

MUNRO LEYS

HOT TOPICS 2017

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MUNRO LEYS





Saturday April 1st
You'd be a fool not to!

Register:
suvachallenge.org

RANKINGS, REGULATIONS & REFORMS

Glenis Yee, Partner

Emily King, Associate

Where this talk is going

- Business environment (the perennial challenge)
- (Relevant) new laws
- New Companies Act – learning to love it
- Looking ahead

Business environment

(RBF Economic Update):

- consumption strong
- credit slowdown
- 5.3 months of foreign reserves
- moderate growth forecast - 3.6% (tourism, gold, garments and electricity)
- TC Winston – recovery efforts slow

What we're seeing:

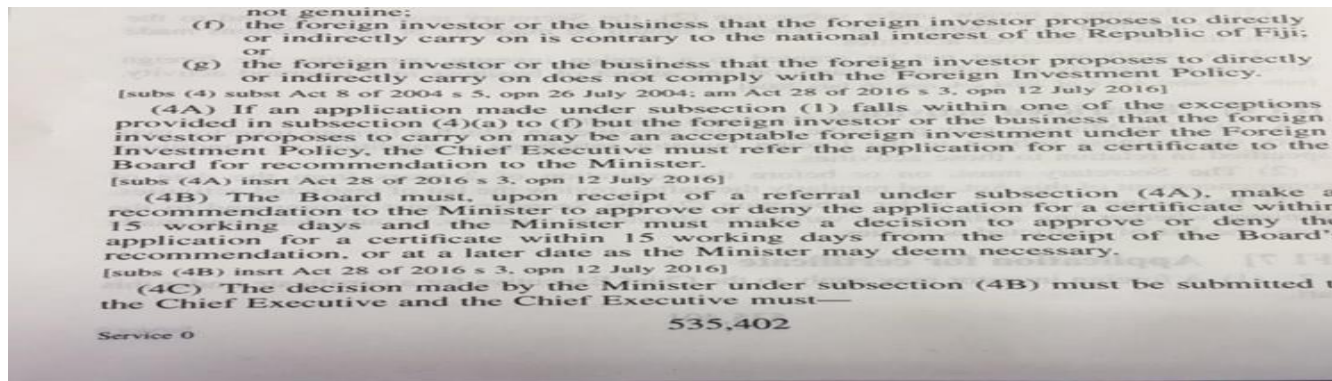
- stronger interest from the US in audio-visual sector (*Survivor Fiji* is back! Others are scouting)
- collapsing market for foreign-owned residential lots (Land Sales Amendment Act)
- FEA part-privatisation in process
- significant bank financing transactions appear light
- continuing challenges in regulatory environment (2 months to register foreign-owned company, regulatory confusion over how use of name “Fiji”, Lands Dept, FRCA)

2016 – 34 new laws

- **Foreign Investment Act**
 - new rules on approval for shareholding changes
 - foreign investors must comply with “Foreign Investment Policy”
- **Land Sales Amendment Act/Regulations**
 - extensions to build houses after 31 December 2016 deadline
- **Fair Reporting of Credit Regulations** (following on from the FRC “win for all Fijians” Act) – sets up application process for new credit agencies
[they haven’t exactly rushed in]

Foreign Investment (Budget Amendment) Act 2015

- there will be a “Foreign Investment Policy” [it just doesn’t exist yet]
- investor applications must be “acceptable” under the Foreign Investment Policy
- Procedure if the investment is thought to be “unacceptable”:



- new s. 11 – requires consent for change in ownership of foreign investor within 20 days. Penalty of \$50,000 for non-compliance. Doubles up on RBF consent process in Exchange Control Act

RESULT: Foreign investment regulation process will get slower
 (and down the rankings we’ll go...)

Land Sales (Budget Amendment) Act 2016

- Non-residents can now apply for extension to build their \$250k houses after the 31 December 2016 deadline:
 - by completing a 7-page application form
 - annexing building consents, contracts, last 3 years' financials (!) [and of course “certified copy of passport bio-data page...”]
 - applications to be considered by “Review Committee” (5 Permanent Secretaries (??!!))
- Clients strongly resisted participating – refused to disclose financials
- First Review Committee sitting was 13 February 2017. Process was confused – Committee only permitted legal representation at the last minute. Next meeting (?)...
- Confusion continues – identification and location of non-residents, definition of possession and ownership, what constitutes a “transfer”...

2017 – 9 new laws/regs (so far)

- **Financial Transactions Reporting (Amendment) Act and Regulations**
 - strict liability of “directors, controllers of officers” of banks/financial institutions for non-compliance with Act, Regulations and FIU directives
 - means every director/senior officer of every bank/financial institution is personally liable for any breach of anti-money laundering laws by employees:
 - whether s/he approved them or not
 - whether s/he knew about them or not

This law is change unique to Fiji (on our research):

[we're world-leading!]

2017 – 9 new laws/regs (so far)

Financial Transactions Reporting (Amendment) Act and Regulations

Breach of Act or Regs

- Fine not exceeding \$30,000 apply to individuals for non-compliance or 5 years imprisonment or both **on conviction**
- Fine not exceeding \$150,000 for non-compliant bodies corporate **on conviction**

Failure to follow FIU

- As above
- Regardless FIU can fine upto \$5,000 per day for failure to follow “*instruction, guideline or directive*”

2017 – new laws/regs (2)

Electronic Transactions Act 2008 (and Amendment Act 2017)

- began life as the *Electronic Transactions Promulgation 2008* (never came into force)
- implements United Nations Convention on the Use of Electronic Communications in International Contracts (2005)
- captures electronic notices, contracts made electronically, stored e-data
- gives legal recognition to electronic documents and makes electronic documents admissible as evidence

Overall effect:

- improves your chances of enforcing contracts entered into electronically
- in theory means you can rely on electronic (not paper) data as evidence

but

- no regulations yet [surprise!]
- expect learning through legal system (including bureaucracy) to be slow
- ensure (for now) you have old-fashioned paper evidence where you can

Business environment www.doingbusiness.org

	DB 2017 Rank	DB 2016 Rank	Change in Rank
Overall	97	84	-13
<u>Starting a Business</u>	159	166	+7
<u>Dealing with Construction Permits</u>	101	100	-1
<u>Registering Property</u>	55	55	No change
<u>Getting Credit</u>	157	78	-79
			["victory for all Fijians"]
<u>Protecting Minority Investors</u>	106	108	+2
<u>Paying Taxes</u>	110	108	-2
<u>Trading across Borders</u>	75	76	+1
<u>Enforcing Contracts</u>	86	84	-2
<u>Resolving Insolvency</u>	90	87	-3

Companies Act 2015 – update!

We're all still learning (especially the Companies Office)



Fiji lags behind

Absence of a fully functional online company's application

By MANASA KALOUNIVITI

ACTING Registrar of Companies, Ashley Sharma says, Fiji's online business registry is still behind compared with most countries in the region.

Ms Sharma revealed this during Fiji's presentation at the Asian Development Bank's (ADB) Pacific Business Registries workshop in Sydney last week.

"What we have right now is not a very advanced system like most of the countries in the Pacific.

"They have a fully functional online company's application whereby you can register for a company and search for information. Fiji does not have that at the moment," she said.

"We do not have a fully functional companies online application and due to that foreign investors are usually deprived from basic information they require."

She said the Fiji companies office was working towards trying to develop a mechanism whereby information was equally available to foreign investors.

"The registry is not advanced as it should be," Ms Sharma said.

She said despite the challenges, the Registrar of Companies had registered about 24,000 companies in Fiji since 2007.

"Foreign companies 27, foreign branches one (1), companies limited by guarantee seven (7), individual business names 105,400 and limited liability companies we have registered about 23,000," she said.

"We have been liaising back and forth with our developers and we should be able to have that rolled out within a couple of months."

She said what they had worked on for now was just registration, and reservation.

Fiji's Acting Registrar of Companies, Ashley Sharma during her presentation at the workshop in Sydney. Picture: SUPPLIED

The searches and other functions associated with the registry would be rolled out later on in the year but this depended on the developers and how quickly they could deliver, he said.

She also shared on the challenges of implementing the new Companies Act 2015, which came into effect on January 1, 2016.

"The aim of the Act is to introduce modern business practices and streamline regulation within Fiji while also improving corporate governance practices to ensure that company directors and company officers are more accountable for their conduct.

"The Act regulates companies operating in Fiji, impacting both local and foreign corporations," Ms Sharma said.

She said attempts to meet an international and regional standard was still one of the challenges faced by the Fiji Registrar of Companies' registry.

Companies Act 2015 – update!

Issues we've had:

- **Annual reporting requirements** – to file or not to file?
- **Company names** – [“Fiji” allowed, “Fiji” not allowed, “Fiji” in brackets allowed... “awaiting advice from the Solicitor-General...”]
- **Tick-boxes on standard forms** – are they in or are they out?
- **Non-compliance notices** – pouring out in random fashion (compliant companies have filed docs but they haven't reached Companies Office file yet)
- “Facilitation” from Investment Fiji meant 2 months to set up one foreign investor company

Confusion remains over annual reporting requirements:

Company Type	Requirements
Small Private	None. Exception – IF directed it must prepare Pro forma/Financial Statements
Medium Private	Proforma Financial Statement Note – IF directed it must prepare Financial Statements.
Large Private / Public	Annual Report containing Financial Statements, Directors’ Report, and an Auditors’ Report for each Financial Year
Foreign (branch)	Determined by home jurisdiction. Exception – if Registrar directs

31 December 2016

Financial Reports can be prepared under Companies Act

Financial Reports – new requirements (refer table)



Annual Returns

**Annual Reports
Pro forma Financial Statements
*Audited**

Companies Act 2015

Solvency resolutions

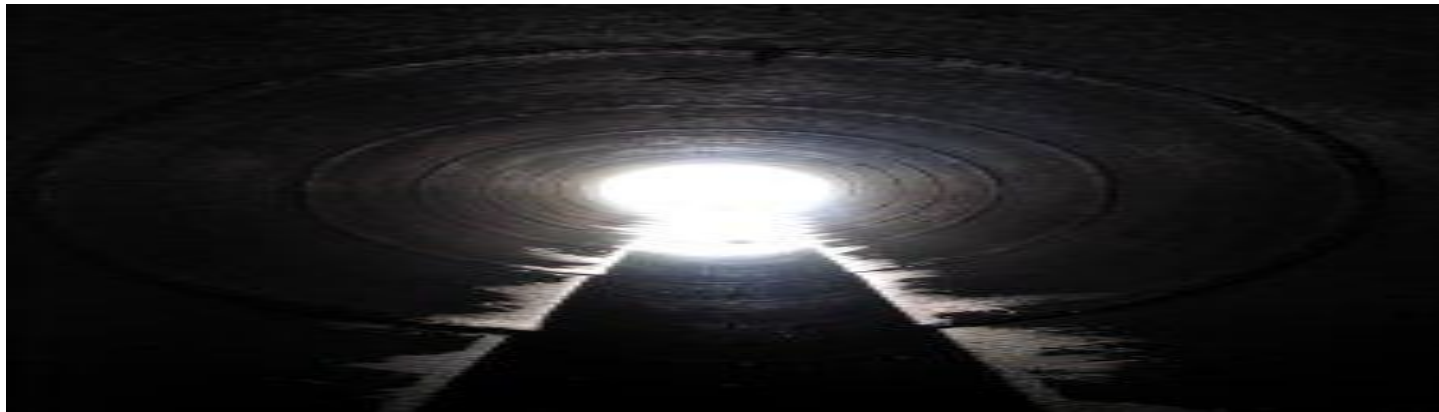
- Directors must pass solvency resolution within 2 months of financial year-end (s.408)
- Solvency = able to pay debts as they fall due
- If solvent – pass resolution and minute it
- If not solvent – pass “negative solvency resolution” and file it within 7 days of due date
- If you missed the date – required to file within same 7 days
- If you missed by > 7 days, maximum penalty of F\$300
- We may see many backdated solvency resolutions instead (!)

Companies Act 2015

Common seals and signing company documents – 1

- A company is no longer required to have a common seal
- Companies Act (s.53) now allows a company to execute documents via:
 - two directors
 - director and secretary
 - sole director (if same person is sole director and secretary of the company)
- Generally, you can assume
 - those signatories have authority to bind the company.
 - a person “held out” by the company as one of its officers is an officer
- But not entitled to rely on these assumptions if you “knew or suspected” the assumptions were incorrect
- So – grey areas if a company tries to escape a contract by saying you “knew or ought to have known or suspected these assumptions were wrong”
- Old rules about execution under common seal – ie evidence of authority – probably still apply
- If in doubt and company has common seal, ask for execution under seal.

Looking ahead



- Consumer Credit Act reform
- Arbitration Act reform
- Electricity sector reform

Draft Consumer Credit Bill

- New Bill circulated 23 January - revised version circulated yesterday
- Small/micro enterprises (t/o below F\$100k) intended to be “consumers” (therefore extended disclosure requirements for them)
- therefore some credit contracts for business use will be covered [different from current law, banks will need to revise all their loan documents]
- All *credit providers* to be registered – including hire purchase providers
- Establishes Consumer Credit Principles – treating consumers fairly, transparency and suitability of products
- Supervisory Authorities – Commerce Commission and RBF
- CommComm to have right to stop credit providers from offering specific credit facilities
- Regulations – yet to come
- “Stakeholder consultations” 14 March 2017 - 5 days after revised draft[!]

Arbitration reform

- New ADB initiative to make international arbitration effective
- Fiji signed NY Convention (on enforcement of international arbitral awards) in 2010 but has no local law to make it work
- Intention is to rewrite Arbitration Act (long overdue) to include mechanisms for international arbitration
- International arbitration issues rare in Fiji
- But improving Fiji arbitration processes would be good (to avoid struggling court system)

WATCH THIS SPACE

(and litigators' presentation!)

Electricity Bill No. 7/2017

- Repeals Electricity Act and Regulations
- FEA business will be transferred to a Company [intention is to part-privatise]
- New “Regulator” to ensure transparency of pricing/commercial return to the Company, etc [current intention – Commerce Commission]
- Third parties to be licensed to generate, transmit and supply electricity (as now)
- Establishes **Public Electricity Supply Code(?)**
- Imposes penalties of \$500,000, imprisonment of 10 years or both

So, overall...

- Economy holding up for now?
- Regulatory burdens – foreign investment, Land Sales, FTR, etc – increasing. More complexity, not less
- Companies Act processes still challenging
- Reform for electricity sector, consumer credit, arbitration – progress?
- Picture remains confusing...

**But if you want confused - it
could be worse...**

<https://youtu.be/WotiVvyS1yk>

**Debts, distributions, deposits
(and disbelief 🤔) – the 2017
tax update**

**Rajnil Krishna
(Senior Associate)**

COVERING

Law changes, recent tax cases and “what’s hot at FRCA” on

- new Practice Statements/draft Practice Statements
- taxation of dividends (“deemed dividends”)
- forgiven debts
- forfeited deposits
- VAT on residential accommodation
- new VAT rules for zero-rating of exports
- NRWT relating to professional services
- Branch Profit Remittance – Additional Normal Tax (BPRANT)
- the importance of following the challenge process under TAD
- FRCA’s whistle-blower policy

Practice Statements are pouring out!

Practice Statements

- documents issued by FRCA providing guidance on how FRCA interprets and will apply a particular tax measure
- not legal documents (ie a Court may disagree [and we often do])
- helpful to understand how FRCA may think in a particular situation
- found on FRCA's website www.frca.org
- not always models of clarity (!)
- over 2016/17, 29 PSs issued, 7 in draft (for consultation before being finalised)

2016/17 PSs issued

Ref No.	Practice Statements	Ref No.	Practice Statements
1/2016	Imposition and Remission of Penalties	28/2016	Advance Tax for Sole traders and other persons
3/2016	Administration of Export Income Deduction	32/2016	Tax Compliance Certificate
6/2016	Administration of Objections to Tax Decisions	33/2016	Waiver of Tax during Amnesty period
7/2016	Amendments to Tax Returns & Assessments	34/2016	Capital Gains Tax
8/2016	Fringe Benefit Tax	37/2016	VAT Refunds on New Dwelling House
9/2016	Service Turnover Tax & Environment Levy	38/2016	VAT on Sale of a Going Concern
9/2016	Service Turnover Tax & Environment Levy	40/2016	1% Transitional Tax
11/2016	Advance Tax for Companies	41/2016	Commercial Debt Forgiven
12/2016	Carry Forward of Losses	42/2016	Employment Taxation Scheme (ETS)
13/2016	Social Responsibility Tax	44/2016	Taxation of Income from Forfeited Deposits and instalments on cancelled sales of Capital Assets
14/2016	Telecommunication Levy	53/2017	Approved Fund
15/2016	Credit Card Levy	29/2017	5% Withholding Tax
21/2016	Third Party Insurance Levy	47/2017	Foreign Tax Credit
22/2016	Deductibility of Entertainment Expenses	50/2017	Methods of Income Tax Accounting
26/2016	Stamp Duty		

2016/17 PSs in draft

Ref No.	Practice Statements
56/2017	Produce Supplier
49/2016	Disposal of Depreciable Assets
48/2016	Depreciation
39/2016	Taxation of Dividends
45/2016	Zero-rating of Exports
46/2016	VAT on supplies of Residential Accommodation
20/2016	Anti- Avoidance Provision

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5% Provisional Tax

Law:

To be withheld from *payments under a contract for services*.

FRCA's Practice Statement:

Applies when:

- the parties have a written agreement for the supply of services or payment of commissions [purchase order ≠ formal agreement]
- the person acquiring the service is a business

(Does not apply to letters of engagement and service agreements with accountants or lawyers.)

[bears no relationship to the law] 

If a contract covers both supply of services and goods PT applies on the total amount (including reimbursed expenses).

Credit for PT deducted:

- against tax due for the tax year in which the tax was withheld (s. 124(2), ITA 2015).

DIVIDENDS – GENERALLY

Govt's thinking seems to be

- we won't move from 20% company tax rate, just tax shareholders instead [increases the “real” corporate tax rate]
- every dollar of profit is cash – if you don't distribute it, we'll pretend you did so we can tax it (unless you “invest” it)
- “investment” = spending on “hard” assets (office equipment, plant/equipment)

Consequences are:

- potential cash crunches in profit-rich/cash-poor years
- arguments over which profits are distributed
- arguments over what is “investment”

DIVIDENDS 2

Where we left off last year

Income Tax Act 2015 originally imposed

- 1% “transitional tax” on balances of retained earnings (2014/2015)
- new withholding tax on dividends distributed
(3% resident, 9% non-resident)
- now earnings of branches credited to head office = dividends
- exemptions [inter-co dividends, SPSE listed cos, etc]

[Note:

- FRCA guidance - no further taxes are now payable on 2014/15 dividends (because 1% transitional tax covered them)
- But that’s not actually written into the law]



DIVIDENDS 3

Then along came deemed dividends

Section 20A [Deemed Dividend], effective 1 August 2016

The net profit after tax of a *resident company* which has not been distributed by the company as dividend by the end of the sixth month following a tax year:

- (a) is deemed to be distributed as a dividend to the shareholders and
- (a) the company is required to pay tax on the deemed dividend as if an actual dividend has been paid to the shareholder (9% dividend withholding tax for non-resident shareholders and 3% dividend withholding tax for resident shareholders)

What does this mean?

DIVIDENDS 4

Deemed dividends for resident companies

- *Resident company =*
 - (a) *a company that is incorporated, formed or settled in Fiji or*
 - (b) *that has any part of its central management and control located in Fiji*
[so not branches]
- so dividend tax applies, whether dividend is actually paid or not
[3% for resident shareholders, 9% for resident shareholders]
- subsidiaries' dividends are also deemed and taxed up → to shareholders of parent
- exemption for *net profit after tax [that] has been or will be reinvested by the resident company for the purposes of maintenance or development of the business of the resident company*

DIVIDENDS 5

“Net profit after tax re-invested”

FRCA says this means [Draft Practice Statement No. 39/2016]

- *current capital projects*
- *future capital projects*

Eg: Construction of a building or replacement of computers

We think it's open to argument:

- *working capital*
- *Any amounts ordinarily treated as investment and liable to depreciation/amortisation*

WATCH THIS SPACE

DIVIDENDS 6

All very easy - what could possibly go wrong?!

Order of distribution

- retained earnings sourced from past years are deemed distributed first
- so after declaring a real dividend (and paying shareholder taxes on it) you could still pay the deemed dividend tax on this year's profits



Income rich, cash poor (?)

- Cash must be found to fund dividends that aren't actually paid (unless shareholders write cheques for tax on dividends they haven't received)



FRCA wants evidence of re-investment

- Ensure your tax advisers know what you're investing in and have evidence
- Arguments are inevitable

Obtaining tax credits (non-residents)

- Timing for obtaining tax credits

DEBTS FORGIVEN

“Forgiveness is the final form of love” – Reinhold Neibuhr

Forgiveness is a taxable event - FRCA

- **s.17 Income Tax Act 2015** [effective Aug 2016] treats as income [to the forgiven party]
 - (f) any commercial debt between associates that is forgiven
- **Forgiven includes when limitation period expires**
- **Debt forgiven before 2016 (or not between “associated entities”)**
 - Matasau Holdings Limited v FRCA [Tax Court, 2016]*
 - “section 11 [of previous Income Tax Act] is wide enough to tax such a gain”
 - no further reasoning [Court ignored a contrary UK authority because “the taxpayer’s first legal argument was that it did not forgive the debt”] 🤔

FORFEITED DEPOSITS

Income Tax Act 2015 [effective 1 August 2016]

- Now includes in gross income *forfeited deposits and instalments on capital assets* (s.14(1)(e))

Pre-2016 (CGT decision) *Southern Horizons S.A. v FRCA [2017]:*

- Challenge to FRCA CGT claim on forfeited deposit for sale of land
- CGT taxed at 10% on ‘gain on disposal’. Court held vendor ‘disposed of a right to land’ [even while cancelling the sale] 🤔

Implications for non-resident sellers of land (who don't pay income tax)

VAT

- Imposed on forfeited deposits since 2010

So presumably a defaulting buyer could get an input credit...☺

VAT on residential accommodation

New law aimed at capturing VAT from landlords earning more than \$100,000 from rental income.

- Excludes from VAT
 - (2) The supply of accommodation in a residential dwelling by way of hire provided it is used predominantly as a place or residence or abode **excluding residential dwelling as specified in paragraph (2A)**.
- So, VAT imposed on this accommodation:
 - (2A).—(1) The supply of accommodation in a residential dwelling by way of hire or rent as a place of residence by a registered person who has an annual gross turnover from such hire or rent that is more than [\$100,000].
- So, whether you pay VAT on your rent doesn't depend on the amount of your rent. It depends on the income of your landlord

VAT ON RESIDENTIAL ACCOMMODATION 2

Implications

For landlords

- VAT = tax on suppliers (landlords) – either absorb VAT or pass on to tenants (s.88)
- Landlords who own residential properties through different legal entities (each below the threshold) will pay no VAT

For tenants

- s.88 means VAT can be passed on even if lease did not specify it
- whether or not you pay VAT is a random occurrence

For (VAT-registered) employers providing staff accommodation

- VAT on rent can be claimed as input credit
- but (remember VAT on employee/fringe benefits) – must account for output VAT on supply of accommodation to staff

New rules: VAT zero-rating of exports

VAT Decree 2nd Schedule amended (from 1 August 2016).

- *a claim for zero-rated supply is only allowed if the Commissioner is satisfied that the export earnings have been remitted to Fiji.*

ie – if Commissioner not “satisfied”, exporters will be assessed for 9% VAT

How FRCA says Commissioner will be “satisfied” [Draft Practice Statement No. 45/2016]:

- initially, a “compliance check” after 6 months of exports [to check that all export proceeds are received]
- export earnings used to purchase raw materials do not have to be brought in [service exporters may also be able to get exemptions for their major costs]
- VAT assessments for shortfalls
- VAT assessments will be “withdrawn” if export earnings come in later
= a lot of needless paperwork, VAT assessments, withdrawn VAT assessments...

NRWT on “professional services”

- Background: Fiji imposes NRWT on “professional services” [...] Different from most countries
(smart prof services providers will “gross up”; others will be surprised)
- Law change [effective 1 August 2016] now catches payments to professional service providers charging for:
 - (a) *accommodation provided or reimbursed;*
 - (b) *airfare;*
 - (c) *transport;*
 - (d) *allowances.*
- So even though professional services provider does not earn this income [hotel or airline or taxi driver does] someone must pay NRWT on it



Employment incentives

(Finally, some good stuff?)

- new s.25A gives Economy Minister powers to regulate employment incentives, including deductions from business income [unusual – Minister can now create tax incentives without going to Parliament]
- Tax deductions now available on:
 - wages paid to first full-time employee
 - apprenticeship in related area of study
 - wages for students employed in related area of study
 - employment of disabled people
 - employees' education fees

Interesting (?) 🤔

tax cases

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BPRANT (Branch Profits Remittance Additional Normal Tax)

- 2008-09 tax. Off the law books now but tax effects may linger for branches
 - Tax lawyer's horror story:
 - law changed 4 times
 - two parts contradicted each other 🤔
 - new law said “don't believe the old law” 🤔 🤔
- but finally:
- (5) Tax shall be based on the profits paid or credited for remittance. Profits refer to the after tax earnings to the extent that the head office does not reinvest such amount to the Fiji branch

BPRANT (2)

Two judgments within two months (which contradict each other):

1. *Life Insurance Corporation of India v FRCA (2016)*

BPRANT is payable if profits are

- (i) paid or
- (ii) credited for remittance.

2. *New India Assurance Company Limited v FRCA (2016)*

- the law doesn't require a remittance to anywhere – payable anyway 🤔
- BPRANT can be charged on earnings that are not reinvested in the branch.

For branches still holding profits earned in 2008-09 – it's not over yet

Courts continue wide approach to profits on land dealings

- Taxpayer subdivided land for his family. Family circumstances changed. He sold commercially (under family members' PoA) (and paid CGT). FRCA then changed its mind and assessed him to income tax. Held to be “dealing in land”.

Taxpayer L

- Farmer engaged in farming business ceased farming and sold his land (held for 30 years). Held to be carrying on a business; profit on sale of farm was taxed as income



Taxpayer S

[second decision (at least) is certainly outside normal understanding of the law on “dealing” in land]

Old Hot Topics lessons still apply:

Get your process right to get your money back

- Appeal from the Decision of the Tax Tribunal. Punja's application against Non-Resident Miscellaneous Withholding Tax (**NRMWT**) refused [This was an additional ground of appeal not in the original objection. Court refused to allow amendment.]

Punja v FRCA (2016)

- Taxpayer assessed to tax (F\$6m). Held meetings with FRCA, received assurances [taxpayer alleges] that issues would be dealt with. No resolution – taxpayer asked FRCA for extension of time to object. FRCA refused. Taxpayer went to Court. Tax Court – no extension.

Sinohydro Corp v FRCA (2016)

Get your legal advice right on process - at the beginning

What's hot at FRCA



What's hot at FRCA

What FRCA says is hot at FRCA

1. Compliance Improvement Strategy (CIS)

Focus will be around the booming Industries which are;

- Mini Van Operators
- Car Dealers
- Hotel Industries
- Private Rentals
- Importers and Exporters
- Hardware and Roofing Iron
- Wholesalers and Retailers


What's hot at FRCA

- Whistleblower policy
 - FRCA currently investigating over 130 cases [FBC News, 26 Jan 2017]
 - Informant rewards [10% of the tax recovered?]
 - Penalties



Conclusion

Tax law developments continue their tendency towards

- the complex
- the confusing
- the crazy (?) 

So learn to love your tax advisers and keep them close ...

[even your accountants]

**THE LITIGATORS’
ROUND-UP
Disclosures, defamation
(and everything else)**

**Nicholas Barnes – Partner
Ronald Singh – Senior Associate**

It's been a boring year for litigation

- Very few cases really advanced big commercial law issues (apart from ours)
- Defamation – minor thrills (!)
- Environmental law – some prospects now that we are taking it seriously
- Some developments in arbitration
- Regulators ever more active – what information do we share with them?

Defamation

Fiji Fashion Week v Emosi Radrodro (fashionistas at war on Facebook)

- Fiji Fashion Week Limited and its principal, Ellen Whippy, sued Radrodro for suggesting her fashion models were used for “more than modelling”
- Court found for Ms Whippy (Radrodro had defamed her)
- Company failed (Court found nothing Radrodro said defamed it)
- Court held that in cases of internet defamation:
 - *claimant bears the burden of proving that the words complained of were read or seen by a third party.*
 - *in case of an internet libel, it would be for the claimant to prove that the material in question was accessed and downloaded.*
- Damages awarded to Ms Whippy - \$10,000

Fiji Fashion Week 2 – the lessons

- Defamation on the internet is like defamation on paper, though evidence requirements are different
- Be careful with your internet/social networking content (and of your employees)
- Not just personal issues – commercially, be careful of what you and your employees say on social media or in email about competitors and their products – and who you say it to
- Not everything critical of others is actionable. Some situations are “privileged” or contain “fair comment” and are able to be defended
- Truth/justification is a defence – but the burden of proving truth is on you
- Don't assume it's easy to sue for defamation (generally expensive and laborious process, a lot of evidence needed for proof of publication and damage to reputation)

**MEANWHILE, SOME
DEVELOPMENTS AT THE
DEPARTMENT
OF ENVIRONMENT**



The Environment Management Act (EMA)

– taking it seriously

- In theory, EMA protects environment from unsustainable development
- In practice, anything goes:
 - Department of Environment is under-resourced, can't enforce EMA conditions, not clear on its own law
 - Environmental Impact Assessments (EIAs) prepared by cheapest available consultant, “box-ticking” exercise for developer
 - Since 2008, DOE had rarely (never?) refused an environmental consent
 - opposing environmentally unsound developments becomes a bureaucratic challenge
 - DOE wouldn't release EIAs despite the law – “confidential”

The EMA – what it’s supposed to do

- ensure all developments are sustainable, ie:
 - “development that meets the needs of the present generation without compromising the ability of future generation to meet their own needs, and implies using resources to improve the quality of human life within their carrying capacity.”*
- to get approval, developer must
 - conduct EIA
 - have it approved by the DOE.

Environment Management Act

The story - 1

- work began on Pac Harbour housing development
- neighbours: “it’s environmentally unsound, we haven’t been consulted”
- developer: “all good, EIA prepared and lodged (I’ve ticked that box)”
- neighbours demanded DOE release EIA to them (to see if environmental impacts properly assessed) – DOE refused
- Munro Leys asks (politely) – DOE refused
- Munro Leys quoted law:

Environmental Register

17. (1) The Department must establish and maintain an Environmental Register for the purposes of this Act into which prescribed matters must be recorded.

(2) A person is entitled to have access to any record or document in the Environmental Register.

(EIA is “prescribed matter”)

DOE refused again

Environment Management Act

The story - 2

- Munro Leys sued

Institution of proceedings

54.-(1) Any person may institute an action in a court to compel any Ministry, department or statutory authority to perform any duty imposed on it by this Act...

- EIA finally delivered!
- EIA inspected – shown to be deficient and non-compliant
- Munro Leys sued again to enforce the Act: EIA must
 - comply with Terms of Reference
 - be reviewed by independent consultant or specifically formed committee
- DoE – “we just don’t do that” (!)
- DoE finally accepts EIA is no good – withdraws consent, tells developer to re-start

Environment Management Act

The moral of the story

- We're making progress (slowly)
 - DoE should now be releasing EIAs for developments which affect you
 - DoE likely to be more strict on future consents (another consent recently refused)
 - EIAs shouldn't be box-ticking exercises – should be done properly and professionally
 - A good environmental consultant costs money but will add value to your project
 - Do it for yourself if nothing else – costly to start again
- and



DON'T BE CHEAP!

While we're talking about arbitration...1

- arbitration – under-used in Fiji (though good arbitrators are sometimes also lacking)
- “private litigation” – skilled professional (not always a lawyer) decides your dispute
- dislike arbitrators' fees? What are delays and slowness in court system costing you?
- if the dispute is resolved more quickly, you are paying your lawyers less
- normally imposed by contract terms but parties can agree to arbitrate (even without arbitration clause)
- good alternative to blocked-up and inefficient court system

While we're talking about arbitration...2

- Flexible:
 - Choose your arbitrator:
 - he or she has time to hear your case (not doing 200 other court cases)
 - he or she can be an expert in the subject matter of the dispute, doesn't need to be taught about it
 - Choose your venue, timetable and starting time (and your finishing time!)
 - Line up your lawyer and go!

Arbitration – 3

- Arbitration rulings:
 - generally final, not appealable (parties agree they will be final)
 - can only be set aside on grounds of ‘misconduct’
- ‘Misconduct’ is not just impropriety – includes procedural errors in the hearing (but not findings of fact or law)
- Recent Fiji Court of Appeal case:
 - Non-lawyer arbitrator (architect in building dispute)
 - sought legal advice from independent lawyer to help make his decision
 - lawyers in the arbitration did not know he was seeking this advice
 - Court said this was not misconduct:

Raghwan Neo JV v FNPF (2016)

Arbitration - 4

- Proposed reform of arbitration laws:
 - may make arbitration more accessible
 - in theory makes international arbitration awards enforceable (a lot of learning for legal system)
- But we need to do local arbitration better

Disclosures and privilege - 1

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CONFIDENTIAL AND LEGALLY PRIVILEGED

- **If a regulator asks for a copy of my legal advice (or tries to take it during a search) do I have to hand it over?**
- **General rule – NO – if it is subject to legal professional privilege**
- **But privilege can be waived (including unintentionally – so beware)**

Disclosures and privilege - 2

Why does the legal professional privilege rule exist?

- Principle – to help people follow the law
- In theory (?) – if people can seek and receive legal advice about what they want to do (or have done) without fear of their disclosures becoming evidence, they will do the lawful thing when they get advice.

Regulators fear people will use legal advice to help them avoid the law.

Disclosures and privilege - 3

Legal professional privilege exists where:

- Communication passes between client and lawyer.
- Communication is confidential and for dominant purpose of
 - giving legal advice (lawyer's documents)
 - receiving legal advice (client's documents)

[other rules apply, eg communications between lawyer and other experts advising client]

Disclosures and privilege - 4

The general rule

- *Absent specific legislative intent to the contrary*, there is generally no obligation to provide regulators with privileged communication because legal/professional privilege is a fundamental common law immunity – *Darrels Corp Int Pty Ltd v ACCS* (2002) 213 CLR 543.

So common law accepts that a law might be passed which affects this privilege.

Disclosures and privilege – 5

One notable law in Fiji (Tax Administration Decree)

- s.35 concerns FRCA’s powers to search for and demand information
 - subs. (8) says –
 - (8) *This section has effect notwithstanding —*
 - (a) *any law relating to **privilege** or the public interest with respect to access to premises or places, or the production of any property, accounts, documents, or records (including in electronic format); or*
 - (b) *any contractual duty of confidentiality*
 - so far, untested
 - does not say “legal professional privilege”
- [but just so you know...]

Disclosures and privilege - 6

Privilege can be waived

- **Regulators will always push their limits – so don't fall into the trap!**
- **Privilege is waived**

“...if the privilege holder engages in conduct inconsistent with the maintenance of the confidentiality which the privilege protects”

- Cantor v Audi [Australia] 2016

Disclosures and privilege– 7

Cantor v Audi case

Background – VW’s emission test cheating

- Germany’s “LTA” [KBA] launched an investigation to see if Volkswagen had put something in their diesel cars to “defeat” pollution test equipment
- VW negotiated a settlement with KBA. As part of the negotiation it gave KBA a legal advice from its German lawyers. KBA reproduced part of that legal advice in orders sent to VW on how to fix its cars.
- VW owners in Australia sued VW in a class action and demanded access to the complete German legal advice.
- VW claimed privilege. The car owners went to court.

Disclosures to regulators – 8

Cantor v Audi case 2

- Court agreed that the German advice was privileged
- Car owners said VW had waived its privilege in Germany when it handed the advice to KBA
- But the court said disclosure to KBA was not a waiver
- Disclosure was made as part of a specific set of legal rules in Germany. That still allowed VW to maintain confidentiality of its advice in the rest of the world.

[A lucky escape!]

Disclosures and privilege– 8

Cantor v Audi case 3

Court noted that to preserve privilege:

- important to take steps to maintain confidentiality
- it helps if the document looks privileged (probably means we all meant for it to be privileged)

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CONFIDENTIAL AND LEGALLY PRIVILEGED

- the facts and circumstances in which the advice was sought are important (did the client expect advice to be privileged?)

Disclosures and privilege – 9

Be careful giving evidence about your legal advice (in any legal proceedings)

- If you give evidence:
 - as a witness in court
 - on an affidavitsaying “my legal advice is X” you may be waiving privilege
- This rule applies in any proceedings (not just proceedings involving regulators)
- Munro Leys is arguing for a waiver in those terms in a current case [so watch this space]

Disclosures and privilege - summary

- First principle – your legal advice is privileged – you do not have to disclose it
- If disclosure is demanded, seek legal advice
- Any time a regulator is raiding your office or demanding documents
 - say nothing [and train your staff to say nothing]
 - call your lawyers
- Always ensure you do nothing which waives your privilege
- If in doubt, get legal advice

PUBLIC ISSUES LAW AT MUNRO LEYS



Liliwaimanu Vuiyasawa
Public Issues Lawyer

What's our interest in the public interest?

- Lawyers are in the law business
- The law business thrives when rule of law is respected
- Making the rule of law work means levelling the playing field so everyone can “play” – including those who can't pay our fees
- It's our responsibility as lawyers (whether we like it or not!)

Public interest issues:

Encompass, among other areas –

- human rights law
- criminal law
- civil litigation (medical negligence/personal injury)
- environmental protection
- international human rights
- Violence Against Women issues
- rights of marginalised groups eg. persons with disabilities, LGBT rights
- children's rights

Focus:

- ensuring debate and litigation on public issues are aired, including for those who cannot otherwise afford it
- supporting voluntary and civil society groups – governance and regulation
- participating in improving law and policy on economic and social issues
- advocating for individuals/causes on a *pro bono* basis

We are not always popular – but that isn't the point!

Public law issues and rights – business has rights too

[my work isn't all for free!]

- access to information
 - fair treatment by regulators
 - due process in courts and tribunals
- [businesses can be prosecuted too]
- the right to challenge govt decisions
 - constitutional rights to property



We work *pro bono* with

- international human rights groups
- women's rights organisations
- local charity groups
- international humanitarian groups
- other civil society groups



AMNESTY
INTERNATIONAL



Some of our work

MUNRO LEYS



Fiji Time: 2:34 PM on Monday 13 February

The Fiji Times ONLINE

[Home](#) [Politics](#) [Local](#) [Sport](#) [World](#) [Letters](#) [Editorial](#) [Nai Lalakai](#) [Business](#) [Features](#) [Classi](#)

[/ Front page / News](#)

Father seeks justice

Luke Rawalai
Thursday, January 19, 2017

NIMILOTE Baleloa cannot look at photos of his deceased son Josefa without feeling a profound sense of loss.

Josefa was an escaped prisoner who according to Amnesty International was allegedly beaten in Suva in July 2008 by security personnel and died from his injuries several weeks later.

No charges were laid in relation to his death and Mr Baleloa says he has not been able to find the legal file detailing the investigations into his son's death despite being told by authorities to check at court registries and police stations.

Mr Baleloa said he would not rest in his search, adding he was looking for a lawyer to continue his fight for justice. But his search has so far been difficult.

With the lack of funds, Mr Baleloa says he is hoping to find a lawyer who will fight his battle for justice pro bono.

"It is not easy for me now. Every time I look at his photos when he was admitted in the hospital, it is very difficult. This was my son. I want justice."



[- Enlarge this image](#)

Nrimilote Baleloa showing pictures of his son Josefa Baleloa when his was admitted at the Colonial War Memorial Hospital in 2008. Picture: JONGA KONATAKI

Village By-laws To Regulate Activities



Some members of the Tailevu Provincial Council meeting in Nausori yesterday. Photo: Selita Bolanavanua

October 27 11:07 2016

by SELITA BOLANAVANUA NAUSORI

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Village by-laws that will be circulated today will regulate all village activities.

The Permanent Secretary for iTaukei Affairs, Naipote Katonitabua made the announcement during the Tailevu Provincial Council meeting in Nausori yesterday.

Mr Katonitabua said there were 20 subtitles of the village by-laws and would include dress code and attending a village meeting.

"The basic one there is: when you come into the village, you have to respect the village by-law," Mr Katonitabua said.

"We have our own freedom. But when you enter the village there are values that they would like to protect or maintain e.g., noises in village, costumes you need to wear in t

Current work includes

- criminal litigation
- incorporation of charitable trusts etc.
- commercial client sued to disclose documents under claimed “constitutional right to information”
- family law – custody, maintenance, adoption, DVRO etc.
- constitutional law and human rights – Village by-laws and the Bill of Rights
- international treaties – CEDAW, CRC, ICCPR, Refugee Convention etc.
- community education – domestic violence legislation and related-policies/issues with key stakeholders, NGOs, law students etc.
- Parliamentary submissions – Village bylaws, Domestic Violence Decree 2009

**Sex, Lies and Stress
New Hazards for Employers**

Jon Apted – Partner

Areas to be covered

- Sex
- Stress, bullying and psychiatric injury
- Lies! Lies! Lies!
- Recent legal developments

Sex?



Sexual Harassment

- age old problem
- potential for serious financial liability and reputational damage
- can be superior-subordinate or between workers of same level

What is sexual harassment?



Sexual Harassment is a broad concept

- any form of offensive sexual attention or communication that is uninvited and unwelcomed
- Does not have to be repeated – can be a single act
- intent is not the issue – effect is



Types of Sexual Harassment

- *quid pro quo*
- hostile work environment



“Quid pro quo”

- this for that
- benefit in exchange for sexual favour
- threat of adverse consequences unless sexual favour

Hostile work environment

- physical touching
- verbal comments
- visuals – pictures, emails etc



- Governed by 2 separate laws –
 - a) Employment Relations Promulgation 2009
 - b) Human Rights and Anti Discrimination Commission Decree 2009

ERP

- Prohibits sexual harassment as a form of discrimination
- Makes employer liable with a worker who sexually harasses another worker “if the employer fails to take the reasonable steps necessary to prevent sexual harassment of the employer’s worker”



"All the other women in the office are suing you for sexual harassment. Since you haven't sexually harassed me, I'm suing you for discrimination."

What are reasonable steps?

- ERP requires employer to develop and maintain a policy to prevent sexual harassment consistent with national policy

**How many of you know what is in the
National Policy on Sexual Harassment?**

National Policy on Sexual Harassment in the Workplace 2008

- Lists examples of sexual harassment
- Requires every employer to have internal written policy and grievance procedure on sexual harassment
- Requires workers and managers to collaborate in its development
- Requires policy to reflect rights of harasser and complainant

- National Policy requires internal policy to specify harassment can be verbal, gestural, visual, physical or audio in nature
- Requires clear and prompt informal and formal procedure for resolving complaints
- Can use LMCC or OHS
- recommends appropriately “sensitised” Sexual Harassment Grievance Officer



“I’d like you to keep your eyes and ears open to make sure our office is safe from any charges of sexual harassment. Thanks, babe.”

National Policy recommends

- Use of pamphlets and posters to reinforce anti-sexual harassment messages
- Orientation programmes that include information about sexual harassment
- On-going training

National Policy also Recommends

- Post-harassment counselling of victim and officer
- Voluntary counselling of “potential offender”

HRADCA

- Treats harassment on any prohibited ground (race, religion, age) – not just sexual harassment as discrimination
 - includes jokes, emails, making fun of accents, food, dress
- Employer liable for a worker's acts or omissions unless employer can prove “took all steps reasonably practicable” to prevent it



“You’ve put up with a lot of teasing, childish pranks and harassment around here. I must say, I admire your restraint.”

Tips

- Ensure you have sexual harassment policy that meets National Policy requirements
- Have a policy that includes other forms of harassment
- Ensure you include it in orientation of all staff
- Include reference in contracts
- Post copies or posters in staff areas
- Ensure you carry out and document on-going training

Stress and Bullying

- Recognised claims overseas
- Starting to see claims in Fiji
- Not covered by the written law yet, but proposal to include bullying in the ERP



"CONGRATS! WELL DONE, ZWERGMAN! SEE, I TOLD YOU THAT IN THIS COMPANY EVERYBODY CAN BECOME A WINNER!"

Current basis for liability for stress and bullying

- Common law duty to provide safe system of work (negligence) and liability for psychiatric injury
- Mutual duty of trust and confidence (breach of employment contract) – can give rise to claim for constructive dismissal

Basis of negligence liability

- Liability not established by stress or bullying and injury alone
- Worker must show that psychiatric injury was reasonably foreseeable and the employer knew that the particular worker was at risk of such injury and did not take reasonable steps to prevent it

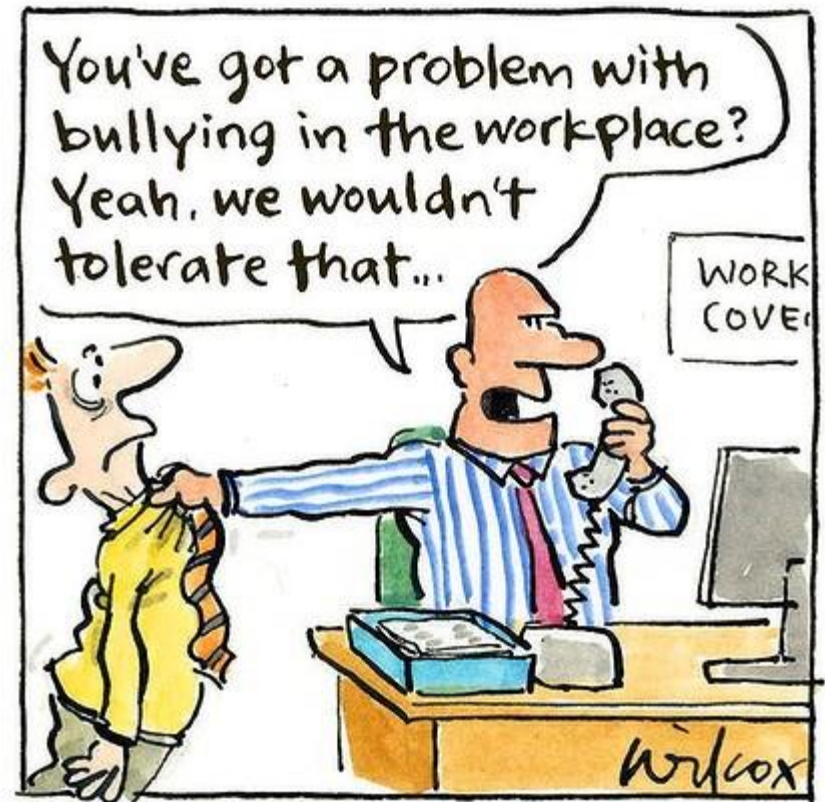


**Who knows what a
constructive dismissal is?**

Constructive dismissal is a resignation in response to breach of a fundamental term of a contract

What is Bullying

- repeated offensive, intimidating, malicious or insulting behaviour
- abuse or misuse of power which undermines, humiliates, denigrates or injures a worker



Personal attacks (direct)

- Belittling remarks – undermining integrity – lies being told – sense of judgement questioned – opinions marginalised
- Ignoring – excluding – silent treatment – isolating
- Attacking a person’s beliefs, attitude, lifestyle or appearance – gender references – accusations of being mentally disturbed
- Ridiculing – insulting – teasing – jokes – ‘funny surprises’ – sarcasm
- Shouted or yelled at
- Threats of violence
- Insulting comments about private life
- Physical attacks
- Persistent and/or public criticism
- Using obscene or offensive language, gestures, material
- Ganging up – colleagues/clients encouraged to criticise you or spy on you – witch hunt – dirty tricks campaign – singled out
- Intimidation – acting in a condescending manner
- Intruding on privacy, eg spying, stalking, harassed by calls when on leave or at weekends
- Verbal abuse
- Inaccurate accusation
- Suggestive glances, gestures, or dirty looks
- Encouraged to feel guilty

Task-related attacks (indirect)

- Giving unachievable tasks – impossible deadlines – unmanageable workloads – overloading – ‘setting up to fail’
- Meaningless tasks – unpleasant jobs – belittling a person’s ability – undermining
- Withholding or concealing information – information goes missing – failing to return calls or pass on messages
- Undervaluing contribution – no credit where it’s due – taking credit for work that’s not their own
- Constant criticism of work
- Underwork – working below competence – removing responsibility – demotion
- Unreasonable or inappropriate monitoring
- Offensive sanctions – eg denying leave
- Not giving enough training or resources
- Reducing opportunities for expression – interrupting when speaking
- Making hints or threats about job security
- No support from manager
- Scapegoating
- Denial of opportunity
- Judging wrongly
- Forced or unjustified disciplinary hearings
- Lack of role clarity

Bullying generally has to –

- be oppressive and unreasonable
- be targeted at the worker
- have happened more than once



*"It's a very special occasion...
You went a whole month without humiliating anyone."*

Diversity Challenge

- cultural differences and generational differences can have bullying and harassment implications
- generational diversity has become more of an issue as workers retire at a later age and young people enter the workforce
- first time to have four generations together at work
- knowledge about generations can help employees work effectively across generational lines

General Groups

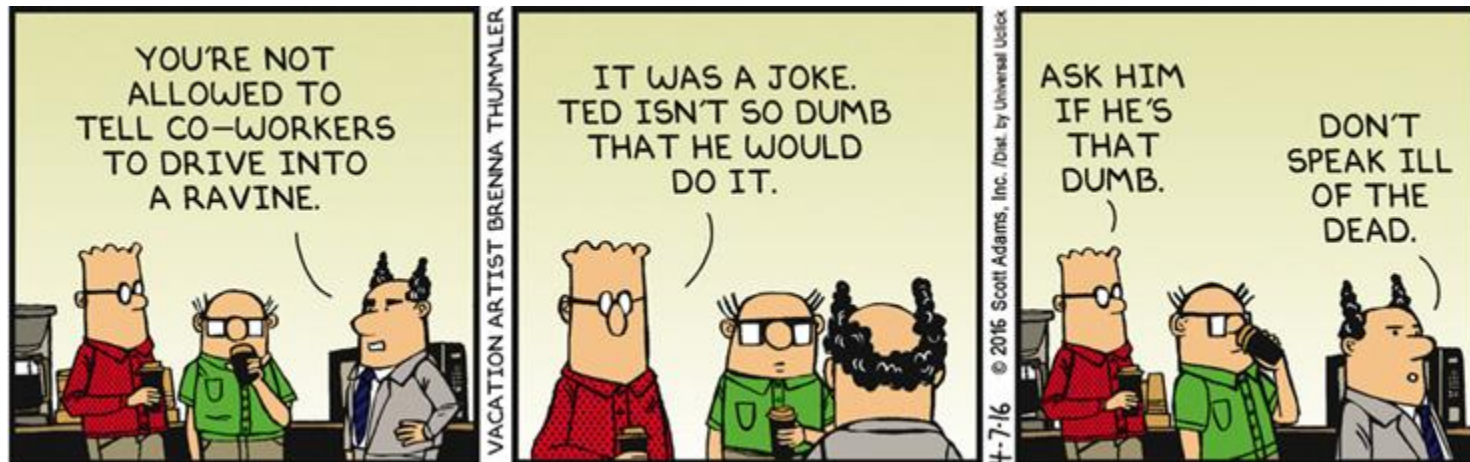
- Baby Boomers: 1946–1964, 50–68 years old
- Gen X: 1965–1981, 33–49 years old
- Gen Y/Millennials: 1982–2000, 14–32 years old



Different styles and expectations can give rise to bullying claims

Sources of stress –

- Excessive workload
- Deadline pressures
- Poor communication
- Demands for high production/standards
- Bullying, harassment etc



Ways to avoid stress claims –

- Don't overload workers
- Keep an eye out for stress
- Performance manage workers out if underperforming
- offer confidential counselling services



Bullying v Stress

- Bullying easier to establish the stress because signs are more likely to be visible
- Sometimes genuine performance management may give risk to bullying and stress claims



Good idea to have anti-bullying policy –

- Helps prevent bullying reaching liability levels
- Gives defence



“...no we don't have any problems with bullies.”

Lies?

Well um actually





"You call it 'lying'. I call it 'perfecting the truth'!"

Amber Harrison v Tim Worner & Seven West Media

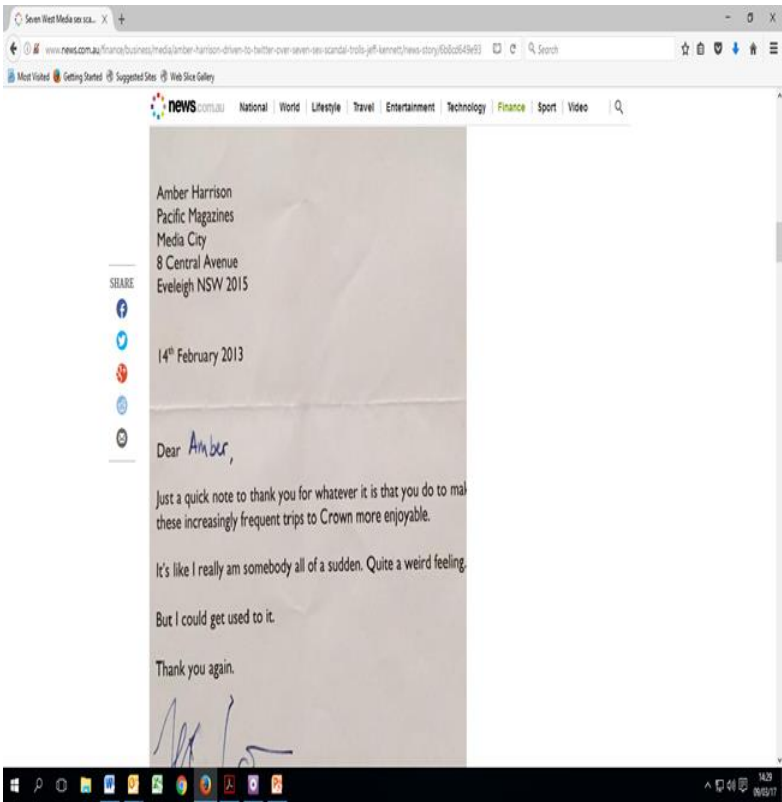
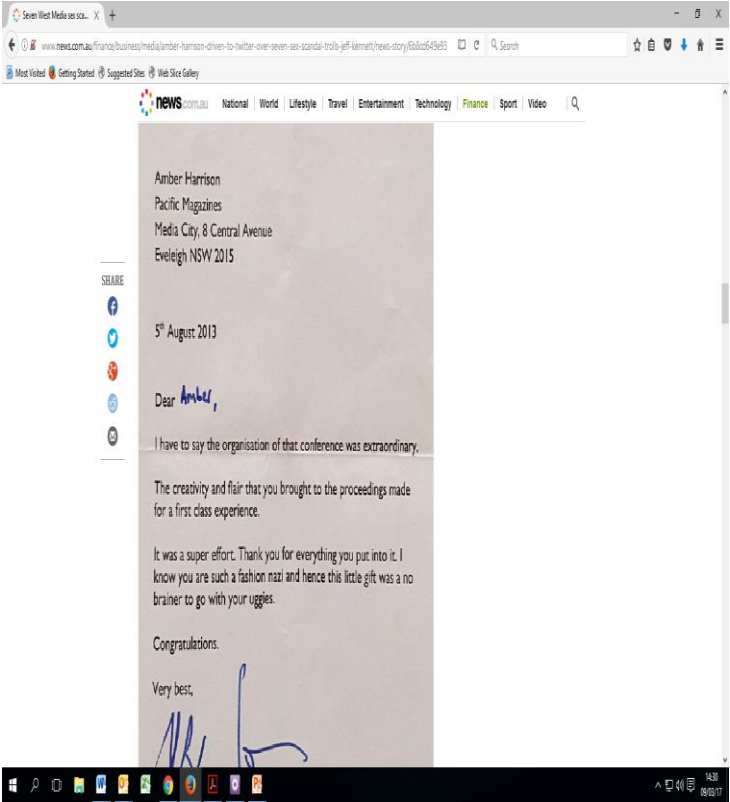
- CEO had 2 year affair with staff member
- Company has paid her AU\$330,000 plus costs AU\$50,000
- When recent payment not made Harrison has gone public and added new allegations of improper conduct
- Male board members supported Worner
- Female board members resigned

Seven West Media directors discuss Sheila McGregors' departure...



- Who's lying?
- Company's share value has fallen

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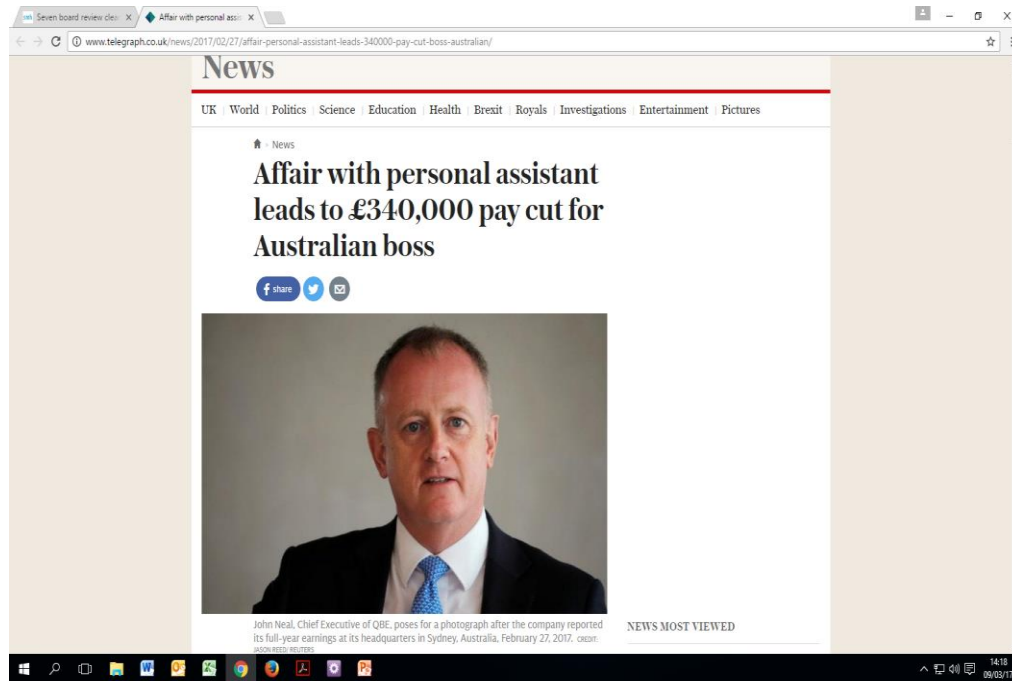


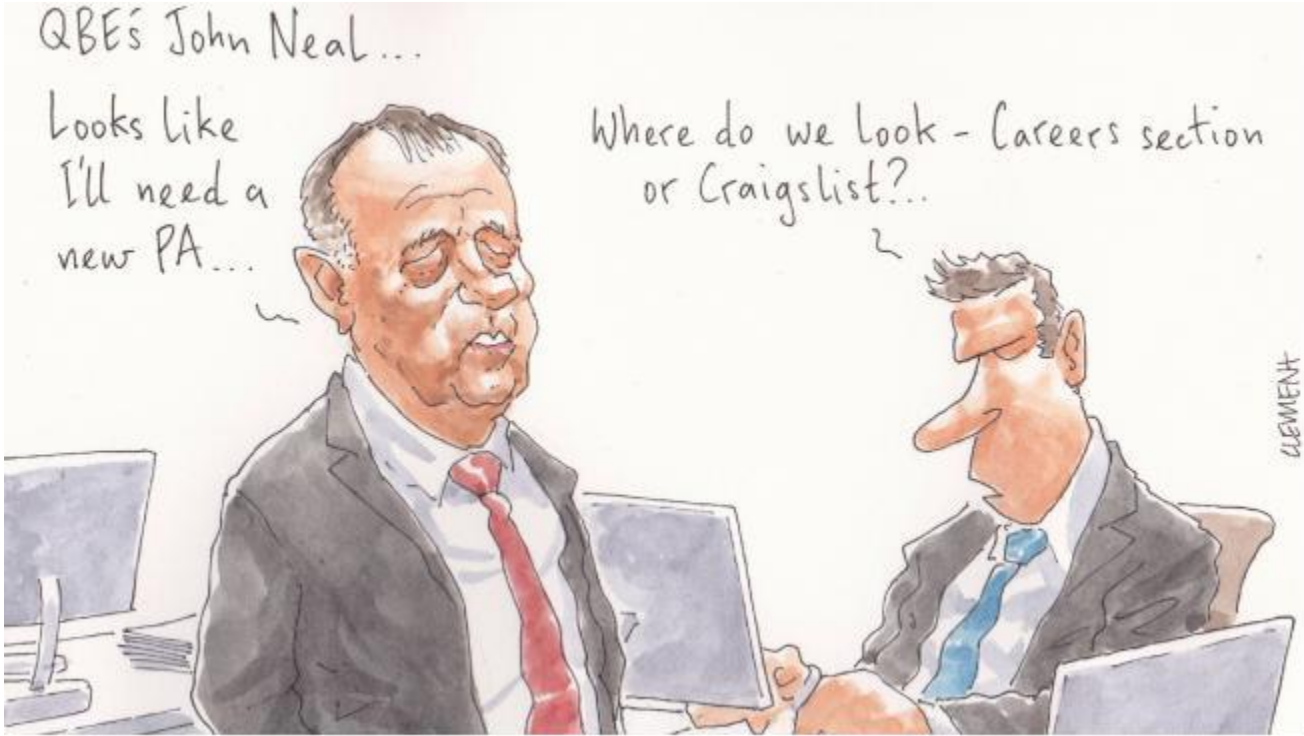
My name is Tim Worner
and I'm a recovering sex addict...

Wrong meeting Tim - this is
a Seven West Media board
meeting!



- Another CEO lost AU\$550,000 from his bonus for affair with PA which risked raising a conflict of interest





Recent Cases

Mo' Money

- ERC in *Nair v FPSA* and *Carpenters Fiji Ltd v Lal* has decided that workers can make grievance claims to the Employment Relations Court
- ERP says that grievances must first go to mediation and then to the Tribunal
- The Tribunal's jurisdiction is limited to \$40,000
- Previously in *Tabua v FRU*, the ERC ruled you cannot transfer a grievance from the Tribunal to the Court to get more money
- ERC has ruled you can bring grievance straight to the Court, or if you have started in mediation, the Tribunal you can withdraw and restart for the ERC

Reasons for dismissal are binding and exclusive

- ERP requires employer to give written reasons for termination or dismissal
- Previous case law said employer will usually be bound by written reasons unless it can show a mistake or was trying to be nice.
- In *Carpenters Fiji Limited v Tawake*, the ERC held the employer is struck with what the termination letter says

No more Termination Without Cause or At-Will Employment

- Previously could terminate “without cause” by giving notice or pay in lieu
- ERT recently confirmed in *Kumar v Nanuku Auberge Resort* that now that there is a duty to give reasons, there is no longer any right to terminate without cause

Redundancy requirements must be complied with if you are terminating a worker's employment for any reason other than misconduct or performance

- Confirmed by the ERT in the *Nanuku* case and the ERC in *Natadola Bay Resort Ltd v Tamnitoakula* that you can't just terminate because you don't need a worker anymore
- Need to follow redundancy procedures and pay compensation
- Consider non-renewable or task contracts

No more “24 months wages” orders

- previously ERT used to make orders based on time eg. “24 months wages
- but its jurisdiction is limited to \$40,000
- in *Yanuca Island Limited v Vatuinaruku*, the ERC confirmed that it must give awards in dollar amounts

Upcoming Issues

- Collective Agreements
- Retirement

**AND THEN THERE WAS THE
REST**

**[other things we are (were) doing and
thinking about]**

Where this talk is going

[because you might have trouble working it out]

- Consolidated Laws of Fiji
- The laws that didn't make it
- “revision”
- offshore curiosities

The EU's AMSP program is designed to prepare the country for the expected challenges Fiji will face when preferential quota access into the European market ends on October 1 this year.

- Fiji used to enjoy sugar prices as much as three times the world sugar price under an agreement with the EU which began more than four decades ago.

This agreement ends in October

Consolidated Laws of Fiji

(well, it's a hot topic for us...)

- Because laws change all the time, keeping them current is challenge
- Old practice – “consolidate” the laws from time to time
- Last Fiji consolidation – 1985
- So you could never be sure the law you were reading was the right one
(unless you were Munro Leys, of course)
- So the new Consolidation of Laws is quite a big deal...
- “A giant leap in access to justice” [if you can afford \$8,500]
- Consolidation of Laws even has its own law (Consolidation of Laws Act)
- Now everything is officially an “Act” (no more Decrees)

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It's 2017. What is wrong with this picture?



The laws that didn't make it - 1

[onto anyone else's slides]

Public Order (Amendment Act) 2017

- meetings in public places can now be held without a permit
- “public places” now widely defined – *highway, public street, public road, public park or garden, any sea beach, river bank, public bridge, wharf, jetty, land, footway, square, court, alley or passage whether a thoroughfare or not*
- meetings in parks or processions on roads need permission from “appropriate authority”
- Police can no longer stop public meetings (unless to avoid matters for which they are responsible eg crimes, breaches of the peace, etc)

Other new laws - 2

Workmen's Compensation (Amendment Act) 2017

- extends period in which worker can bring claim from 1 year to 3 years
- allows workers to bring a claim even after leaving employment
- labour inspectors can legally demand information from lawyers by notice
- doctors assessing injuries must receive and have capabilities in “Impact Assessment Training”

Other new laws - 3

Electoral (Amendment) Act 2017

- 40+ changes to the electoral laws (advertising, 3-digit numbers, etc)
- “clarifying” some definitions (eg “day”)
- Supervisor of Elections is now secretary to the Electoral Commission
- Supervisor permitted to make Regulations for “rules for campaign activity by political parties and candidates” - ???

Other new laws - 4

COP 23 Presidency Trust Fund Act 2017

- establishes a “Fund”
- Fund can receive donations etc and spend money on COP23 Presidency
- audited by an independent auditor “approved by the Minister” [of Economy]
- reports six-monthly, including financial statements

Other new laws - 5

Fiji Interchange Network (Payments) Act 2017

- law to regulate electronic payments and systems (eg ATMs, credit cards, EFTPOS, mobile payments, etc)
- Establishes “Fiji Interchange Network Authority”
- FINA must “implement an IT infrastructure for the interconnection of payment systems to be known as the Fiji Interchange Network”
- FINA sets specs and guidelines for all transaction routing through the Network (which Govt owns)
- all providers must be licensed to take part in it

Revision

[Do you remember what we've talked to you about?

- **The Next Generation – Planning Ahead (2013)**

Wills, family trusts, succession planning and tax effects – are you all set up?

- **Compliance – Some Facts of Life (2014)**

FIRCs, exchange control, property and leases, intellectual property (brands and contracts), modernising your terms of trade – are you up to date?

- **Social media and the law (2015)**

Social media policy in place? Employees trained? Do you get the copyright issues?

- **Hot leftovers – 50 new laws the Internet of Things (2016)**

Are you up to date on the law? How is your business planning for disruption?

Meanwhile, back at FRCA...[2013]



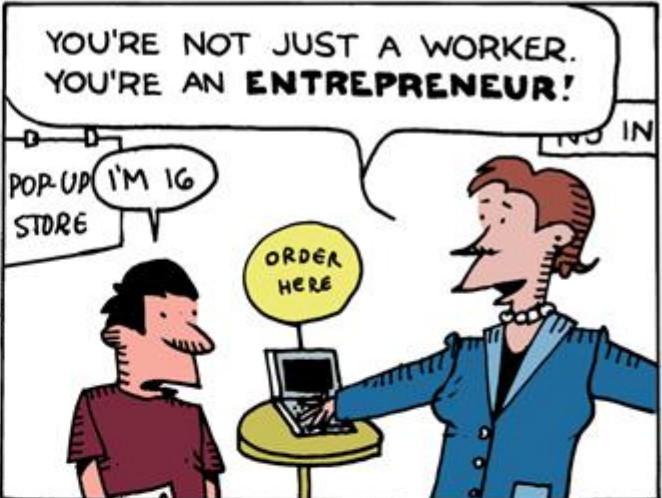
More from offshore

What we should be looking out for...?

What's your gig?



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The gig economy

“Labour market characterised by the prevalence of short term contracts or freelance work, as opposed to a permanent job”

- Gig economy jobs:
 1. taxi drivers (definitely Uber drivers)
 2. couriers
 3. plumbers
 4. gardeners
 5. consultants
 6. ? [...pretty much anyone]

The gig economy latest

Benefits

- Workers: work when you want, how you want and for what you want – flexibly. Independent contractors.
- Employers: only pay when work is carried out – no costs for staff downtime.

But where there are more workers than work – employers do better

Law pushes back

- Recent UK cases – Uber drivers, bicycle couriers, plumbers engaged on ‘gigs’ held to be “workers”, not independent contractors
- Different facts and law in Fiji – but a trend to watch if your business is using independent contractors

The right to disconnect

Something to think about...

France

- new law (2016)
- organisations with 50+ workers must start negotiations to define the rights of employees to **ignore** their smart phones and reduce the intrusion of work into private life
- Some overseas employers now require employees to “switch off” while on leave



WHAT'S THE WORLD COMING TO?

switching off

Note: The material set out in this presentation is of a general nature. It is not a substitute for specific legal advice in a given situation and should not be relied on as such. Munro Leys cannot accept responsibility for any such reliance.