

## Are your timesheets giving away client secrets?

### ***Protecting confidentiality - Are we waiving privilege when providing an itemised bill?***

Drawing a bill for release to a hostile party (or anyone other than the client, for that matter) has always been a balancing act.

As a general proposition, entries in a client's bill are not privileged. If privileged information is included, the offending entries must be redacted.

For example, when a *Third Party Payer* requests an itemised invoice pursuant to s 332 of the *Legal Profession Act 2007* (Qld) any document generated using raw data merged from time recording software must be scrutinized carefully to ensure that it does not disclose privileged material. (For other perils inherent in signing automatically generated invoices see the long running *Keddies* saga in NSW).<sup>1</sup>

To prevent privileged material slipping through the net, it is important to give some consideration to the format in which time is recorded in the first place – and the balance is not an easy one.

It is not just the information written in the bill which could be exposed. An overly detailed description of the nature of an attendance or document being charged for (Counsel's advice, for example) may lead to derivative waiver in the privilege of such underlying document.

Courts are reluctant to readily find derivative waiver, but it has happened, and in such cases the consequences may be significant.<sup>2</sup>

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<sup>1</sup> *Legal Services Commission v Scroope* [2012] NSWADT 107.

<sup>2</sup> *Players Pty Ltd (In liq) (receivers appointed) & Ors v Clone Pty Ltd* (2013) 115 SASCFC 25.