

A man in a dark suit and tie stands in a library of law books. He is holding a folder and looking towards the camera. The shelves behind him are filled with numerous red-bound law books, some with gold lettering on the spines.

# 'There's a potential conflict between the duty to the Court and the client on one hand and the duty to shareholders on the other'

The introduction of multi-disciplinary practices to Australia's legal landscape has yet to lead to the major overhaul in the sector that some industry experts predicted. But it's only a question of time, says Davies Collison Cave's **Rodney DeBoos** →



As law firms in the UK begin to prepare for the industry changes that will result from the Legal Services Act in 2010, many are looking to the legal landscape in Australia for answers as to how market deregulation will transform their practices in the coming years. Some Australian states have allowed the creation of alternative business structures and incorporated practices since early 2000. But Rodney DeBoos, partner in the commercial division of award-winning intellectual property (IP) firm Davies Collison Cave, says that such business practices are still playing only a minor role in the country.

'It's true that Australia has seen a gradual corporatisation in the way that legal services are provided,' he says. 'But more than anything else this has tended to result in the emergence of larger firms. Even mid-size firms these days have offices overseas, and that simply wasn't the case when I started out.' In fact, before joining Davies Collison Cave, DeBoos ran his own IP boutique, and was in-house counsel at Imperial Chemical Industry in the UK and the ICI Group of Companies before that.

DeBoos says there's also been a tangible rise in the mobility of staff between firms. 'These days it's incredibly easy to move between firms, even at partner level,' says DeBoos. That's why it's not unusual to see whole swathes of employees defect to other firms as career and market conditions dictate.

'Of course, all law firms are keen to retain their employees and the experience and capabilities of these people, particularly when they have expended so much effort training them. But mobility in the sector, both on a national and international scale, is now very much part of the culture.' He adds that he doubts that will change even in the current climate.

### Upwardly mobile

Most law firms in Australia are currently looking at cost-cutting measures in their practices, but DeBoos says that comparatively few are actually letting staff go at present. That is not to say, however, that Australia's legal sector isn't feeling the pinch. 'Of course, there are large firms that are involved in large corporate projects that clients have

chosen to defer due to current economic concerns,' he says. 'And there is concern as to where all this will end. But my impression talking to firms in the UK is that the level of optimism is higher here, and there is some suggestion that Australia will be more insulated from the full impact of the global recession; although whether that turns out to be justified only time will tell.'

DeBoos says that the sector is feeling the same pressure as its counterparts elsewhere in the world when it comes to sensitivities about legal costs, although perhaps not on the same scale. 'When I worked in-house, over 20 years ago, we were talking about how best to manage spending on external counsel,' he says. 'We hear about current pressures over in the US, for example, about freezing rates or reducing fees. But the emphasis here is still very much on quality, as long as firms don't exceed pre-approved cost projections, of course.'

DeBoos says that the introduction of alternative business structures to Australia's legal landscape has provided firms with a number of new opportunities, but he says the options

of partnering up with different service providers or of incorporating and listing on the stock exchange have not been widely embraced to date. 'Most law firms still exist on a traditional basis,' he says. 'Even where such partnerships have been formed, they still tend to be run in the same way as other law firms. They are subject to the same ethical rules as the rest of us and are regulated by the same state bodies.'

### New territories

However, DeBoos does expect to see more take-up over time. 'Such structures can provide valuable funds for a firm's growth and development,' he says. 'If you're in the right kind of sector, then it is possible to make it work for you.'

To date, personal injury firm Slater & Gordon is the only Australian firm to have listed on the stock exchange. 'Incorporation allowed Slater & Gordon to raise money to acquire other, smaller firms and it has grown quickly as a result,' says DeBoos. 'But it is a firm that is heavily involved in class action litigation, which is expensive to run. In such cases, incorporation can provide

firms with a new avenue with which to raise additional funds, but it may not suit the operation of many other law firms.'

DeBoos says that the issues facing the UK legal sector in this regard are similar to those still being experienced in Australia. 'The listing of law practices on the stock exchange raises the potential conflict between the duty to the Court and the client on one hand and the duty to shareholders of a company on the other. The Legal Profession Act requires the former while the Corporations Act requires the latter. While this duty arises in any situation involving an incorporated legal practice, it is a much more sensitive issue where the shareholders are not the legal practitioners involved in the practice, but investors and members of the public.'

However, DeBoos says that this can easily be managed or legislated for. 'The Legal Profession Acts in Victoria and New South Wales, for example, provide for regulations to displace certain provisions of the Corporations Act,' he says. 'Similarly, in the listing documents filed by Slater & Gordon, the company amended its constitution so that the company's duties to the Court prevailed over all other duties and the company's duty to its clients prevailed over its duty to shareholders. However, the extent to which this displaces the duties imposed under the Corporations Act remains to be seen.'

There are also tricky questions that need to be addressed at partnership level. 'Incorporation gives partners the opportunity to cash out of the business at what could be its point of highest value. That might mean that the principals who take advantage early could leave no value in the listed company for those who stay on,' he says. 'Similarly, firms would need to weigh up the likelihood of unwanted takeovers. Incorporation makes it much easier for a third party to acquire control of a law firm. That could mean that Australian firms could become ripe takeover targets for foreign firms that want an easy way into the market.'

But Slater & Gordon has shown that such threats can easily be managed and accounted for. 'The legal sector is still very much a conservative industry,' says DeBoos. 'But, while I'm sure that Slater & Gordon's decision to list would have

raised eyebrows in some areas, that isn't to say that other firms haven't considered it. It just hasn't happened yet.'

However, DeBoos says that such changes in the legal sector are also enabling law firms to look at alternative ways of operating with third-party providers. Take, for example, the work that Davies Collison Cave has recently outsourced to CPA Global.

'We'd been looking to develop a precedent system for document management in the firm for many years,' DeBoos says. 'But ongoing client work often meant that our attempts to do so were never quite followed through, so we decided to look at outsourcing it to an external provider as a means to simply get the job done.'

### Gradual changes

On Davies Collison Cave's behalf, CPA Global created a series of standard documents that the law firm could regularly use to manage its transactions. This meant that the firm was able to reduce the time it took to create first drafts for clients and thereby reduce the outbound costs of having to draft them from scratch each time. 'It seemed a sensible and cost-effective thing to do,' says DeBoos.

'Some legal process outsourcing work already goes on in the legal sector in Australia in respect to automated functions such as renewals or e-discovery document preparation,' explains DeBoos, although he thinks that the service is only now building up steam. 'I suspect that it would be a natural progression to move from this to the outsourcing of other elements, for example, the production of draft agreements. This is particularly helpful when you consider that offshore services can also ensure an overnight turnaround.'

'The Australian legal industry is going through a lot of changes at the moment, particularly those being imposed by regulatory regimes,' he adds. 'We're under a high level of scrutiny from external ombudsmen and imposed standards, partly because of the changes in the way that we provide our services.'

'But there is also a gradual shift-change in the way that legal services operate in the country,' DeBoos says. 'And that can only be a good thing.'