

NEW LIFE IN-HOUSE

The legal departments of some of Australia's largest organisations are seeking to re-establish their own relevance and fix some long-term staffing problems. **Angela Priestley** reports

A global recession will always present opportunities for those looking to make the most of a crisis.

For in-house lawyers in Australia, the tail end of the Global Financial Crisis might just be providing the perfect climate to re-establish their own presence within their organisations and seek to address some of their long-term resourcing challenges.

While Australian general counsel may not have made the same level of demands on their external law firms as their counterparts in the US and the UK, where organisations like Rio Tinto and Cisco have moved a significant amount of legal work to fixed fee arrangements, they have taken advantage of the economic downturn to meet other needs – especially their own relevance to the business requirements of their employers.

"The GFC is an opportunity for in-house lawyers to prove their worth," said Chris Bertuch, group general counsel and company secretary for CSR.

It was a comment echoed by in-house lawyers represented on a panel at Naiman Clarke's biannual in-house seminar in Sydney last week. While the panel agreed we have not seen the end of the GFC just yet, and that we still don't know what's around the corner, they spoke of the necessity for in-house teams to

make the most of the renewed interest in understanding business risk and to demonstrate the real value of their services.

"It [The GFC] is an opportunity to make sure we have the right processes in place, but also to demonstrate to our business that the good times won't go on forever," said Bertrech.

CSR was particularly hard hit by the GFC after being exposed to commodity prices and a slowdown in building and construction. Bertrech said his team has harnessed the renewed focus on business risk, compliance and the necessity to understand the cyclical nature of businesses that the GFC has offered.

"It gave us an opportunity to work with the business in a positive way," he said, "and to increase the awareness of business issues."

At Deloitte, general counsel Leslie Moore notes that some of her biggest challenges come in the form of recruiting and retaining the right mix of skills into her team to meet the needs of the business. She cited skills such as an inquisitive nature, ability to be cool, calm and collected in the face of a crisis, good communication skills, an understanding of ethics and a fantastic sense of humour as being particularly important. "This is the set of skills in-house lawyers need to have to be good in-house lawyers," she said.

But with a significant portion of the work-



"The GFC is an opportunity for in-house lawyers to prove their worth"

CHRIS BERTUCH,
GROUP GENERAL
COUNSEL AND
COMPANY
SECRETARY, CSR

force considering a move over the next 12 months in line with a recovering economy, according to recent reports from various recruiters, Moore noted the importance of offering the necessary career plans, training and mentoring programs to assist in retention and to ensure that lawyers don't get bored or frustrated by their work. "During the GFC, people cut back on interesting projects, work can get stale," she said.

Simon Brookes, deputy group general counsel at Telstra, said his organisation also understands the importance of nurturing the skills of lawyers – as well as their interest levels.

He said that at Telstra lawyers have been moved out of the central office and into the field, and encouraged to sit with their business units. "There is no substitute for sitting open plan," he said. "The lawyers enjoy it more."

Brookes also cited the need for in-house



Telstra's competitors. "If we both get it wrong, there will be a winner and a loser and we won't do it next year."

"There is still a role for them [law firms], but the GFC did provide an opportunity to level the playing field. It moved from a sellers market to a buyers market."

Bertruch also said he has sought to realign relationships with external lawyers. "It's not necessarily about how much they are paid, but how they are paid," he said.

John Knox, founder of Advent Lawyers, also noted the emerging selling power of in-house lawyers. "There are alternatives now to the conventional law firm model," he said, pointing out his own "in-sourcing" model that is new to Australia but has been in operation overseas for some time now.

But Michael Bradley, founder of Marque Lawyers, said that in-house lawyers did not need a GFC to realign their relationships with law firms. He believes in-house lawyers have held the balance of power all along and that they just haven't used it to their advantage. "It's always been a buyer's market," he said. "I've spent 20 years [in private practice] obsessing over why people don't want to give us work!"

Bradley said that he has long been surprised by how little in-house counsel have made of their power in the Australian legal market – which is, he believes, one of the most competitive legal markets in the world. "It's there for exploitation," he said.

As much as law firms might resist moving to alternative fee arrangements, Bradley said that they are more than capable of giving up time costing. He used his own firm as an example, stating that with a third of his revenue coming from retainer arrangements and the rest from fixed fees, he "can still afford shoelaces for my children".

If in-house lawyers haven't encountered enough opportunity during the GFC, then Bradley left the Naiman Clarke audience with one final piece of advice: "I encourage you, make life difficult for them [law firms]."

lawyers to demonstrate their value to the business, an ability that is further enabled during a crisis. "We want people to come to us because we add value, not because they need to get sign-off on a piece of paper," he said.

Meanwhile, to a certain extent, Australian in-house lawyers have also used the GFC to renegotiate their panel arrangements with external law firms.

Brookes said that Telstra has sought to maximise the competitive tension law firms suffered at the hands of the GFC to their advantage. In particular, the organisation established a broad strategic arrangement with Gilbert + Tobin to offer the firm a significant chunk of their outsourced legal work.

"It was predicated on the basis that it needed to work for both of us," said Brookes, who noted how the arrangement brought G+T on board, a firm that has traditionally acted for