The Australian Financial Review
Friday 5 February 2010 • www.afr.com

Partners seek brand new day

Jones Day has expanded a lot since it opened up in Sydney, write **Alex Boxsell** and **Hannah Low**.

Chris Ahern: 'The firm tries very, very hard to avoid any encouragement of any of negative behaviour.' Photo: NIC WALKER

The attraction of an international firm with a global network of patent litigation experts prompted Gilbert + Tobin partners Anthony Muratore and Lisa Taliadoras to join Jones Day's partnership last month.

Their move to Jones Day follows the recruitment in September of Freehills partner Philip Hoser, a restructuring and insolvency expert known for his work on the collapses of Lehman Brothers and HIH Insurance.

When Jones Day opened its Sydney office in 1998, its focus was on US-bound capital markets work, similar to the advice given by the Sydney office of Skadden, Arps, Slate, Meagher & Flom.

But since partner-in-charge Chris Ahern joined in 2006 from Corrs Chambers Westgarth, Jones Day has set about building a local practice in its own right.

It has expanded to 25 lawyers and eight partners in its Sydney office, with a focus on mergers and acquisitions, banking and finance, litigation and insolvency.

Muratore is the former head of Freehills' patent litigation group. He worked there for more than 20 years before leaving for Gilbert + Tobin in 2007.

Within a few years, Ahern plans to double the number of lawyers to about 50 and to rival large local firms for a greater share of work from their lucrative corporate client base.

Ahern says a major drawcard for those who have grown used to the partnerships of large local firms is the chance to join a single global equity partnership and genuinely shared list of clients.

"Client origination is always valued but it is not something that is an end in itself," he says. "We don't measure it." Any partner performance "metrics" that encourage individuals to hoard files or clients are strongly discouraged.

Partner remuneration for Jones Day's 100 per cent equity partnership is determined by the firm's global managing partner to maintain a single firm rather than "32 offices, 32 agendas, 700 partners and 700 different businesses", Ahern says. "The firm tries very, very hard to avoid any encouragement of any of the negative behaviour that you sometimes see in firms, including those in Australia."

Jones Day's Sydney office recently advised a group of US private equity consortiums about the acquisition of Macquarie Alliance Group via an $850 million scheme of arrangement, and Japan's Sumitomo Chemical about its $600 million acquisition of a 20 per cent stake in Nufarm.

It also acted for Lehman Brothers in its US bankruptcy proceedings last year, and will represent Lehman's Australian business before the High Court next week, under new partner Hoser.

"Lehman is one of those matters that is so ideally suited to a Jones Day," Ahern says.

The complex financial products at the heart of the matter, and assets, contracts, trustees and issuers all around the world mean the firm "is able to advise on those issues in a single organisation subject to a single benefit of client privilege".

The appeal of a single global network is something other firms, such as Baker & McKenzie, use as a selling point when they are hunting for lateral recruits.

It is also one of the advantages being promoted by the Australian management of Norton Rose, which merged with Deacons this year, and DLA Phillips Fox, although neither firm has integrated to the point of having a single revenue and profit pool, as Jones Day has.

Ahern says he expects other international firms to open offices in Australia in the near future. They will probably include those that put their "toe in the water" with brand agreements short of full integration and others that replicate the Jones Day single-partnership model.

Caution on cost reform

Hannah Low

The NSW Law Reform Commission's review into security for costs orders, following the decision in Rickard Constructions last October, leaves open the possibility for reform in class and representative actions and modifications in respect of appeals.

In Rickard, the High Court held that a third party who funded litigation for an impecunious plaintiff could not be held liable for an adverse costs order.

The national managing partner of the litigation group at Clayton Utz, Stuart Clark, believed the reforms should "acknowledge that in appropriate circumstances the court should order security against an individual and should not be restricted to an impecunious corporation".

It is "outrageous that circumstances could arise where a third party can come in and fund litigation but then avoid any adverse costs order", Mr Clark said.

Striking the balance between access to justice and discouraging unmeritorious claims was a difficult task, said Robert Ishak of William Roberts Lawyers.

"The connection of costs and access to justice ought to be measured carefully so as to ensure that the justice system provides open access for as many people as possible without inviting claims that do not have merit," he said.

Mr Ishak said there ought to be exceptions ordering security "such as the possibility that a litigant in a genuine public interest case could lose their home is a significant deterrent in prosecuting cases".

Preliminary submissions close on February 15.

Tribunal limits 'too restrictive'

James Eyers

Proposed limitations on the information the Australian Competition Tribunal may use to review decisions on infrastructure access are too restrictive and may result in erroneous decisions, the tribunal's president says.

The Trade Practices Amendment (Infrastructure Access) Bill, which is being reviewed by the Senate's economics committee, relates to the access regime for facilities of national significance, such as electricity, water, gas and railways.

The bill would allow the tribunal — which is constituted by a Federal Court judge and two lay members with industry experience and hears appeals from Australian Competition and Consumer Commission arbitrations relating to "declared" facilities — to consider additional information that clarifies what was put before the ACCC but otherwise limits its ability to clarify information or to seek additional information.

The government is seeking to limit merits review to overcome perceptions that appeal processes are too lengthy and costly, which it says may be having an adverse effect on infrastructure investment.

But in a scathing attack on the bill in a recent submission to the committee, tribunal president Ray Finkelstein suggests limiting merits review "will seriously detract from the tribunal's ability to make correct decisions".

"While limited merits review does save time, if the limitations are too strict there is a real risk that it will result in erroneous decision-making," he said. "The consequence of an erroneous decision has the potential to cause significant loss to both individuals and the community as a whole.

"It is important that the tribunal gets its decisions right. In almost all cases, this will require the tribunal being able to seek further information in a flexible and timely manner."

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Justice Finkelstein said that at a minimum, "the tribunal should be able to request any additional information (and not just clarification) directly from the party who provided the information to the original decision-maker" .

Justice Finkelstein said limiting merits review might force the tribunal to assume the existence of facts that no longer existed or to ignore facts that had come into existence since the decision under review was made and that the parties might not have referred all the material facts to the ACCC in the first instance.

The Law Council of Australia says the proposed limits on merits review "are unduly restrictive, could seriously impair the review process and could lead to an incorrect decision".

Justice Finkelstein said that if the government was concerned about costs and delays, it should allow the tribunal to constrain the parties' ability to put forward new evidence in a tribunal hearing.