Time is up for lawyers' hourly billing

Marcus Priest

Lawyers may not thank their clients for forcing them to drop their prices, but they may eventually thank them for being able to get rid of the scourge of modern legal practice: the time sheet.

ANZ's and Westpac's threats to send legal work to New Zealand have left large and mid-tier law firms admitting that the pressure to cut legal costs is forcing them to move away from traditional hourly billing.

"It is going to be harder and harder outside of litigation to justify time-based billing for any type of work," Gadens managing partner Michael Bradley said.

"There is no doubt we are seeing more pressure from in-house counsel to come up with solutions – whether they are technological or pricing – in order to deliver services more cost-effectively."

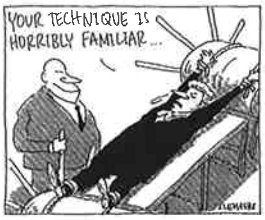
KEY POINTS

- Law firms are under threat from cheaper New Zealand practices.
- Fixed-fee billing is likely to become more common.

In April, a survey for the Australian Corporate Lawyers Association showed that almost 60 per cent of companies were seeking alternatives to hourly rates from their firms.

"The move to use New Zealand firms is a fairly new one ... but we are seeing every other trick in the book such as moving to boutique firms for certain aspects of work," ACLA chief executive Peter Turner said.

Most firms said they doubted any great proportion of work would be sent offshore. But they conceded the pressure to cut costs was forcing them to move to fixed-fee arrangements, task-based billing and success fee arrangements.



"What this means," Deacons chief executive partner Don Boyd said, "is that another string needs to be added to lawyers' bows and that is the ability to scope and value legal work.

Clayton Utz managing partner David Fagan said that law firms in the US were moving to fixed fees for individual tasks done by a lawyer – known as task-based billing – and this was likely to happen here.

"Standard rack-rate billing, while although still the majority of work, it is a diminishing majority," Mr Fagan said.

But Minter Ellison chief executive Guy Templeton said fixed-fee arrangements worked well where it was easy to define the value of work, but in some cases it was hard to determine that value.

"One thing that consulting firms got very, very good at was being clear about the value they added to clients, and we, too, need to be very clear about the value we are adding because without that clarity the services will become commoditised," he said.

M4 East back on the road map

Lisa Allen

The NSW government has vowed to include Sydney's controversial M4 East tollway in its new road transport plan, just weeks after saying the motorway extension had been shelved.

The government has also outlined billions of dollars' worth of public and private infrastructure projects, including three transport hubs to be built and operated by the private sector as part of the city's massive Port Botany redevelopment.

The intermodal hubs, which provide an interchange between road, rail and sea, are crucial to the government's ambitious commitment that 40 per cent of all freight will be handled by rail, not road, by 2011.

The NSW Minister for Infrastructure and Planning, Craig Knowles, flagged increasing private-sector involvement in the provision of the state's infrastructure.

"We are now heading into the world of the use of the private sector in a much bigger way than we ever have before," he told an Insto infrastructure finance and investment conference yesterday.

Mr Knowles said the M4 East – which will connect Sydney's western suburbs with the inner west – had not been abolished, but a "pause button" had been applied.

"People think we have stopped the M4 East, we haven't. The M4 East will continue but it will be part of a more sophisticated road transport plan," Mr Knowles said.

Residents in Sydney's inner west protest against the NSW's government plans for the M4 extension. Photo: PETER RAE

The comments came as NSW residents called for more money to be spent on infrastructure including public hospitals, rail systems, regional trains and nursing homes.

A survey by Allen Consulting Group commissioned by the Property Council found that more than 83 per cent of respondents believed government infrastructure funding was insufficient, and almost 80 per cent said using public debt was the best way to fund improvements to public infrastructure.

"The political assumption that the public are debt-adverse is wrong," Property Council director Ken Morrison said yesterday.

"Voters don't want to leave a legacy of a decaying infrastructure base to their children," he said.

"The Property Council does not want to see a reckless approach to debt, but we are missing a major opportunity to invest for the future."

Meanwhile, Victorian Treasurer John Brumby told the conference that his state was leading the way in public-private partnership projects.

Victoria had 13 public-private partnerships under way that would create assets worth almost $4 billion, Mr Brumby said.

AMP Capital Investors' head of infrastructure, Phil Garling, said he expected AMP's $11 billion of infrastructure investment funds to grow to $53 billion by 2010.

But there were insufficient opportunities for Australian investors, he said. Unless something was done, retail investors would be forced to look offshore for infrastructure investment opportunities.

Accountants object to ATSIC move

Tracy Lee

The Australian Securities and Investments Commission has trained its sights for the first time on accountants and the advice they give in relation to self-managed superannuation funds.

The corporate regulator "is able to investigate and take action against anyone, whether licensed or not, who gives misleading or deceptive advice about financial products including self-managed super funds", ASIC deputy chairman Jeremy Cooper said.

His warning angered some accounting groups who feel the regulator's enforcement powers do not take into account the exemption the profession won last year, allowing accountants to give advice without an Australian financial services licence.

CPA Australia financial planning policy adviser Kath Bowler said ASIC had advised the peak accounting body it was unsure how to administer the exemption because the regulation did not work in practice.

The exemption allows an accountant to recommend a DIY fund to a client but does not allow the accountant to compare the appropriateness of that structure with other options, such as industry or corporate funds. To do so would be considered advice under the Financial Services Reform Act and such advice can only be given by a licence holder.

Accountants with the exemption are concerned that recommending a DIY fund without being able to make a comparison with other options could be construed as misleading by the regulator.

If an accountant wanted certainty, he or she should become licensed, Mr Cooper said.

As a general rule, DIY funds with less than $200,000 of funds in their balance would raise the interest of the regulator, ASIC said.

The regulator simply wanted to ensure unlicensed accountants were aware they still came under the purview of the regulator, despite the exemption, Mr Cooper said.

He explained that the regulator would look mainly for instances such as when a self-managed fund was recommended to, say, a blue-collar worker who belonged to an industry fund and had a balance of $60,000.