

Perils the profession can't ignore

*In 2012 the Australian legal profession faces a number of key challenges which, if disregarded, pose a significant risk to the performance and sustainability of the industry. **Briana Everett** looks at the top 10 risks to the future of Australia's law firms.*



Mental health

It comes as no surprise that mental illness is one of the biggest threats to Australia's legal profession.

Over the last few years, countless reports in the media have revealed the devastating effects of depression and anxiety and the high incidence of mental illness in the legal profession, compared to any other.

But despite the increasing willingness amongst members of the industry to speak openly about mental illness, as well as the significant efforts made by organisations such as the Tristan Jepsen Memorial Foundation (TJMF) to increase education about mental illness, it remains a huge issue and threat to the legal profession in 2011 and beyond.

In September this year, members of the profession gathered in the Federal Court of Australia to hear a

seven-member panel address the ongoing issue of mental illness in the profession as part of the TJMF's annual lecture. Discussing his own battle with depression, panel member and managing partner of HopgoodGanim, Bruce Humphrys, highlighted the need to address ways of preventing the illness, rather than focusing on alleviating the symptoms.

"The key is to work out how to prevent the disease rather than how to deal with it once it has occurred," he said.

Consultant and former Middletons chief executive John Chisholm says mental illness represents a huge risk and cost to the profession.

"I think it's much more open now in terms of talking about it and recognising it, reflecting society in general, but I do think, unfortunately, we're still dealing with many of the symptoms and not the cause," he says.

"That's something we risk as a profession if we don't start



"Not having specialisation puts the practice at risk in terms of their relevance to their market"

BILL SHEW, PARTNER, GRANT THORNTON

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ALEXANDER WARD, PRESIDENT,
LAW COUNCIL OF AUSTRALIA

looking at the causes and stop dealing with the symptoms."



The billable hour

While agreement is yet to be reached as to exactly why the legal profession suffers a higher rate of mental illness than any other profession, the billable hour is a recurring theme underlying talks about the causes of depression and anxiety amongst lawyers.

"When you treat people on the basis of only measuring their time and not by the value they give to a particular client ... you're reducing that person to a very low common denominator," said Damian Sturzaker, partner of Marque Lawyers, at TMJF's annual lecture this year. "It's a very lonely experience."

But whether or not it's the major contributing factor to mental illness amongst lawyers, time-based billing continues to be categorised as an obsolete and inefficient way of doing business, and as a result, a major threat to the progress of the legal industry in the future.

"We continue to fail to recognise that clients don't actually buy our time and that really, what we do, is sell intellectual capital," says Chisholm. "We're not digits or widgets ... We're actually knowledge workers ... [Time-based billing] is just a dumb and outdated business model."

Chisholm says while he is seeing some change within the industry with a number of firms embracing alternative methods, many firms are still "clinging to old" ways.

"[Time-based billing] is a big issue and there are much better ways for lawyers to sell their value to their clients than just by time," he argues.

While more and more firms are adopting value-based pricing methods, such as Marque Lawyers and Slater & Gordon – which this

year rolled out fixed fees in its family law practice – other firms are utilising new software to automate the process – a decision which has received significant criticism from some members of the industry.

After Corrs Chambers Westgarth announced in November that it had purchased automatic time billing software to help track and report on lawyers' daily work activities, Michael Bradley, the managing partner of Marque Lawyers, voiced his concern that the legal profession had "finally jumped the shark" in an opinion piece for *Lawyers Weekly*.

"Of all the steps our profession has been taking, by progressive inches, to dehumanise lawyers over the years, this just screams out for someone to say, 'Enough!'" said Bradley.

"I'm outraged that this software even exists. But that's different to being surprised. I'm not surprised."



Workplace bullying/harassment

The toxic workplace culture of a number of law firms in Australia and the resulting bullying and harassment cases that have surfaced over the years continue to pose a threat to the recruitment and retention of lawyers.

Closely linked with the time-based billing methods of law firms and associated mental health issues, in many cases the negative environment of some law firms has resulted in the decision of many lawyers to leave the profession.

Speaking at the TJMF 2010 annual lecture, professor Patrick McGorry likened the law firm environment to a Victorian era workplace.

"[A law firm is] a 19th century working environment. Twenty-first century working environments promote autonomy, mastery and purpose," he said.

Talking to *Lawyers Weekly* earlier this year, Freehills partner and TMJF board member Peter Butler also discussed the toxic nature of law firm culture.

"There are some that say the culture of law firms at worst can be toxic and, even if that's not true, they can lead to stress levels which aren't helpful to someone who may have a predisposition to anxiety or depression," he said.

This year, behaviour experts at The University of Queensland (UQ) Business School joined forces with law societies across Australia to confront the "unacceptable workplace behaviour and toxic organisational structures" of the profession.

According to UQ, low employee retention and potential exposure to legal action arising from workplace mistreatment, such as harassment and bullying, are just some of the signs of a toxic working environment.

"Cut-throat cultures such as those common to the legal profession can either encourage or simply allow employees to overwork, exposing them to well above average stress levels and a critically poor work-life balance," says UQ Business School PhD candidate Rebecca Michalak – a former human resources director at a large Queensland law firm.

"With a number of workplace mistreatment, intimidation, harassment and bullying cases recently coming to light in the media and elsewhere, the legal industry, and employers in general, can consider themselves on notice."



Legal process outsourcing

In October this year, Mallesons Stephen Jaques made the big announcement that it will be using 200 trained lawyers in India for legal work after signing a legal process outsourcing (LPO) contract. As the first large law firm in Australia to sign a formal agreement with an international LPO provider, with Blake Dawson soon following, Mallesons managing partner Tony O'Malley described it as a "watershed moment" for the Australian legal sector.

But while LPO has, for a number of years, been at the hub of developments regarding the delivery of legal services internationally, many Australian law firms have stood by and watched, reluctant to jump on the LPO bandwagon. For some industry members, while it makes business sense, LPO presents a threat to the development of the country's young lawyers.

"My personal opinion is that I'm uneasy about it. I can certainly see the sense of it from a commercial point of view. My worry would



be the work that is normally done by younger people is not done here,” says Law Council of Australia (LCA) president Alexander Ward.

“If it’s getting someone to do transcription services [much] cheaper, then of course it’s a sensible thing to do, because that’s not going to be the work of the young lawyers anyway. But if it’s to the extent to which it’s actually legal work, even if it’s low level, then that would be of more concern to me.”

For Chisholm, LPO is something that can’t be ignored. And to those firms that don’t embrace it, he says “do so at your own peril”.

“There is an element of work that is commoditised. I don’t like the word but it happens. Get used to it and learn to deal with it,” says Chisholm. “Those firms that are embracing it and acknowledging it will do really well. But for the firms pretending it’s not happening ... or that there’s no benefit to it, then good luck.”

In response to concerns about the effect outsourcing agreements will have on the recruitment and retention of young lawyers, Chisholm says the “smarter firms” will give their young lawyers “much more interesting work” instead of “mind-numbing discovery”.

“Firms are embracing LPO much more now. Mallesons and many other firms are doing it,” he says. “Much of this legal process outsourcing is much more effective than what we’re doing.”

Global market uncertainty

During the global financial crisis, the Australian

legal industry certainly underwent a great deal of change, with new developments such as LPO gaining momentum thanks to its cost-cutting benefits for law firms.

But despite the world economy’s recovery from the GFC, the Australian legal industry is not out of the woods in 2011.

As the European debt crisis unfolds and the United States struggles to avoid another recession, the performance of the Australian legal industry – while in a better position than many others – faces the threat of further global market turmoil.

In October, Foreign Affairs Minister Kevin Rudd conceded that Australia is not immune to the market turmoil in Europe.

“What happens in Europe in the financial markets and the stability of those markets affects Australia,” said Rudd at a CHOGM press conference. “It affects Asia, it affects the rest of the world, including Africa, Latin America and all the countries represented here at this Commonwealth Forum.”

For Chisholm, while the Australian legal profession is “very well managed” compared to many other professions, the global market uncertainty is unquestionably a risk.

“We are going to reflect how our clients are travelling and our clients reflect how the economy is travelling,” he says. “Nearly six months into this financial year I’m seeing many firms that have not reached budget. They geared up again for work at the end of the last financial year, with salary increases and all these sorts of

things, but there are some firms in some areas for which the work hasn’t come. Having said that, there are some firms doing really well, but I’d be surprised if most firms are not at, or under, their targets at this time of year.”



Arrival of global law firms

The influx of global firms in the Australian market over the last few years has undoubtedly had a considerable impact on the competitiveness of the industry, but according to some industry members, their arrival poses a considerable threat to local national firms which choose to ignore the globalisation of the industry.

“I think rival global firms are a threat,” says Chisholm. “Our terrific national firms are not doing what they’re doing for no reason. I think firms have got to accept that we’re part of Asia and that we’re global – those firms that don’t do so at their own peril.”

For Sydney-based Jones Day partner Matthew Latham, who spoke to *Lawyers Weekly* in September, the recent merger between Blake Dawson and Ashurst put the spotlight on the future of national firms in Australia.

“What looked like a trend on the international global side is starting to look like a tsunami,” he said. “The Blakes and Ashurst merger will put additional pressure on the other big national firms to determine what their international strategy is.”

Recognising that some firms will aim to differentiate themselves from those firms taking the global path, Chisholm says those firms need to have a very strong alternative strategy.

“There is certainly room for focused, strong firms that just concentrate on their own market,” he says, “but if you’re not well connected or networked, then you’d better be pretty good at what you do.”

In contrast, Allens Arthur Robinson partner Paul Quinn told *Lawyers Weekly* in September this year that the global firms have not had the huge impact the industry was anticipating.

“We have not seen a significant impact from Allen & Overy or Clifford Chance in Australia because they don’t have the scale that we have,” said Quinn. “In Australia, we don’t see them as a significant threat yet.”

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“

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JOHN CHISHOLM, CONSULTANT, JOHN CHISHOLM CONSULTING

Similarly, for Corrs Chambers Westgarth chief executive officer John Denton, the threat of partners being lured from national to global firms is of no concern.

“[Global firms] are not a great concern for me in terms of recruitment because we haven't actually seen a lot of that luring of top partners away,” he told *Lawyers Weekly* last month. “It's not a priority concern for me at all.”



Shortage of lawyers in rural, regional and remote Australia

Attracting and retaining lawyers in rural, regional and remote (RRR) Australia has been an issue confronting the country's legal profession for some time.

The LCA's 2009 RRR Area Lawyers Survey revealed that RRR law firms and community legal centres are unable to find suitable lawyers to fill vacancies and that the problem will worsen in the next five to 10 years as experienced country lawyers retire.

But despite the efforts of the Commonwealth Government and organisations such as the LCA and the states' law societies, the recruitment of lawyers into RRR areas remains a huge issue for the profession and a threat to the sustainability of regional legal practices.

“It is certainly a challenge that needs to be addressed and if we don't address the challenge of getting more people out there, [law firm owners] are getting to the point where they'll retire and won't have anyone to take over their firm,” says Ward.



No-one to take the reins

Closely linked to the issue of retaining lawyers

in RRR areas is the lack of succession planning amongst law firms across the country – an issue that continually arises as a key threat to the sustainability of legal practices.

Despite talk in recent years about succession planning and the elements required to implement an effective business strategy, a number of law firms and sole practitioners still fail to recognise the importance of planning for the evolution of their business and the ongoing effort that is required to ensure its longevity.

“Every firm I work for, succession planning is high on the list,” says Chisholm. “More than 10 per cent of private practice lawyers are over 60 [years old] and more than 30 per cent are over 50. I think it's a huge issue, [aggravated] by the fact that we've still got too many people leaving the profession by the time they get to third or fifth year.”

Similarly, partner at business advisory firm Grant Thornton, Bill Shew, says succession “is absolutely a risk for practices, given the changing dynamic of individuals”.

“Younger partners don't have the same mindset as older partners and what they're willing to step into is not what partners used to [step into] 10 years ago,” he says.



Lack of innovation

Underlying the number of challenges facing the legal profession in 2012 is a lack of innovation amongst Australian law firms.

According to Chisholm, one of the greatest risks for law firms is complacency and inertia, and a lack of innovation.

“I haven't been into a law firm that doesn't say that they're innovative on their website. Some firms genuinely are but, for most, what we think in the profession is innovative, other industries look at us and go, ‘What? You're kidding,’” he says.

“A lot of innovation we're seeing is unfortunately coming from people outside the law. The disruptors to our profession are non-law firms. [We must] realise that one of the biggest threats to private law firms is

competition from non-lawyers or non-law firms.”

Chisholm says the legal profession needs to stop dividing its business from others in ‘legal’ and ‘non-legal’ terms, and says it could learn from the accounting profession, which long before the legal profession differentiated itself and established consulting businesses.

“Accounting firms thought outside the square. We still, at times, just think we're lawyers. I think the value law firms add is their business skills or being able to give commercial advice. Legal skills are just one little part of it really. Many organisations can do that and you don't have to be a lawyer. I think that's a real threat.”

While he says law firms must innovate to survive, Chisholm recognises that innovation is not easy within the legal profession as it is now.

“We penalise innovation and penalise creativity, and we reward command and control,” he says. “Most firms don't reward innovation and it's a big risk.”



Losing relevance

Coinciding with the lack of innovation amongst the profession is the risk that the relevance of some firms will disappear unless they differentiate themselves and specialise.

“If a practice remains all things to all people, then their relevance can be called into question when their peers around them are becoming specialists,” says Shew. “Clients, certainly the larger ones, are just as likely now to buy a certain service from one firm and another service from another ... Not having specialisation puts the practice at risk in terms of their relevance to their market.”

Chisholm agrees and says generalist, undifferentiated, full-service firms are “dying, if not dead”.

“The trouble is, in our profession, too many firms go for anything that moves,” he says, noting the ‘I have never met a billable hour I don't like’ mentality amongst law firms.

“Smart firms have a focused strategy and stick to it.” **LW**