgers, for example, which allow you to achieve significant cost savings for transactions if those ledgers are not confidential.”

He doesn’t see smart contracts immediately replacing lawyers.

“There are too many inherent limitations,” he says. “They are currently limited to a virtual environment, with the software acting as a processor to create efficiencies rather than replacing the legal structuring of a contract.” In fact, lawyers may benefit.

“I would say smart contracts are more opportunity than threat, because they open up a whole complex area that people have to wrestle with,” Brookes says.

3 Partner power

TMT clients are expected to continue to migrate away from one-stop-shop law firms, according to Henderson, a trend that is likely to see an increase in the power of key rainmaking partners, while others are potentially sidelined. “Clients are seeking out the best and brightest practitioners wherever they may sit. More of those conversations will focus on who can build strong teams with knowledge of the client’s core business and who can deliver outstanding results to the business,” Henderson says. “We think we’ll see the trend towards law firms defining themselves by their best practitioners, and shedding practices that can’t stand on their own two feet, because clients are less and less willing to pay a premium for underwriting underperforming practice areas,” he says. **AL**