

## Time for affirmative action



A shift in attitudes towards quotas is necessary to get more women into high-powered positions, according to speakers at yesterday afternoon's IBAHRI Showcase session 'Women 'firsts' – how does international and domestic law help (or hinder) women to succeed in Australia and elsewhere?'

"Too often women say they don't want to be chosen as the token woman, they want to be chosen on merit," said Baroness Helena Kennedy, session chair. "And I think, really? Stop being so self-deprecating, get in there and make the difference."

There's still a sense of obstinacy towards the use of quotas – but speakers espoused the benefits of affirmative action.

"If it weren't for affirmative action in the Labor party, there is no way I would have achieved becoming president of the national party," said Hon Linda Burney, the first Aboriginal woman to serve in the Australian House of Representatives.

Less extreme than the use of quotas or affirmative action, Burney also spoke of the benefits of using blind applications when hiring. "That would help us see not only more

women, but greater diversity more broadly," she said. "At most workplaces in Australia we don't see many women wearing the hijab for instance. It's mostly young men."

Issues affecting women, from the gender pay gap to domestic violence, must be talked about more widely – or be viewed simply as 'women's issues'. And the language used is important. On the term 'equal pay', Hon Mary Gaudron, former Justice of the High Court of Australia said, "it's time we forget about euphemisms and call it what it is: discrimination, pure and simple".

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### DINING OUT

From pies and mash to Asian fusion, Sydney has it all

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### SEEKING PARTNERSHIP

Is it still the primary career goal in the modern legal environment?

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## Brexit will benefit Asia-Pac

Asia Pacific countries will be among Brexit's biggest beneficiaries, according to panellists at yesterday's session on how the UK's departure from the EU will impact financial markets.

"Brexit is likely to be a catalyst – perhaps in itself not the driver, but in the wider context of regulatory developments in the EU, Australia, Hong Kong and Singapore are all likely to benefit," said Paul Yuen, head of market conduct at the Monetary Authority of Singapore. "Essentially Brexit in itself won't make

us a clear winner, but other things will."

Other speakers agreed that an event like the UK's vote to leave will make businesses consider what they are doing, why they are doing it – and to focus more on the location in question.

"We don't anticipate banks closing up their operations and moving wholesale to Hong Kong, but I do suspect some will stop booking in London," said Michael Duignan, senior director of corporate finance at the Hong Kong Securities and Futures Commission. "But financial services was never a pan-

European system anyway, it's already very fragmented." There are financial products sold in Belgium that can't be accessed in France, for instance.

Duignan thinks Hong Kong's traditional role as a gateway to China will be particularly important as both Brexit and regulatory reform in the west take hold. But he added that Brexit will not be the biggest event for financial services in the coming years. "We will lose more banking jobs to artificial intelligence than Brexit by many, many multiples," he said.

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# China outbound: prepare for more

The wave of Chinese outbound M&A into Europe is only the start of the trend and the country's domestic economy is stronger than many in the west believe. That was the message from speakers at yesterday morning's session, 'Is Europe ready for increased levels of Chinese investment?'

Chinese outbound foreign direct investment (FDI) into Europe jumped to almost €35 billion (\$41 billion) in 2016. This stands in stark contrast with a further drop in investment by European firms in China.

The growing imbalance in two-way FDI flows, persisting asymmetries in market access, and increased Chinese acquisitions of advanced technology and infrastructure assets have spurred a heated debate about related risks among European policymakers, regulators and the broader public.

Yesterday's panel was split into two sections, with the first half featuring speakers representing Chinese acquirers and the second featuring European targets. Sitao Xu, of Deloitte in Beijing, painted a positive picture of the domestic situation. "If you ignore the slight blip in 2015, there will be an avalanche of PRC investment. What you see in Europe is just the beginning of a very powerful trend," he said.

The reason for this, he said, was a domestic economy much stronger than many outside the country be-



Sitao Xu, Deloitte

***"If you ignore the slight blip in 2015, there will be an avalanche of PRC investment"***

lieved. "In the automotive and housing industries, the government has introduced policies to actually dampen demand," he said. "In most other places, governments would be struggling to get consumers to open their wallets but it is the opposite here.

There is more demand than supply," he added.

But the rapid growth of this investment activity by Chinese companies and the increasing capital outflows have also triggered a retightening of administrative controls by the Chinese authorities.

Qian Xu of BGI Genomics, based in Shenzhen, outlined the process, explaining that there are three government departments that must approve outbound foreign acquisitions: the National Development and Reform Commission (NDRC), the State Administration of Foreign Exchange (Safe) and the Ministry of Commerce (Mofcom), she said. "All three need approvals before foreign investment. Contracts signed will be invalid with-

## KEY TAKEAWAYS

- Chinese M&A into Europe is set to grow in the coming years, underpinned by a strong PRC domestic economy;
- But parties still need to overcome cultural differences, including issues surrounding legal fees, legal definitions and client expectations;
- Private deals, with less government involvement are generally easier to close, though counsel must work hard to manage expectations

out it." Speakers agreed that the government was generally agnostic over the target jurisdiction though, unless it presented national security concerns, such as Iran.

The perennial issue of cultural differences between buyer and European sellers was also discussed, including their impact on legal fees. One speaker explained that some Chinese companies have been known to refuse to pay the full price post-closing.

"Lawyers must be rigorous in securing full payment, said the speaker. "Some parties in Europe have been implementing a success fee if the deal goes well. Chinese like the cap fee plus a success fee but one size doesn't fit all and you have to adapt to the buyer," he added.

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Continued from bottom of page 1

Despite a strong working relationship with the UK and EU, the impact on Australia will be minimal, explained Cathie Armour, commissioner of the Australian Securities and Investments Commission. That's partly down to Australia's burgeoning trade relationship with Asia which is presenting new opportunities due to a growing middle class and increased number of high net worth individuals.

"We may see some volatility in global markets, and some impact on how derivatives are cleared," said Armour. "But although it might be slightly more cumbersome than in the past, we are quite ok with dealing with different groups and different national approaches."

The uncertainty arising from the whole situation - negotiations began earlier this year but have still not produced any concrete results - is having a bigger impact than Brexit itself, added Yuen.

The growth of Asian financial markets is also giving the region a more

**"We don't anticipate banks closing up their operations and moving wholesale to Hong Kong"**

Michael Duignan



powerful voice on the global stage. Since the financial crisis both the EU and US have been rolling out huge pieces of legislation which Asia Pacific countries are often caught in the crossfire of, according to speakers. But that is changing. "It's now sufficient to say 'no, we're important too and if it hurts us we will stand up and complain'," said Duignan.

The possibility of further regulatory

divergence once the UK has left the bloc is also a concern for panellists, who referred to comments made by some UK politicians on post-Brexit deregulation. "Who really knows, but that is unlikely considering the UK's role as a principle architect of the European financial services framework," said Paul White, partner at A&L Goodbody in Dublin.

European speakers also lamented

**KEY TAKEAWAYS**

- Asia Pacific countries are set to benefit from both the UK's departure from the EU and the masses of financial services regulation being rolled out in the west;
- The growth of Asian markets is also giving the region a stronger voice on the global stage;
- The negative impact of Brexit is unlikely to hit APAC countries too hard, though the enduring uncertainty that surrounds it is a concern.

the fact that politicians are in charge of the process.

"Businesses are being very sensible about the whole thing, but politics has to get in the way," said Stephen Revell, partner at Freshfields Bruckhaus Deringer. "We do have a lack of leadership in the UK, but there are forces at work in financial services, and London has the benefit of an already dominant position. I remain an optimist."

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# Humans vs superbugs

Continued from top of page 1

The gender pay gap was brought to light in the UK recently when public service broadcaster BBC was required to publish the salaries of all its employees. Some female staff members, including high-profile presenters and journalists were found to be earning an average of nine percent less than their male counterparts.

The public outrage surrounding that was encouraging, agreed panellists. “The problem is that it’s always by accident that women find out these kinds of things,” said Baroness Kennedy. “No one ever wants to talk about sex, money or violence – but we must.” The media has an important role to play here in keeping such issues on the agenda.

“We’ve got to be looking at the way we work and are rewarded, how we assess merit, and the way we nurture the women behind us,” said Fiona McLeod, president of the Australian Law Council.

**D**id you know that shredded cheese is coated with an anti-fungal drug used as an anti-caking agent? Or that the hand-wash we buy often contains an anti-bacterial that is commonly found to have cross gene transfer ability – meaning it can develop resistance more easily?

These are just some of the examples of how prevalent antibiotics usage is and how little thought goes into asking whether we need them before using them.

During yesterday’s session ‘Superbugs: tackling resistance to modern medicines through science and regulation’, panellists discussed regulatory approaches, including education and awareness, in battling the growing resistance of microbes to medicine.

“Anti-microbial resistance is the greatest threat to healthcare as we know it in the 21st century,” said Larry Kelly, Health Products Regulation Group, Department of Health in Australia. Anti-microbial resistance

is creating more deaths and making illnesses more expensive to treat.

## A growing killer

By 2050, an estimated 10 million deaths will be caused by anti-microbial resistance and will be dominated by Asia with an estimated 4,730,000 deaths. The number is equally staggering for Africa at 4,150,000 deaths. “Anti-microbial resistance will be largely driven by resistance in *N.gonorrhoeae* and *E.coli*,” said Socorro Escalante at the World Health Organisation, Vietnam.

As microbes develop genetic mutation and horizontal gene transfer abilities, they are playing a game of survival of the fittest. While anti-microbial resistance is predominantly a public health issue, it involves multiple disciplines that shouldn’t be left out of the policy conversation.

Untreatable infections in animals

threaten agriculture and food production. Antibiotics from hospitals, pharmaceutical companies and agriculture contaminate water. The issue clearly goes beyond the health sector.

Since the 1980s, no new classes of antibiotics have been created. “The pace at which resistance is increasing

exceeds the pharmaceutical industry’s capacity to develop

to produce new antimicrobial drugs,” said Kelly. “Like fire extinguishers, we need them but don’t want to use them. That is causing tension for industry and they ask: what’s in it for me?” Society needs to get more creative in creating incentives to go on and do

necessary research.

“The challenge with battling anti-microbial resistance is that it is highly technical and involves multiple disciplines,” said Valerie Johnston at the Food and Agricultural Organisation of the United Nations, Italy.



Valerie Johnston

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# A conversation with... John Howard

As former leader of the Liberal Party and Prime Minister from 1996-2007, John Howard has been at the centre of Australia's national development for the last 20 years

**T**oday's lunchtime session is with Australia's second longest serving prime minister (1996-2007) and member of parliament for 33 years, John Howard.

Howard led the country through the financial crisis. His greatest achievement is arguably in the economic and business spheres, where he oversaw widespread deregulation and other free market policies that significantly cut unemployment, raised wages and completely wiped out \$96 billion of government debt.

Howard's track record is not without controversy. Some, but by no means all, of his positions on contemporary issues run against what might be considered mainstream liberal opinion. Howard is sceptical on climate change science and has called Australia's pro-renewables energy policy a national scandal.

**SESSION:** A conversation with... The Hon John Winston Howard OM AC

**TIME:** Today, 13.15 – 14.15

**VENUE:** Pyrmont Theatre, Convention Centre, Level 2

With regards to international politics, he has since struck a cautious note with regards to Donald Trump's presidency and urged people to judge him on his actions. As regards Brexit, he has backed it as "the right decision".

### The career

Howard was born in 1939 in Sydney's Earlwood suburb. He graduated in law from the University of Sydney in



1961, then practiced at law firm Clayton Utz for 12 years. During his time as a student and lawyer, he joined the Liberal Party and served as president of the Young Liberals.

Howard's first big break in politics was in supporting Malcolm Fraser for Liberal Party leader. Fraser led the Party to power in 1974 and Howard became Minister for Business and Consumer Affairs and then

Treasurer, where he championed free market policies and was instrumental in the introduction of Treasury bonds in 1982.

He became Party leader in 1985, only to be ousted four years later. He returned as leader in 1995 and led the Liberals to a dramatic victory in 1996, ending a 13-year Labour government. This bounce-back characterised him as a political Lazarus.



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# Handle with care

From classified National Security Agency data to political party programmes, confidential corporate data, private emails and the tax returns of the rich and famous: no single type of information is immune from disclosure any longer.

The regular wave of private information being leaked to the public has come hand-in-hand with increased scrutiny of governments, corporates and individuals alike. This has highlighted the fact that what's fair when it comes to the public interest and what's fair for the business community can be two different things. While investigative journalists can argue they have a responsibility to expose wrongdoing of any kind and promote transparency on a global scale, this can be at odds with business standards and practices.

The role of lawyers, especially, is being called into question, as shown by the recent spate of cyber attacks against law firms globally, *Legal Practice Division Showcase: cybercrime and the media* panel chair Peter Bartlett, partner at MinterEllison, will tell delegates this morning. "A lot of consideration was given to the topic we should cover as this is the only LPD showcase," he says. "Cybercrime is one of those issues that is of relevance to our clients, to the government and to society as a whole."

## Conflicting positions

While a potential conflict between client confidentiality and the duty to report wrongdoing has always existed, the situation has become increasingly untenable. Pressure from many directions has led to some tough questions. The 2016 Panama Papers leak is a perfect illustration: law firm Mossack Fonseca's business was technically legal but its lawyers carried out their work in a vacuum, with no questions asked as to the consequences of their actions. Another area that's consistently fuelled the debate is anti-money laundering.

For years, lawyers have fought this off but they and their clients need to understand there's a real market out there for the sensitive information they hold. This renewed focus on legal practitioners' duties creates two sets of challenges.

First, how far does a lawyer's duty to their client go, especially when there is tension between what's legal and what's ethical? "A lawyer is not just retained to give advice on A, B or C," says co-moderator Robert Wyld,

*"Now more than ever, the extent of a lawyer's duties is being re-evaluated"*



**SESSION:** LPD Showcase: cybercrime and the media – unexpected risks to your clients, your law firm and your government

**COMMITTEE:** Legal Practice Division

**TIME:** Today, 09.30 – 12.30

**VENUE:** Room C3.3, Convention Centre, Level 3

partner at Johnson Winter & Slattery. "They must also give advice on any risks that may arise in the course of a transaction – in that respect, there can be a real question of how far should a legal practitioner go?"

Second – and just as important – is the issue of the impact of electronic crime at a law firm. Figures released by the American Bar Association show a quarter of firms with more than 500 lawyers experienced a data breach in 2016, though the real amount may actually be higher as some organisations don't go public with their experience for fear of damage to their reputation. The same amount didn't have proper technology in place to tackle cybercrime. A LogiForce report also showed that 40% of the 200 law firms surveyed were unaware that they had been attacked.

But the disruption caused to the law firm and the time spent overcoming the

issue and ensuring clients' material is secure outweighs security costs – though these are often used as an explanation for lack of adequate preparedness for the sector as a whole. In that sense, risk management is key.

The traditional response has been to try to contain the disclosure – in some cases, an almost impossible task. "There are some really difficult questions to answer," explains Bartlett. "How did this happen? How do we get back online with minimal disruption? Is there any long-term damage? What are the next steps we can take?"

Beyond these important questions, a wider line of thought is emerging. "It's almost as if a lawyer has to decide beforehand their position on how they run their business," says Wyld. "Now more than ever, the extent of a lawyer's duties is being re-evaluated."

## Public eye

While legal practitioners are asking questions of their own, how are governments doing? Not well, if reports are to be believed. "We are constantly hearing about attacks happening in all parts of the world, so clearly not enough is done to address these at corporate and at government levels," says Bartlett.

While the varying degrees of cyber preparedness in the corporate world are well known, the public sector's response to threats is less debated, in particular because many governments are late to the party.

The initial layer of protection needs

to be technological and come from the devices and systems themselves. The number of digital security companies has multiplied exponentially in the past few years, as threats against networks have grown. The second area of focus is the regulatory response which addresses issues of liability, though it's a tough task to locate the people responsible and bring them to justice. The EU, the US and Australia are just three examples of countries which have implemented cyber-related and data breach legislation – with varying degrees of success.

However, it's hard to know how governments will choose to react, and they are often pulled in conflicting directions. On the one hand, they advocate transparency and openness, but on the other, they favour discretion and will pursue those who threaten public order.

In the US, the response against journalists and whistleblowers has recently escalated. Attorney General Jeff Sessions announced in August that the administration would crack down on the so-called 'staggering number of leaks' and said he was considering increasing the level of sanctions in that area. Russia recently jailed an investigative journalist on charges of extremism, after the individual called for a referendum to make politicians more accountable.

While both these countries' actions are notable, they are by no means isolated. The balance between lawyers' duties, and public and commercial interests is a delicate one.

# Time for change

The workplace is changing, and the legal sector is not immune. Flexible working and career goals, and a better work-life balance are only some of the requests employers are now faced with. For lawyers, this has repercussions beyond the day-to-day working life, and right into the founding principles of the legal profession.

“There are two questions that come back again and again in Africa but also globally,” says Kimathi Kuenyehia, managing partner of Kimathi & Partners, and chair of the *Partnership: is it still a primary career goal in the modern legal environment?* session. “What’s the hope for the partnership model and can it still be relevant for the future of the legal practice?”

Most private practice young lawyers traditionally aim to become partners at some point.

Those who achieve this goal can become equity partners but those who don’t have to find alternative sources of employment, often in-house. Becoming partner tends to be a high-sacrifice, high-reward game.

“For most sub-Saharan African law firms, there’s a consensus that partner-



Kimathi Kuenyehia

ship is the way to go,” says Olumide Akpata, partner at Templars. “But because the traditional Nigerian law firm is still a one or two-man outfit, there’s still some way to go to convince young practitioners that a scalable partnership model is the way forward.”

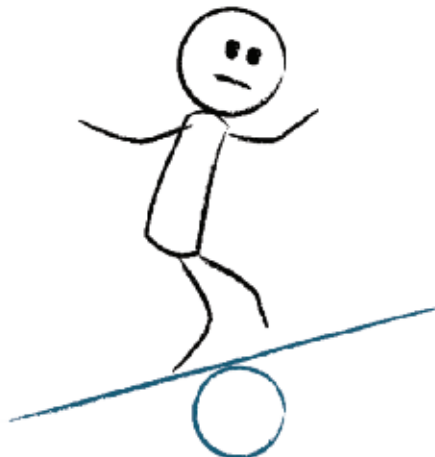
A crucial point to remember is that, nowadays, many law firms bring in most of their partners via lateral hires. “This is a cost-led decision because bringing a partner in means bringing their clients too at the same

time,” says Kuenyehia. “This way, there won’t be any time or resources invested in a young lawyer building their own client portfolio – this takes time.”

The pressures associated with making partner have led to a growth in alternative models.

The in-house path is looking more appealing to many in the younger generation. “It’s fair to say that working in-house, you can have all the advantages of being a partner but without the constraints,” noted Kuenyehia.

Akpata agrees: “Younger lawyers are quite happy to go in-house because the environment is more flexible and adaptable.”



**SESSION:** Partnership: is it still a primary career goal in the modern legal environment?

**COMMITTEE:**

- Senior Lawyers’ Committee
- Young Lawyers’ Committee

**TIME:** Today, 09.30 – 12.30

**VENUE:** Room C4.3, Convention Centre, Level 4

The one-person law firm model is also looking like an increasingly attractive option for younger legal practitioners keen to work in a more flexible environment, as is the salaried partnership model. The number of recent law firm bankruptcies has encouraged lawyers to gravitate towards this particular model – as opposed to an equity-based one favoured by many law firms – which is believed to be more stable and less risky.

For more and more young lawyers, the well-trodden partnership career path is not satisfactory anymore. It’s likely that some aspects of the partnership model will stay, but not as we know it.

# Turning point

The shape of the European Union has changed since it was founded by the Treaty of Rome in 1957, but perhaps even more so in the past 12 months since the UK’s Brexit vote.

Many observers feel the region is on the decline, with economic and financial crises, simmering discontent over its complex decision-making process, and rising populism threatening its unity. But there is also a growing sense of optimism that Europe can work through these challenges and seize new opportunities to grow stronger.

“There’s been a recent swing in the mood in the population – for the better,” says Torsten Riecke, international correspondent at German business daily Handelsblatt and chair of today’s *The European Union: declining giant or future world power?* session. “There is scepticism when it comes to some economic policies, but the political feeling is that is a new window of opportunity

to explore, especially looking to links with the US and Asia.”

The traditional image of a strong Europe with common values and a solid economic and political foundation has been under threat for some time. There is a growing sense that the bloc has evolved towards being a ‘two-speed Europe’: on the one hand, member states such as Germany and France lead the way, and on the other, countries like Greece and Italy remain buried under piles of public debt and uncertainty.

Felix R Ehrat, group general counsel at Novartis and senior vice chair of the IBA’s Corporate Counsel Forum, believes the EU has some significant underlying challenges that have yet to be addressed. “The current economic framework – a single currency without

a fiscal union – is not sustainable,” he says. “That, and the fact that economic and political gaps between member states have been growing over time make further integration difficult without institutional reforms.”

While Brexit has recently highlighted these issues, it’s also given EU institutions the opportunity to reflect on solutions going forward. A reformed and more flexible Europe, which includes a common budget for the eurozone – a project a number of member states are discussing – is one avenue explored, argues Riecke.

According to Ehrat, unleashing the power of this economic union might only happen if certain key areas are looked at in priority. “It’s important to give a critical look at the EU’s political architecture; the democratic element in



Torsten Riecke

**SESSION:** The EU: declining giant or future world power?

**COMMITTEE:**

- Legal Practice Division
- Section on Public and Professional Interest
- European Regional Forum
- Regional Fora Coordination Committee

**TIME:** Today, 14.30 – 16.00

**VENUE:** Parkside Ballroom 1, Convention Centre, Level 2

the decision-making process has to be reinforced and more federalism and subsidiarity might be a good start,” he says. “I also do believe that community-wide solutions are often a critical topic going forward – making people feel part of the decision-making is key.”



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# Dining out in Sydney

From pies and mash to Bondi brunches and Asian fusion, Sydney has it all. And not a warm can of Fosters

Australian citizens used to suffer from culinary stereotyping: lazily peddled assumptions of Fosters swilling, Vegemite devouring masses were *de rigueur* for much of the twentieth century.

But some point around the turn of the millennium, attitudes started to change. And it's easy to see why. Spend a few days in Sydney and it is clear that this is a city that takes its food seriously. Its close proximity to Asia means delegates can find some of the world's best dishes here, and the local chefs love to put their own touches on such fusion dishes.

We asked a couple of locals what they would recommend, what the most Sydney-esque culinary experience that someone in town for a few days could have. The consensus was a beachside brunch on the wonderful Bondi Beach; throw on some boardies

and a pair of thongs, and head to Speedo's Café or The Depot for a great cup of coffee and breakfast at lunchtime.

For those that like to wear more pedestrian shoes while they eat, Sydney still has plenty to offer. A few of the more upmarket restaurants for those looking to try something special are **ARIA**, **Quay** and **Tetsuya**, all of which come highly recommended. Alternatively head to **Sepia** in Darling Harbour for a nine course meal with offerings including sansho roasted duck breast and seared Rottneest Island scallops.

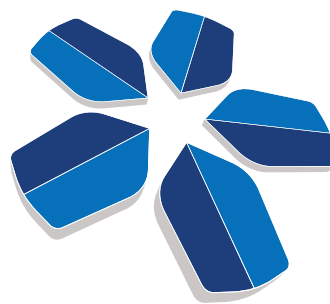
Not everyone's expense account will stretch to scallops. Besides, you might simply want an Aussie meat pie and a sampling of one of Australia's bestselling beers, Victoria Bitter. For this, find your way down to **Harry's Café de Wheels** at Woolloomooloo



(yes, that's eight Os), where your pie comes complete with mash and peas.

Head to Potts Point for some excellent Asian fusion food. For Japanese, **Cho Cho San** comes highly recommended, **Mr G's** offers a wonderful modern experience, and **Billy Kwong** is Chinese-Australian fusion brought to you by renowned head chef Kylie Kwong.

Hipsters among the delegation looking for a taste of what Sydney has to offer need look no further than Surry Hills' stylish café scene. Just south of Hyde Park is reminiscent of Williamsburg in Brooklyn – and has food to match. There is plenty of choice: **Via Napoli** provides some of the best pizza in town, and the wagyu skirt steak at **Porteño** is legendary in its own right.



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# Dream of electric lawyers

What was once a dream is quickly becoming reality. Today's session looks at the very real preparations the legal community should be making for AI

“**M**aybe there was once a human who looked like you, and somewhere along the line you killed him and took his place. And your superiors don't know.” This scenario imagined by Philip K Dick in *Do Androids Dream of Electric Sheep?* is possibly still some way off, but it leaves the question of exactly where AI is now, how it is being applied and, more importantly, what are its very real and not-so-distant implications.

In practice, it is a whole array of distinct and specific tools or a combination of tools. Litigation partner Geraldine Clarke illustrates this: “there isn't a single legal AI product on the market, you have to get products from various producers; for example, for case prediction, you would have to get a case prediction product, an e-discovery product, an analysis product... buy them in all separately and try to integrate them”.

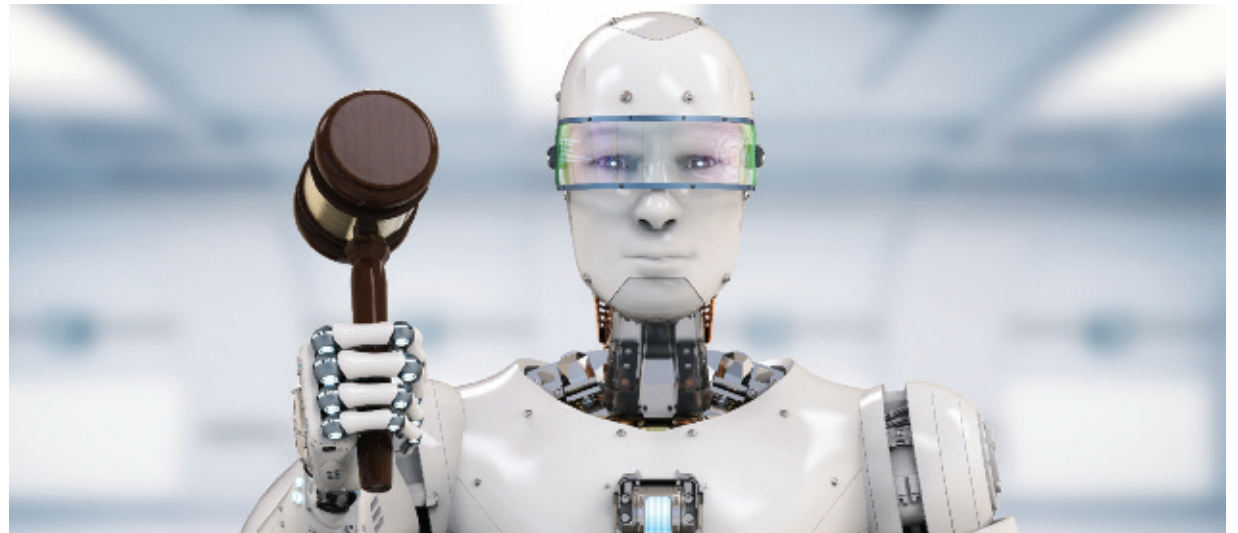
This can make AI hard to track, but in its totality the mass of technological AI applications in law amounts to a rising tide of AI use that compels the legal community to study, prepare and respond.

Fiona McLeod, president of the Law Council of Australia, stresses that the need to understand and embrace changing technology is now urgent. “It has the potential to transform justice outcomes for clients of legal services,” she adds.

## What is AI in law?

In the legal world, AI developments are coming thick and fast in many different fields and the implications vary enormously.

Recent examples include Canadian app Legalswipe, a free app that provides legal advice to people unexpectedly questioned by police. Another is AI chatbot DoNotPay, which was de-



veloped by a 19-year-old and in just 21 months helped appeal 250,000 parking fines worth over \$4 million with a 64% success rate.

The developer is now looking at its application for flight delay cases and, possibly, for advising refugees on foreign laws. Yet another is LawGeex, an online contract review and approval system.

Perhaps one of the most-high profile recent stories in AI legal tech comes from Ross Intelligence. The AI system it created predicted with 79% accuracy the results of nearly 600 cases related to three articles of the Convention on Human Rights before the European Court of Human Rights (ECHR).

There are limits. As Clarke points out, “the ECHR is a paper-based submission process and AI cannot make value judgements, take an oral hearing and assess the credibility of a witness, for example”. But it could enormously speed up the initial stages of a process where a client details the reasoning behind a case to a lawyer, using up the lawyer's valuable time.

## The big risks

The developments open up three important risks that today's session will tackle head on. The first is ethics. “No matter how good a programme is, a lawyer still needs to check and make the judgement,” says Steven Richman from Clark Hill. “A computer might tell you that move ‘x’ is the best based on running through all the permutations, but a lawyer may decide that this move is not the best.” According to Richman that means that lawyers must

be competent and understand the technology that is being implemented. “There is an ethical obligation of supervision of the non-lawyers,” he adds.

Clarke puts it another way: “the creativity, imagination and expertise a lawyer brings to a problem must not be removed. But if a decision has to be made, who makes the decision? Do I make it as a lawyer with 30 years' experience or is it based on the analysis of the robot?”

Richman adds that it raises further questions, such as whether the current rules of professional responsibility cover these responsibilities of lawyers. This is a key issue also in terms of the varying ethical standards in different legal regimes, and where AI is tested and applied, especially in global cases.

A second consideration is data protection and confidentiality. For example, if two law firms are using the same AI system to analyse contract terms, how can it be assured that the data generated cannot be used by others? “How can individual data be protected, and not visible to another law firm accessing that system?” asks Clarke.

A third and arguably most worrying concern is how AI will impact access to justice. The risk is that only big law firms have the resources to develop programs, leaving small firms and sole practitioners at a serious disadvantage and potentially widening the justice gap. On the other hand, many applications being developed promise to boost access to justice.

“My focus as president of the Law Council of Australia has been on the growing justice gap in Australia con-

**SESSION:** The no longer brave new world: artificial intelligence and other new deliveries of legal services

### COMMITTEE:

- Academic and Professional Development Committee
- Alternative and New Law Business Structures Committee
- Law Firm Management Committee and Professional Ethics Committee
- Technology Law Committee

**TIME:** Today, 14.30 – 17.30

**VENUE:** Room C4.10, Convention Centre, Level 4



Fiona McLeod,  
president of the Law  
Council of Australia



Steven Richman,  
Clark Hill

tributed to by chronic underfunding of legal aid and legal assistance services,” says McLeod, adding that “emerging legal technologies provide a once in generation opportunity to reduce the justice gap”.

According to McLeod, “the challenge will be to ensure that technology complements the relationship of trust between lawyer and client, assisting those who are most vulnerable in society to resolving their legal problems and navigate the justice system rather than introducing yet another barrier to justice”. However, she warns that the ability of the legal profession to engage with this issue will be an essential factor in determining whether legal AI positively or negatively influences access to justice.



# DUBAI INTERNATIONAL ARBITRATION CENTRE (DIAC)



The Dubai International Arbitration Centre (DIAC) is the largest arbitration centre in the Middle East. It is a non-profit institution that provides efficient and impartial administration of commercial disputes. The DIAC Arbitration Rules, adopted in 2007, are in line with international standards. The DIAC is comprised of the Board of Trustees, the Executive Committee and the Secretariat.

The cases registered with the DIAC relate to different sectors such as real estate, engineering and construction, general commercial, media, insurance and oil and gas with large amounts in dispute, some exceeding one billion dirhams.

The DIAC has developed a pool of experienced arbitrators from different cultural and legal backgrounds located in the UAE and abroad.

The DIAC has recently established DIAC 40, a forum for young arbitration practitioners, and organizes a wide range of specialized training courses and events.

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# Things to do in Sydney

From beach walks and gardens, to jazz bars and museums, the antipodean jewel has it all

Situated on the edge of south-eastern Australia, Sydney has it all: culture, a coastline and wide transportation network connecting to major domestic and international destinations. And as the financial centre of Australia, the metropolis is home to immigrant communities from around the world, notably Europe and Asia.

Few cities match Sydney when it comes to outstanding areas of natural beauty. One shouldn't miss out on the six-kilometre walk from Bondi Beach to Coogee Beach, with secret rock pools and stunning cliff top views along the way. In particular, a five-kilometre walk up the Federation Cliff offers a panoramic view of the Pacific Ocean from Dover Heights to Watson Bay. The walk boasts views of stunning sandstone cliffs and panoramas of the Tasman Sea.

Gordon's Bay, which is situated south of Clovelly Beach and north of Coogee Beach, is one of the world's most secluded spots for snorkeling as well as paddling with a combination of lush bush, steep cliffs and houses nestled below. Taronga Zoo, a prime loca-



A quiet day on Bondi

tion for catching a glimpse of wildlife, is also one of the top spots for some of the best harbour views in the city.

For those wishing to spend a relaxing afternoon in a park, engaging in leisurely activities without breaking a sweat, a visit to Sydney's centuries-old 30-hectare Royal Botanic Gardens will do the trick. The park features a variety of flora and fauna as well as an aviary and a zoo, while Australia's oldest park,

Hyde Park, houses the famous ANZAC Memorial building and numerous monuments and statues. Located at Circular Quay on the edge of Sydney Harbour, the Museum of Contemporary Art Australia (MCA), which is housed in the former Maritime Services building whose architectural style is a fine example of late art deco design, is another place for a relaxing afternoon and an educational experience.

As one of the most well-connected cities in the world, Sydney has a well-established public transportation network. Using unique Opal cards, foreign visitors can get on a ferry and explore Sydney Harbour and its islands such as Cockatoo Island, one of the world heritage-listed Australian convict sites for \$2.50 per person.

The Sydney Harbour Bridge – also accessed via public transport – is unmissable. Built and opened in 1932 the bridge is nicknamed The Coathanger and carries rail, vehicular, bicycle, and pedestrian traffic between the Sydney central business district (CBD) and the North Shore.

For Asian tourists hankering after a taste of home, Spice Alley, tucked behind the Kensington Street laneway in Chippendale will whet their appetite. The open-air courtyard serves up hawker-style dishes from Singapore, Thailand, Vietnam, Malaysia and Hong Kong.

And when the sun sets on Sydney, the city shifts a gear. After a day of sessions and networking, a host of jazz

bars and fine dining places will keep delegates from their beds. The Hero of Waterloo Hotel, a 170-year-old hotel located within the city's iconic Rocks precinct, is a popular highlight. It features a variety of live jazz, soul and folk performances, while Jazushi offers an eclectic experience by serving a blend of fine Japanese fusion dishes complemented by live jazz. Foundry 616 is another unmissable spot, as the key venue for a number of major music festivals in town such as the Sydney International Women's Jazz festival.

For history buffs, Elizabeth Bay House, known as the finest house in the colony built between 1835 and 1839, is recommended. Designed by renowned architect John Verge for Colonial Secretary Alexander Macleay and his family, the house was restored and turned into a house museum in 1977.

Once surrounded by an extensive 54-acre garden and described as a 'botanist's paradise', it now features a library and a rich entomology collection. For the more adventurous, a visit to the centuries-old Water Police station offers a glimpse at the dark side of Sydney. Once the city's busiest legal hub where criminals and the police co-existed, it has been renovated and turned into a museum. In particular, the Justice and Police Museum, which was originally the Water Police Court, is a sandstone complex where one of the busiest legal and policing precincts in NSW used to be.

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# QUESTION What sessions are you



**Kenneth Akide**  
Akide & Company Advocates  
Kenya

I am here to learn best practices from the US, Europe and Asia regarding managing a modern law firm. This is an opportunity to equip ourselves for the borderless society.



**Gilberto Giusti Pinheiro Neto**  
Brazil

The arbitration committee and the Latin American Forum are fantastic. Over the years I have made good contacts and good friends and I am looking forward to the Latin American Forum lunch on Tuesday.



**DK Singh**  
KBH  
United Arab Emirates

I will be going to the Asia-Pacific forum and North American Forum. Regulation in the DIFC is in its relative infancy so it will be useful to see how different trends in other regions affect the Middle East.



**Wilhelm Bergthaler**  
Haslinger Nagele  
Austria

I will be attending seminars on the law firm of the future. As an environmental lawyer I want to learn the methods that different jurisdictions have for dealing with problems like urbanisation that effect everyone.



**Sarah Lindsay**  
Maurice Blackburn Lawyers  
Australia

I am here for the business development day and will be attending the thought leadership seminar. We also aim to educate people about class action reform. Hopefully the seminar will share some useful techniques.



**Stephen Hubner**  
Shepherd and Wedderburn  
Scotland

I will be attending the session on agile working in the law firm of the future. Agile working is especially important for youngsters at my firm and it will be good to hear what other firms are doing.

## The Commonwealth's LGBTI shame

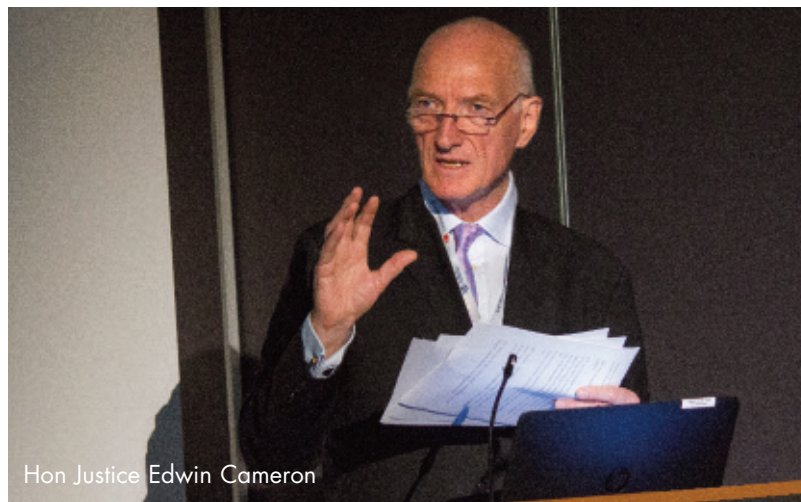
Are legacy sodomy laws of the British Commonwealth a crime against humanity in the making? This was the topic hotly debated at yesterday morning's session 'LGBTI criminals: the British legacy'.

The debate centred on whether domestic laws in many of the Commonwealth nations that criminalise sodomy, private same-sex behaviour and sanction violence against LGBTI people are in breach of the UN charter.

An example of a Commonwealth country that has strict laws in place is Uganda. The country even introduced the Anti-Homosexuality Act in 2014, under which those convicted of repeated same-sex sexual acts could face life imprisonment. While laws of this nature have largely been abolished in places like Canada, Australia and South Africa, the British legacy still remains prevalent across large parts of the Commonwealth, from Bangladesh to Ghana.

One of the requirements of a crime against humanity, said speaker Hon Justice Michael Kirby, is that it should be an act of violence committed against persons, led by a state policy that shakes the conscience of humanity.

"The question of what is a crime against humanity requires more than a human rights violation," he said. "Many of the acts of violence and discrimination against LGBTI people are



Hon Justice Edwin Cameron

undoubtedly human rights violations. Some countries don't like to hear that, but that is pretty well established."

Acts of violence against the LGBTI community have shaken Kirby's conscience, but, as he pointed out, not the conscience of humanity as a whole. Some acts have an impact upon human beings generally, for example the Holocaust and the actions against the minorities in Germany, but LGBTI rights are more difficult from a legal point of view.

"Far from shocking the conscience of humanity, nearly half of humanity thinks that these laws are a very correct and understandable rational and even a god-given requirement, said Kirby."

For this reason, when asking if the acts of violence and discrimination against gay people are crimes against humanity, Kirby is doubtful.

"At the moment a lot of people, in many countries, with a lot of power have a lot of problems," he said. "Most of the countries of the Commonwealth of Nations will do anything to stop this mandate progressing."

### Crimes against humanity?

Hon Justice Edwin Cameron of the Constitutional Court of South Africa was quick to commend Kirby for his instrumental work in leading the fight for LGBTI rights in Tasmania, but sug-

### KEY TAKEAWAYS

- The legacy of sodomy laws in much of the British Commonwealth remains, and countries across Asia, Africa and the Caribbean have refused to decriminalise LGBTI acts and violence against these persons;
- More than 80 countries still uphold criminal convictions against same-sex adults.

gested that the sodomy laws of the Commonwealth were, in fact, crimes against humanity.

To emphasise this point Cameron spoke of his country's apartheid policy between 1948 and 1991, which he said was considered a crime against humanity, even though it was by no means the bloodiest offence on the African continent in recent times.

"Apartheid horrors were a crime against humanity not because of the volume of blood, or the number of lives that were lost, but because of the systematic derogation, subordination and politicisation, with associated separation and imprisonment," he said.



# most looking forward to?



**Andreas Meyer**  
Deutsche Bank  
Germany

I am speaking on the panel on legal opinions in financial transactions. You rarely get an opportunity to discuss this in the middle of a deal so it is great to bring in-house and private practice together.



**Daniel S. Heller**  
Kelley Dorsey  
USA

We're currently a small US-focussed firm. I will be attending all of the tax sessions with offshore elements as the firm is looking to become more international.



**Laurentiu Gorun**  
Drakopoulos Law Firm  
Romania

I will be going to the session on complex transactions by the Real Estate Section. I saw the same speakers last year and they were excellent – and the topic is very pertinent in Romania at the moment.



**Nathan Jia**  
R&F Properties Group  
China

As a former prosecutor in Beijing I was invited to speak at the anti-corruption update on Wednesday. As the world becomes more global we must combat corruption hand in hand with the same techniques and values.

*CORRECTION: On page 3 of yesterday's edition of the IBA Daily we incorrectly cited Horacio Bernardes Neto as the IBA's Secretary General. He is in fact the Vice-President of the IBA. We apologise. Below is his correct biography.*

**Horácio Bernardes Neto**  
Vice-President

Horacio Bernardes Neto is Vice-President of the IBA and candidate for the office of IBA President (2019–2020). Immediately prior to holding the Vice-Presidency position, Bernardes Neto was the IBA Secretary-General. He is also former Chair of the Bar Issues Commission (BIC).

After joining the IBA in 1992, Bernardes-Neto served in several LPD and PPID Committees and has held many Officer positions, including Deputy Secretary-General for Latin America. Presently, he chairs the IBA's Special Projects Fund and is a member of the Latin American Regional Forum's Advisory Board, having contributed to the creation of the Forum. He is a partner of the Brazilian Law Firm Motta Fernandes.

## Lawyers: help the First World poor

Panelists at yesterday's session 'Poverty in the First World' shared strategies that lawyers and bar associations can take to reduce the problem of poverty in developed countries.

One in eight people in the US lives in poverty. "It is a political problem and a lack of political will which is turning the war on poverty to a war on poor people," said Norman Clark, principal at Walker Clark, US and chair of the Poverty and Social Development Subcommittee.

With 19.4 million living on less than \$6000 per year and 1.5 million households living on less than \$2 per day, disadvantaged groups such as African Americans, women, the elderly and people living in rural areas face poverty due to problems such as institutional racism and wage stagnation.

The issue hasn't improved in the past year. Since coming into power President Trump has cut back on legal services, proposing 2018 budget cuts for the Legal Services Corporation, which provides funding for 133 independent programmes across the US. But he has also proposed the largest tax cuts for the wealthiest people and the largest military spending in the past 50 years.

Clark argued that although the solution is a political matter, lawyers can bring about lasting improvements.



Strategies such as constitutional litigation can slow down policies, for example, the restraining order courts have used on Trump's immigration ban on Muslims. Pro bono services have had inconsistent resources in varying states but bar associations have a powerful coordinating role in setting out anti-poverty agendas for states and promoting initiatives in social development and empowerment.

"It is the responsibility of the legal profession globally to do something about poverty," said Professor Bryan Horrigan, Faculty of Law at Monash University, Australia. "While it is every individual lawyer's responsibility, not

everybody has to do everything in the same way."

### More than a mantra

"Lawyers chant 'the rule of law' like it's a mantra, but it being just a mantra doesn't take us very far," said Horrigan. "It requires equal access to justice and a segment of the population don't have it and need to have someone advocate on laws that are not mutual for everyone. But pro bono can't be the sole vehicle."

"Pro bono and legal clinics, non-governmental organisations, social entrepreneurs and multinational companies all have a role to play in fighting poverty," said Carmen Pombo, chief executive at

### KEY TAKEAWAYS

- Poverty in developed countries is a growing problem, often caused by a lack of political will;
- Lawyers can offer a different perspective on how existing laws can be interpreted and new laws created to help battle the war on poverty;
- Bar associations have a huge role to play in acting as the liaison between non-governmental organisations, law schools, lawyers and businesses that want to help.

the Fernando Pombo Foundation in Spain and co-chair of the Rule of Law Forum. In Spain, the problem of homelessness grew after the 2010 economic recession. 40,000 are homeless and 1.5 million families are living in substandard accommodation. Pombo shared the example of how a bankruptcy law for individuals helped get trafficked women off the streets because lawyers were able to think from a different point of view in a public interest law case.

The reason that the women were unable to get off the streets was because of their debts, but by using strategic litigation, the law was a second opportunity for the women to start new lives.

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