

# The Blunt Instrument of the Billable Hour



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## **"To neglect non-billable time is to neglect tomorrow"<sup>1</sup>**

Young lawyers today are, more often than not, introduced to time recording and the proverbial "billable unit" on the first day of their careers. The six-minute unit has become so important in many firms that lawyers, both young and old, rarely take the time to question why chargeable time has become the preferred measure of a lawyer's value. But how effective a tool is time?

In a profession that is age old, the move to time based billing is a relatively new phenomenon.<sup>2</sup> The manner in which the practise of law has evolved from that of a noble profession to a business<sup>3</sup> has encouraged the use of the billable unit as a budgeting and management tool. Those in favour of charging clients on the basis of time argue that it provides a means of quantifying work done in an easy and precise manner. When used legitimately and ethically there is no reason why billable time should not form part of the way in which lawyers charge their fees. However, firms in which lawyers are not required to meet time-based budgets are few and far between.

In firms where time-based billing prevails, lawyers often focus entirely upon the amount of billable units that they charge each day to determine their worth. However, the billable unit is but one measure of a good lawyer. What of a lawyer's expertise, knowledge, experience and efficiency? The exclusive focus on the billable unit detracts from the development of these skills, especially in the case of young lawyers.

Onerous time targets hinder the transfer of knowledge from more experienced practitioners to younger lawyers. They discourage a sense of community in law firms, "...of people helping one another unless, of course, there is something of value to record on the timesheet."<sup>4</sup> This may lead young lawyers to find the practise of law a lonely and isolating experience in which a 'my time sheet'

perspective prevails.

Chargeable time targets may also encourage dishonesty in time recording. A recent Sydney legal management consultant firm found that 'bill padding' is widespread in sections of the legal profession because of unrealistic billing targets and unrealistic partner expectations of young lawyers.<sup>5</sup> This is inconsistent with lawyers' over-arching duties of honesty and integrity as an officer of the Court.

In the cut-throat competitive industry that the practise of law has become, it is natural for firms to want to extract a 'return' from their young inexperienced lawyers as quickly as possible. This is achieved by directing lawyers into a specialisation early in their career. In the short term, this enables a young lawyer to produce huge billable hours in narrow practice areas. In the long term however, it limits experience and employability.

Many of the above arguments are beginning to find some currency within the legal profession. For this reason, some firms are now recognising the limitations of using the billable unit as the sole yardstick of achievement.

These firms are implementing substantive and meaningful change in the form of reduced time targets and other key performance indicators, which allow the young lawyer to focus on development of their skills. They should be actively encouraged to participate in continuing legal education, committees and also to learn through observing their more experienced colleagues, without the stress of knowing that with the passing of every unit, they have missed an opportunity to charge a client.

Furthermore, alternate methods of billing are beginning to increase in frequency. One large Australian firm estimates that up to thirty percent of its billing is unrelated to time.<sup>6</sup> Other methods include:

- task-based billing;
- "win-only" fee structures;

- fixed-fee billing where the entire file is considered a single "task"; and
- hybrid billing options, which could include the setting of a cap on total fees.<sup>7</sup>

In light of current trends, firms will be required to find a system of billing and budgeting that is fair to both their employee lawyers and their clients. While the billable unit will undoubtedly remain a necessary evil in modern legal practice, lawyers should not lose sight of the future while focusing on the present. Ultimately, young lawyers should remember that "what you do with your billable time determines your current income, but what you do with your non-billable time determines your future."<sup>8</sup> ■

1 Maister, D., "It's About Time"(1998) *Australian Legal Practice* October 7.

2 The Hon. Justice Kirby, "Billable hours in a Noble Calling" (1996) *Alternative Law Journal* 21(6) 25.

3 Law Council of Australia, (2001) "A Discussion Paper – Challenges for the Legal Profession", 119.

4 Clarke, A. (2001) "Fordist Lawyering in a Post Sony World" unpublished, 1.

5 Priest, M., "Survey Exposes Bill Extortion By Lawyers", *Australian Financial Review* 31 January 2003, 25.

6 Saville, M., "Lawyers pushed into the Furnace" *Sydney Morning Herald*, 20 March 2000, 37.

7 Fisher, L., "The Crude Yardstick of the Billable Hour" (1996) *Australian Law Journal* 70(3) 162.

8 Maister, D., op cit 8.

## **Results of YLJ Opinion Poll:**

**Are timesheets a good method of billing a lawyer's time?**

