

# Legal Affairs

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## Profits up for litigation funders

Alex Boxsell

Hillcrest Litigation Services has become the second listed litigation funder to report strong profit and revenue growth in as many weeks, with the Perth-based company revealing plans to expand to the east coast and consider funding class actions.

Integrated Legal Holdings (ILH), another listed company, which consolidates independent law firms, this week reported a boost to 2009 financial year revenue but a slide in profit, after an impairment charge reduced the value of its legal document publishing business.

Hillcrest's income from ordinary activities rose 28 per cent to \$2.8 million, with profit up 48 per cent to \$1.5 million.

The result follows the 21 per cent rise in profit reported last week by litigation funding market leader IMF Australia. Listed plaintiff firm Slater & Gordon also reported higher revenue and profit last month.

### KEY POINTS

- Net profit for Hillcrest Litigation Services increased 48 per cent.
- The firm is considering expanding to Sydney and Melbourne.
- Litigation funding has few rivals.

Hillcrest's core business is the funding of insolvency matters, which executive chairman and West Australian barrister Alan Van Noort said was the origin of litigation funding in Australia before general commercial and class action matters became popular.

"We started this business four years ago from scratch. We're pretty pleased that in our fourth year we have got a profit of \$1.5 million," he said.

Mr Van Noort said Hillcrest was considering expanding into Sydney and Melbourne, and was investigating its first shareholder class action. It was a mystery why more

competitors had not entered the litigation funding market, Mr Van Noort said, although he acknowledged the barriers to entry of a capital-intensive business, where it could take years for cases to be resolved.

IMF was not planning to make life easy for new entrants in the market. Managing director Hugh McLernon wrote in the IMF annual report, released last month, that the funder had collected almost \$750 million for its clients, a figure that "tends to indicate the scale of our business compared to that of our competitors".

He said IMF would "move aggressively to ensure that all other funders are either licensed, exempted or unable to carry on business in this country".

Hillcrest has an exemption from having a licence from the Australian Securities and Investments Commission, Mr Van Noort said.

ILH has about 50 fee-earners, including 17 principals, working at

firms Talbot Olivier in Perth and Argyle Lawyers in Sydney and Melbourne.

The firms provide broad commercial legal services for small to medium enterprises and wealthy clients. While its operating revenue rose 59 per cent to nearly \$17 million, ILH was forced to recognise an impairment charge of \$450,000 as part of a write-down for its internet-based customised legal document publishing and information service, Law Central.

ILH managing director Graeme Fowler said the past financial year brought "tough trading conditions" and "in some of our specialist areas, like financial services, things were a bit tougher".

But he said he was confident Law Central and the broader business would perform strongly when the economy recovered and that a fall in net profit, excluding the impairment charge, of 41 per cent to \$1.04 million was still a healthy result in these conditions.

## Log your calls while on the move

Alex Boxsell

The economic downturn may have taken some of the fury out of the tyranny of the billable hour, but lawyers can now reclaim a fraction of their former power with new mobile device software that allows them to bill on the run.

It was NSW Chief Justice Jim Spigelman who said in a speech at the 14th Lionel Murphy Memorial Lecture in 2000 that "the comparatively recent emergence of the tyranny of billable hours and the ubiquity of time-based charging — a system which rewards the least efficient — has created real difficulties for the maintenance of an ethic of service".

Things have not improved much in the past decade. This May, Victorian Attorney-General Robert Hulls referred to the "tyranny of the billable hour" when announcing a package of reforms to ensure more responsible use of the civil justice system. "The way costs are imposed currently rewards inefficiency, offers no financial incentive to settle matters, and I think that is totally inappropriate," Mr Hulls said.

Large companies, such as Qantas and Telstra, increasingly agree. While those with enough bargaining power have long been able to insist on fixed-fee arrangements, other companies have used the downturn to push their case for alternatives to the much maligned billable hour.

While the critics are many, law firms have commonly responded by acknowledging charging in six-minute blocks has its drawbacks, but no better alternative has ever been devised. The system also offers general counsel a "high-water mark" against which they can argue for a discount.

And so the practice continues. The problem is that time recording is labour intensive and those lawyers taking increasing numbers of calls out of the office are often too busy or absentminded to keep accurate records. This is why Australian software company Stratatel launched softlog.mobile, allowing lawyers to log the duration and cost of calls on their mobile phones through a program that integrates with their firm's billing system.

Softlog.mobile chief executive Matt Parry said market research showed lawyers were keen to find a better way to record billable units when taking calls in court, at home or out on the weekend, along with billing clients for the cost of calling them while out of the office.

The product's slogan is "make every minute pay". "Each time you turn on your phone or send off a message it is updating your most recent 20 matters on a drop-down list that is automatically going to come up when you hang up on an incoming or outgoing call," he said.

The product can be used on BlackBerry and Nokia phones, and Mr Parry said it improved the accuracy of time recording and allowed for greater transparency, as lawyers were able to present their clients with a detailed, itemised bill.

Softlog.mobile is not yet iPhone compatible, but there is a range of iPhone applications, or "apps" that also cover the lawyer market. One such program, Timewerks, tracks several projects and clients, and logs time-sheet details.

## Move to help refugees hit by rising waters

A framework for a clear response to the impact of climate change is taking shape, writes James Eyers.

In the book *Climate Wars*, journalist Gwynne Dyer examines the future impact of climate change through the prism of national security: India and Pakistan come to the brink of nuclear war over water supplies, while the European Union is brought to an end after an influx of refugees from North Africa, struck by famine.

While some may question whether Dyer's futurism will play out, consensus is forming that one of the most dramatic effects from rising sea levels and more frequent storms will be the displacement of millions of people.

Norman Myers, a British academic who has acted as a senior adviser to the World Bank, the White House and the United Nations, estimates that by 2050, as many as 200 million people will be displaced by the effects of climate change.

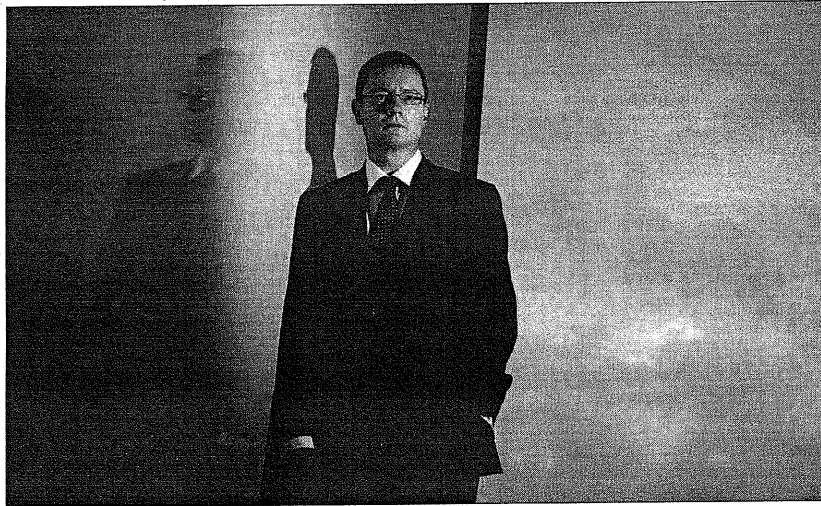
But world governments do not appear to have noticed the pending humanitarian catastrophe. Ahead of the climate change meeting in Copenhagen in December, they are focused on emission targets and the mechanisms that should be established to achieve such goals.

But environmental and international lawyers increasingly say the climate change debate is too narrow and more planning is required to prepare for its effects.

Many of those who will be displaced live in the Pacific Islands and in south and east Asia, making this a problem Australia will have to address.

David Freestone, former deputy general counsel of the World Bank, says people displaced by climate change "is going to be a serious issue" and that the Intergovernmental Panel on Climate Change has also talked about 200 million needing to move if action is not taken to keep temperatures within 2 degrees of current levels.

"There are water issues, people living in very low-lying areas in Bangladesh and in the Mekong. And that is going to be an issue for Australia because Australia is seen



David Hodgkinson has proposed a Convention for Persons Displaced by Climate Change.

Photo: ROSS SWANBOROUGH

as an important leader in the Pacific," Freestone says.

At the Pacific Islands Forum last month, leaders from the region expressed concern about the pending crisis and while the Australian government said it would work with the Pacific Islands on issues of adaptation, including building infrastructure, there seems to be little alarm about how such a mass of people will be relocated, either internally or internationally.

There is no mechanism in international law to deal with people displaced by climate change. Although they are often referred to as "climate change refugees", they are afforded no protection under the 1951 Convention Relating to the Status of Refugees, since the international legal definition of refugee requires individuals to already be outside their country of origin.

So David Hodgkinson, a special counsel with Clayton Utz and editor of the new online service Climate Change Law and Policy in Australia, has proposed a Convention for Persons Displaced by Climate Change.

"We believe we have a sufficient

tly detailed outline to use as a basis for more significant discussion at the level where that discussion really needs to be taking place," the Perth-based Hodgkinson says.

The starting point of the convention is the creation of a research program, to be carried out by the countries that sign up. The results would then be discussed in an international forum, allowing countries to plan and

**Hundreds of millions of people, many in our region, will be displaced.**

Clayton Utz's David Hodgkinson

respond to the impacts of climate change. Hodgkinson has also proposed specific matters that the convention would address, including the long-term resettlement of displaced persons, either internally within affected countries (the priority) or internationally.

"Climate change refugees represent a particular category of persons which international mechanisms aren't designed to deal with," Hodgkinson

says. "Hopefully, this framework will address the problem rather more quickly and effectively than dealing with existing refugee conventions."

The convention proposal has been picked up in the most recent issue of the influential *Harvard Environmental Law Review*, in an article titled "Confronting a Rising Tide".

Hodgkinson and Tess Burton, a human rights lawyer at the University of Western Australia, who has also worked on the convention, presented their ideas this year at the Grantham Research Institute on Climate Change at the London School of Economics. Hodgkinson says he fielded two hours of questions after the presentation. The two will also discuss their proposal at a side event to the main Copenhagen conference in December.

Hodgkinson says the issue of refugees "is not an immediate problem — a little like climate change in general".

"But it soon will become a major issue."

"The scale is quite remarkable — hundreds of millions of people, many in our region, will be displaced."