

# MUNRO LEYS

# HOT TOPICS 2018

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# EFDs, TCCs, BEPS and other delights – the 2018 tax update



Rajnil A Krishna  
(Senior Associate)

# Covering

**Law changes** (that you may have missed), **recent tax cases** and **“what’s hot at FRCS” on**

- tax avoidance, time bars and FRCS’s new “services”
- prosecution and penalties
- BEPS – every tax authority’s hottest topic
- CGT on intellectual property
- VAT refunds
- EFDs and
- TCCs

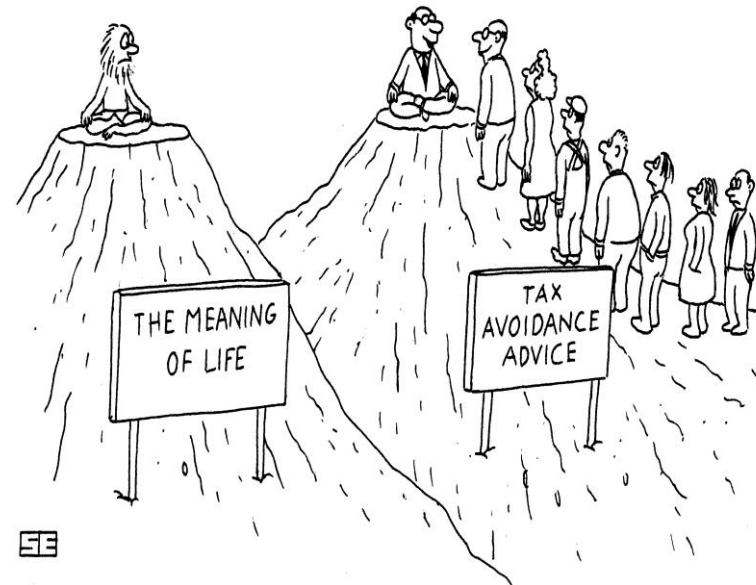


# Law changes

## “Tax avoidance”

- Previously:
  - defined as “*any scheme if one of the main purposes of ... the scheme is the avoidance or reduction of ... tax*”
  - required the CEO to be satisfied that the “*person ...who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person ... to obtain a tax benefit*”
- Now loosened to:
  - any scheme ... that directly or indirectly—*
    - (a) *has tax avoidance as its purpose or effect; or*
    - (b) *has tax avoidance as one of its purposes or effects, if the tax avoidance purpose or effect is not merely incidental;*

(so just about anything can be “tax avoidance”)



# Law changes

## No more time bars

- Tax Administration Act 2009 (s.60):

*The prosecution of an offence under a tax law may be instituted at any time ~~within 7 years~~ after the commission of the offence.*

- Customs Act 1986 (s.167):

*~~Any proceedings for any offence against this Act may be commenced and anything liable to forfeiture under this Act may be seized, within 5 years from the date of the commission of the offence.~~*

**Message from FRCS: “ Don’t forget anything, ever”**

# Law changes

- The “Authority” is now a “Service” (apparently)

## New “services” now available from FRCS

- “Naming and shaming” (s.52B FRCS Act):

*... the Service may publish and make publically available information regarding the person, if the person derives a gross turnover equal to or exceeding \$1.5 million in a tax year, operates a business that is a member of a prescribed group of business and –*

- has made an error in the submission of any document or information required by the Service for tax returns or any document or information required for customs purposes; or*
- has failed to comply with any tax or customs obligation under any law specified in Schedule 1.*

- Giving your tax information to FCCC (s.52(4) FRCS Act):

*... to the extent necessary for the performance of the functions of the Commission ...*



# Law changes

## Burden of proof/Penalties + prosecutions

- **Guilty till proven otherwise?**

Customs Act 1986 (s.167A):

*In any proceedings under this Act, the burden of proof lies with the defendant in the proceedings.*

- **Big taxpayers - why hit you once when we can hit you twice?**

Tax Administration Act 2009 (s.48(3A):

*... the powers conferred upon the Service to issue penalties under this Subdivision shall be in addition to any power conferred upon the Service to institute prosecution under this Act in respect of the same act or omission.*

[gross turnover > \$1.5m and “prescribed group of businesses”]



# Law changes

## Increase in penalties



Act	Previous penalties	Current penalties
Stamp Duties Act	Offences: \$10 - \$200	\$25,000
	Minimum late stamping fine:	
	- 2-3 months - \$2	\$500
	- after 3 months - \$4	\$1,000
Tax Administration Act	\$2,000 - 15,000	\$25,000
	3-14 months' imprisonment	10 years
Customs Act	\$5,000-\$20,000	\$25,000 or to imprisonment for a term not exceeding 10 years, or both
	6 months - 6 years	

Offence to register or record an unstamped share transfer in the company books



# BEPS - 1

“Base Erosion and Profit Shifting”

- OECD/G20 initiative (from 2012).
- Aim: close gaps and mismatches in tax rules which artificially shift profits to low or no-tax jurisdictions where there is little or no real business activity.
- Estimated global tax revenue losses from BEPS USD100-240 billion
- **15-point Action Plan** (covering hybrid mismatch arrangements, tax treaty abuse, artificial avoidance on permanent establishment status and dispute resolution).

...and FRCS wants to play!



# BEPS - 2

## The Convention

- **“Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” – signed 2017.**
- **68 countries (including Fiji), originally signed up. Now 78 members.**
- **Convention modifies all “Covered Tax Agreements”**  
(for us that means Double Tax Agreements where other country is a BEPS signatory)
- **BEPS signatories with Fiji DTAs: Australia, New Zealand, Japan, South Korea, Malaysia, Singapore, United Kingdom, and India.**
- **BEPS now re-interperts DTAs.**
- **Mandatory binding arbitration for double tax disputes**  
(Fiji, Australia, New Zealand and UK have opted for this).

# Recent tax cases 1

## *Remember Vonu v FRCA?*

- From our 2015 HT (“Wacky” tax cases):

*NZ resident taxpayer had registered IP in several countries (including Fiji), licensed to Fiji manufacturer*

*Taxpayer sold IP to a Fiji company*

*Issue – is this a “Fiji asset” for CGT purposes?*

*FRCA – yes, because it just sort of feels like it*

*Taxpayer – IP does not have necessary connection, not a “Fiji asset”*

*Held:*

*IP was a “Fiji asset” (since it was licensed to a Fiji branch, the NZ owner had an “interest” in it as a “capital asset of a fixed place of business” in Fiji)*



# Recent tax cases 2



## *Vonu v FRCS (2)*

- Tax Court:

*The IP is not a capital asset of a fixed place of business in Fiji. Consequently, it is not a Fiji asset. Thus its disposal is not subject to CGT.*

- F\$800K refunded. Post-judgment interest (4%) also awarded.

[TAXPAYER WINS!]



# Recent tax cases - 3

## VAT on deposits

*Taxpayer C v FRCA*

- Land developer collected deposits on sales of lots. FRCS demanded VAT on the sale of the lots, saying the deposit was the “first payment” for the lots, triggering obligation to pay VAT.
- Tax Tribunal agreed that a deposit fell within the definition of “any payment...received by the supplier” for the purposes of section 18(1)(b) ... [and] the trigger for determining the time of supply and the obligation to meet the taxation that is imposed as a result.
- Decision overlooked (?) s.3(13) of VAT Act – a deposit held as security for performance only to be taken into account when applied to the sale (or forfeited).



# Recent tax cases 4

## Refund of VAT

*Nadi Methodist Division Holding Company Limited v FRCA*



- Land developer filed VAT returns. Early stage losses – input credit exceeded output tax. Therefore refunds were due.
- Taxpayer claimed refunds from FRCS >3 years after they had become due. FRCS said they were “forfeited” (s. 65 (1) of VAT Act says FRCS can keep “excess” tax after three years).
- Both Tax Tribunal and Court agreed with FRCS [though we do not agree]
- **Note:** The three-year limit does not apply if a written application is made for the refund before the expiry of the three years. **So:**
  - keep track of your VAT refunds
  - make a written application for the refund if there is a delay (you don’t have to wait for the three years)

# Recent tax cases 5

## Tax on shareholders – lifting of corporate veil

*Brain & Hill v FRCA*

- Taxpayers were shareholders in a company. Company acquired land in 1995 with plans to develop a resort. Plans abandoned in 2000 after both taxpayers become ill.
- Taxpayers sold their shares in the company in 2006. The land was the company's only asset. The taxpayers gave warranties relating to the land in the share sale agreement.
- FRCS claimed income tax on the sale. Tax Tribunal agreed, holding that the sale was a business deal and subject to income tax – but also held that the activities of the company were activities of the taxpayers – and the taxpayers were selling the **land**.

**Case now on appeal.**

**Potentially serious implications for shareholders if FRCS is treating shareholders and companies as the same thing and not as legally separate in some cases**

The background of the slide is a close-up, high-resolution image of flames. The fire is bright yellow and orange, with dark red and black outlines, creating a sense of intense heat and movement. The flames are dense and fill the entire lower and middle portions of the slide.

# What's hot at FRCS



# EFD

## Electronic Fiscal Devices (VAT Monitoring System)

- Announced in the 2016/17 Budget
- S.118A of the TAA (*Electronic systems*):

*The Service shall implement electronic systems to obtain and monitor accurate records relating to the imposition of a tax.*

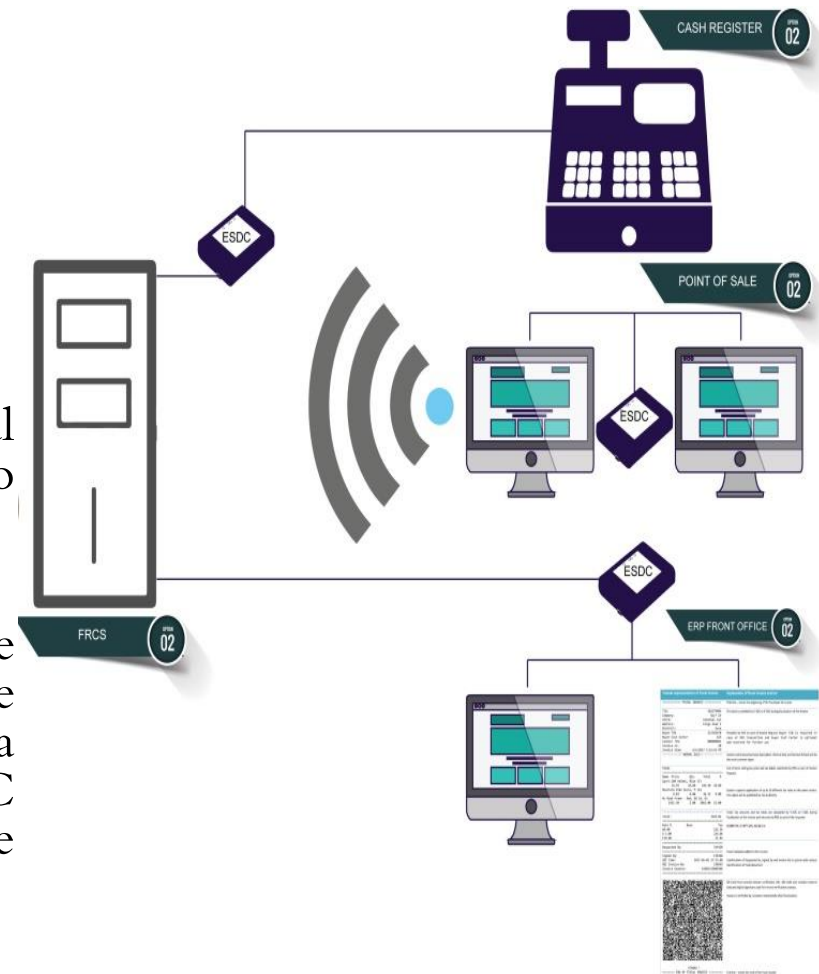
- Tax Administration (Electronic Fiscal Device) Regulations 2017 issued in June 2017 (35 pages).
- Specified “group of businesses” to install, implement and operate an EFD by the time specified [Everybody to be “fiscalised”?]



# EFD

## What is an EFD?


- EFD consist of accredited:
  - POS (Point of Sale system)
  - SDC (Sales Data Controller)
 that is connected and produces fiscal invoices. It transmits the fiscal data to FRCS system.
- Regs require: The SDC to transmit the fiscal data to the Service's system and the Service's system to verify the fiscal data and transmit it back to the SDC. The SDC then transmits the fiscal invoice to the POS. [FRCS realises this is too hard!]



# EFD

## Implementation

- Phase 1 - Supermarkets and Pharmacies . On 3 July 2017, time for compliance set as 31 December 2017. On 20 December 2017 time extended to 28 February 2018
- Cost and practical issues [hardly any supermarket or pharmacy has implemented the EFD]. Only one accredited SDC provider (from Romania).



In Accordance with Tax Administrator (ELECTRONIC FISCAL DEVICE) REGULATIONS 2017

## Point of Sale (POS)

### *Accreditation*

Accreditation ID: P007   Product: FRCS Free POS   Version : 1.13   Accreditation date: 28/02/2018   Country of Origin: Fiji

This Accreditation confirms that the version of POS complies in all respect with Fiji Revenue & Customs Service's technical specification and is compatible with Virtual Sales Data Controller.  
The Accredited version of this product has following characteristics:

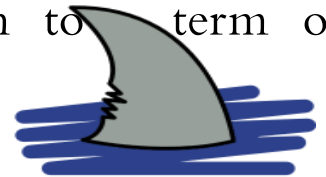
<b>Operational</b>	Sale	Normal ACCREDITED	Copy ACCREDITED	Training ACCREDITED	Proforma ACCREDITED
	Refund	ACCREDITED	ACCREDITED	ACCREDITED	ACCREDITED

<small>Type</small>	<small>USE (retail/hospitality/ wholesale)</small>	<small>Support Printer</small>	<small>Battery type / paper width</small>
POS	GENERAL PURPOSE	ANDROID/FILE PRINTER	N/A

# EFD

## Penalties and obligations

- Fines between \$10,000-50,000 (based on gross annual turnover), imprisonment of 2 years, or both for not complying.
- Each **director of a company** is also liable on conviction to a term of imprisonment not exceeding 24 months.
- A customer **must report** the following matters:
  - (a) if customer has not been issued a fiscal invoice for a transaction
  - (b) that fiscal data printed on customer's fiscal invoice is not accurate
  - (c) that the customer is not able to verify ... whether the Service's system has received fiscal data recorded on a fiscal invoice issued to the customer.



# EFD

- EFD Regs require fiscal invoice to specify the customer' TIN if the customer is registered for VAT. **How will this be implemented by the seller? Will this impact your input credit claim?**
- **Phase 2** - All medical centres, travel agencies, accounting firms, law firms and hardware companies (wholesale and retail). Implementation date – 30 June 2018.

## In your accountant's office:

NOTICE TO ALL CUSTOMERS: The Tax Administration (Electronic Fiscal Device) Regulations 2017 requires the operator of this business to issue a fiscal invoice to each customer. DO NOT PAY FOR THE GOODS AND SERVICES SUPPLIED TO YOU UNLESS YOU ARE ISSUED A FISCAL INVOICE. You may verify the authenticity of each invoice issued to you on the Fiji Revenue and Customs Service's website – [www.frsc.org.fj](http://www.frsc.org.fj)

Please Notice This



# TCCs

- Proof that the person is compliant with the lodgement of tax returns and payment of taxes.
- A tax compliance certificate must be submitted with:
  - an EoI or tender for a public sector contract or
  - application for a registration, permit or licence from a ministry, including:
    - ✓ professional membership
    - ✓ business/exporter/importer/broker licence
    - ✓ vehicle registration/renewal
- FRCS to also look into not only status of company tax payments but all directors, partners and trustees too(!)



**Compliance**

# TCCs

- If granted (yes, they can be declined), only valid for one year. TCCs can also be issued with a 3 month validity.
- TCCs can be revoked
- TCC not a “clean bill of health”. You can still be audited.
- Some Government contractors (eg FRA) also require, before contracting: FNPF, FNU, LTA Compliance Certificates(!)

And no – this is not an option





# Personal Property Securities Act 2017 (“PPSA”)

*Are you ready?*

Glenis Yee  
(Partner)

## What we will cover

- history
- current status
- what the law tries to do
- what is covered and what is not
- new concepts + PPSA Register
- impact – what do you need to do?

## History

- initially adopted in the US, then Saskatchewan
- NZ (early adopters in the region - 1999)
- Australia – 2009 (a cautionary tale)
- since adopted by Vanuatu, Tonga, Solomon Islands, Papua New Guinea and Samoa (NZ) – ADB driven
- Fiji's Bill – modelled after NZ (and PNG – complexity levels mirrored on PNG given similar type of transactions)

## Current Status

- late 2014: RBF Task Force created
- 21 August 2015: draft Secured Transactions Bill released
- 16 September 2017: PPSA passed [effective date yet to be gazetted]
- Registry – being sourced [software specifications to be determined] – RBF to be the Registry?
- Regulations – yet to be released [in conjunction with Registry]
- RBF flagged intent to implement Register in the second quarter of 2018
  - existing security interests: uploaded on the Register [180 days to lodge]
  - new security interests: to be uploaded from date of implementation

## Economic rationale

- “increase economic activity by making it easier and less expensive to obtain credit” [jury is out]
- interests will be recorded in a real time centralised online registry and searchable [that’s the aim]
- allows lenders to secure interests concurrent to the loan disbursements (or earlier)
- US, Canada, NZ, Australia and most of the Pacific have it [so – harmonisation - a good reason for us to have it]

# What we have now – where we are starting from 1

The rule that Fiji banks and banking lawyers have lived by on securities:

*Nemo dat quod non habet* [You can't give to another what you don't own yourself]

- Registration of securities traditionally works from this starting point
- Problems with actual v quasi-ownership, eg
  - finance leases – apparent ownership v real ownership creates issues – finance lessors can't register their ownership, so lessees can pretend they own – *ANZ v Koi*
  - disputes between competing credit providers over who has interest in assets of insolvent borrower (*Credit Corp v Sutton*)

## What we have now – where we are starting from 2

*Nemo dat* is still the law on legal ownership:

- for real property (land and buildings) [not affected by PPSA]
- also for personal property – but for personal property, registration of interests on the PPSA Register determines who gets paid first in a dispute between creditors

# Application

- intent is to apply to all transactions that have traditionally been used to create security interests
  - bills of sale
  - charges
  - pledges
  - hire purchase
  - retention of title
- functional definition – substance over form





## Security interest

- regulates “security interests” over personal property
- security interests are transactions *regardless of form* that grant a legal interest in *personal property* to *secure the payment or performance* of an obligation
  - without regard to:
    - the form of transaction or
    - identity of the person who has title [*nemo dat* no more!]



# Application

- Wider than chattels – also deemed to apply to certain transactions
  - transfer of an account receivable or chattel paper
  - a lease for a term more than 1 year, and
  - a commercial consignment



## What is personal property?

- goods – crops, livestock, inventory, equipment, manufactured homes, standing timber, etc
- chattel paper – writing that is evidence of a money obligation and a security interest in specific goods
- investment property – security, (shares, units) etc
- instrument – bills of exchange or letters of credit
- money – bank accounts
- intangibles – accounts receivables, IP (TMs, licence or patents) and licence
- regardless of whether the use is for commercial/industrial or domestic purposes

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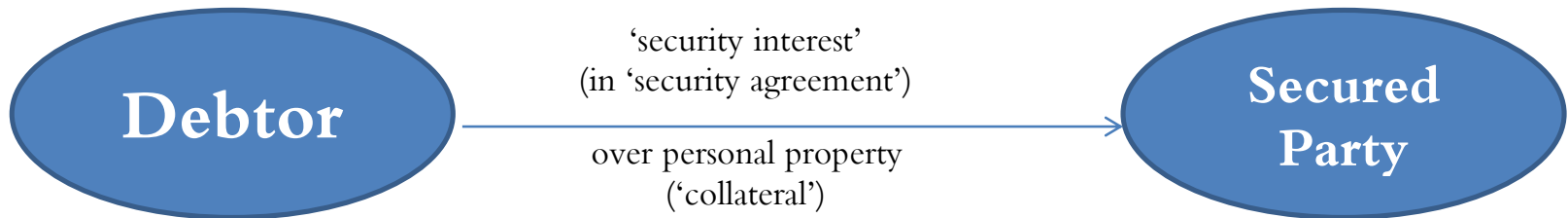


## What is not covered?

- interests in present or future wages (loans secured by a pledge of wages or superannuation benefits)
- interest in certain statutory rights (mining tenements, petroleum licences)
- interests in land (including leases)
- interest in a ship or aircraft
- sale of accounts receivable as part of the sale of a business



# New concepts - attachment and perfection



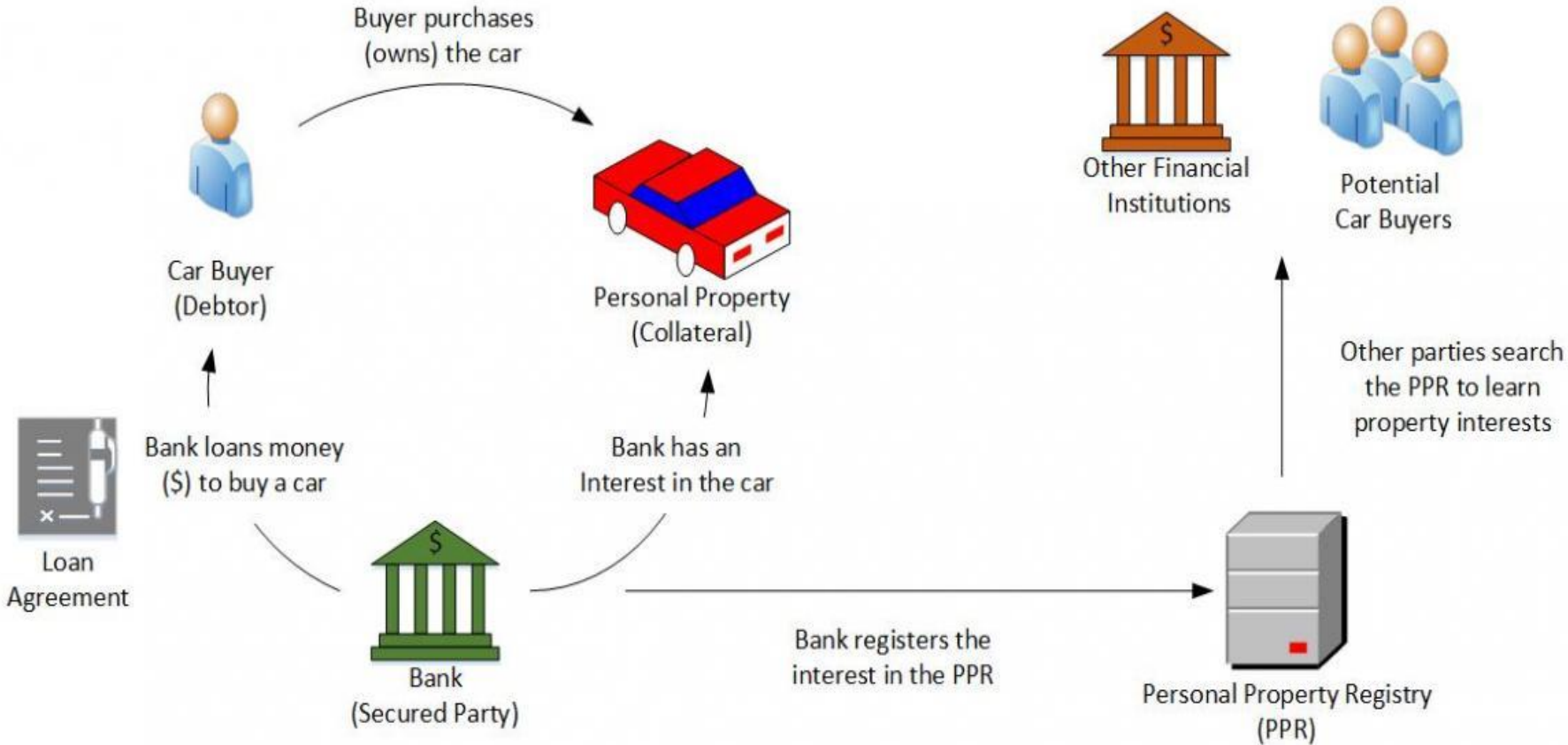
## Attachment

1. Value is given, and
2. Debtor has rights in collateral, and
3. one of
  - possession,
  - control, or
  - signed security agreement

## Perfection

1. Attachment, and
2. one of
  - possession,
  - control, or
  - registration

# Illustrative Example of How PPR Is Used – A Car Loan



## Priorities (s.30)

- between perfected interests, first in time beats second (who registers first)
- perfected security interest beats unperfected interests
- between unperfected security interests, order of attachment to collateral determines priority
- beware of PMSIs – Purchase Money Security Interests
- note transitional provisions

PRIORITIES

- 1.
- 2.
- 3.



## PMSIs (s.37)

- security interest to secure purchase price of specific goods
- security interest given to lender who provides value to enable collateral to be acquired
- perfected PMSI interest beats a prior charge by another lender even if prior charge is over all present and future equipment (7 days to register interest)
- existing Fiji common law position: *Credit Corp*

## Register (s.69)

• Personal Property  
Securities Registry



- electronic register, 24 hours, fee payable (as set in Regs)
- searchable in real time for actual or prospective security interests
- allows one to register their own security interests over the personal property of others
- public property and property of the State
- Registrar can refuse to register a notice (user beware)



INVESTMENT PROMOTION AUTHORITY

*Papua New Guinea*

- Home
- Public Search
- Help ▾
- How To... ▾
- Law And Regulations ▾
- Create An Account
- Log In ▾

[Bilingual Ship](#)

### Public Search Result



The entity registration number is the number issued by the Investment Promotion Authority upon incorporation of the entity. It may be found on the Certificate of Incorporation issued by the IPA.

**Party Type**

**Entity Registration Number**



# Notices



- Contents of initial notice
  - identify the debtor (include TIN) and provide a physical address
  - identify the secured party or agent + address
  - describe the collateral
- Notice can be filed before security agreement is finalised
- Notices can be amended, renewed, searched or terminated (discharged)
- Offence to register notices with malicious intent

# Repeals/Amends

Repeals	Amends
• Crop Liens Act 1904	• Companies Act 2015
• Bills of Sale Act 1879	• Bankruptcy Act 1944
	• FNPF Act 2011
	• Fiji Development Bank Act 1996
	• Indemnity, Guarantee and Bailment Act 1881
	• Land Transfer Act 1971
	• Land Transport Act 1998
	• Marine Insurance Act 1961
	• Property Law Act 1971
	• Registration Act 1879
	• Sale of Goods Act 1979
	• Stamp Duties Act 1920
	• Sugar Cane Growers Fund Act 1984
	• Tax Administration Act 2009

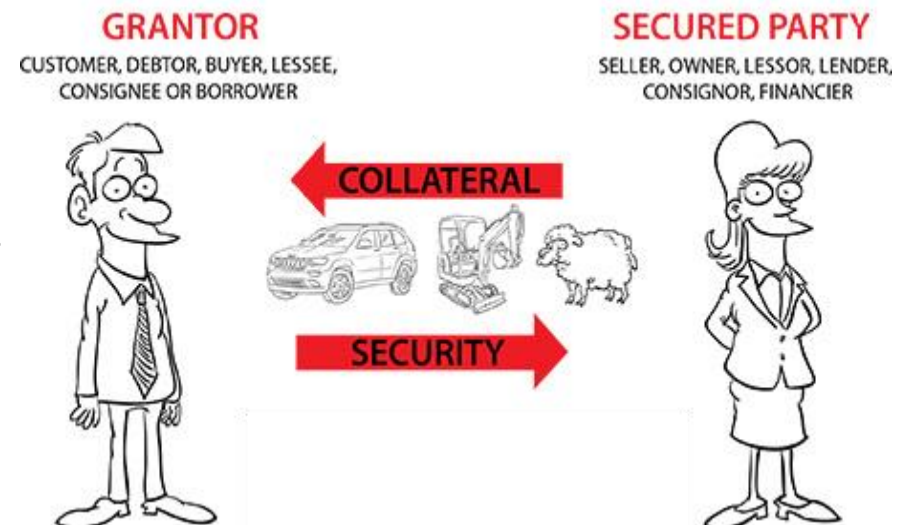
## Transition

- commencement expected to be second half of 2018
- security interests arising out of a prior secured transaction takes priority to interests arising after PPSA commences if you file a notice on the Register within the transition period
- we will only have 6 months!
- need to develop a plan to start collating relevant information on existing security interests (await further advice from RBF)



# Impact

- All sectors of the economy will be affected:
  - rural sector (cases in NZ have covered livestock, racehorses, potatoes, wool, trucks, wine, timber and farming assets)
  - building and construction
  - retail
  - importing/wholesale business
  - secured lending/leasing
- *Graham v. Portacom NZ Limited*  
(equipment leased by contractors)



# Impact

- Australian experience (PPSA Review – 2015 Report to AG)
  - many business (particularly small business) were not prepared for impact of the Act
  - cost and availability of finance increased particularly for construction industry
  - impact on suppliers or lessors – unlike banks which can pass on the costs, a business will need to fund its own legal costs, registration costs and internal admin costs.



## **Are you affected? If you answer yes, then you probably are.**

- Banks, credit institutions, other lenders?
- Do you lease equipment, goods or other property to others?
- Do you manufacture and distribute goods under consignment?
- Do your terms of sale include a retention of title clause?
- Are your security agreements in writing? Or registered on existing registers?
- Do you have security over a motor vehicle?
- Are you looking at buying a motor vehicle or other personal property against which interests would be registered on the PPSA?
- Are you looking to check the credit worthiness of potential customers?
- Are you looking at licensing your IP?
- Do you supply goods/equipment to construction companies?

## What to do?

- Try to understand it (education and training for potential users)
  - go to industry meetings or RBF seminars on it (or ask your 1
  - ADB yet to procure the Registry and will train users
- Know the timeframes
  - ensure that you have processes in place to identify and register all existing security interests within the 180 day period
  - also think about processes for new security interests during this time
- Have a plan in place, including for migration of data
- Review internal policies and processes (think about a collateral)



## What to do?

- Security documentation
  - phasing out of fixed and floating charges (mortgage debentures)
  - no use for bills of sale
  - Australia and NZ – use General Security Agreements (GSA) or Specific Security Agreements (SSA)
  - NZ – new forms were introduced slowly
  - Australia – agreed language was incorporated
  - authority to register for PPSA
- Existing customer documentation (consent for PPSA registration for goods that you supply with RoT clauses or on lease)
- System – cross check names, TINs, Company Registration No., interests, collate information for the notice





## Conclusion

- Implementation is on the horizon
- It may achieve its aims
- Bound to face implementation issues
- Opportunity to collaborate, learn

# CRASH COURSE

## ACCIDENT COMPENSATION ACT 2017



- (Act No. 40 of 2017) – commenced 1 January 2018

**Nicholas Barnes**  
**(Partner)**

# ACCIDENT COMPENSATION ACT 2017

Aim:

- to establish the Accident Compensation Commission Fiji and to make provision for compensation in respect of persons who suffer personal injury or death as a result of an accident in Fiji and for related matters.

[No fault scheme].

## **What does the ACC Act mean for me right now?**

- Immediately not much
- instead of your 3<sup>rd</sup> Party premium you now pay an “ACC Levy”
- a person hurt in a “motor vehicle accident” might not sue – might make an ACC claim instead – but maybe not – keep listening

**I know about the NZ Accident  
Compensation Act – so I'll be OK**

No you won't

The Fiji law is very different.

# WHAT'S AN "ACCIDENT"?

- An accident caused by a motor vehicle in Fiji

(and only a motor Vehicle so far)





# ACCIDENT COMPENSATION ACT 2017

- What does “motor vehicle” mean?



LTA Act – *“Motor vehicle means any automobile, motor car, motor carriage, motorcycle, traction engine, tractor, or other carriage or vehicle propelled or capable of being propelled by means of an engine powered wholly or partly by a volatile spirit, steam, oil, gas, or electricity, or by any means other than human or animal power, ...”*

- Golf cart?
- Segway?



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# ACCIDENT COMPENSATION ACT 2017

- What does “personal injury” mean?

*“a physical or bodily injury including impairment or loss, loss of use, or derangement of any body part, organ system or organ function”*



# WHAT'S DIFFERENT?

## S.19 - No Fault Compensation Scheme

- Under the scheme, Commission must make a lump sum payment in respect of **personal injury** or death suffered by a person as a result of an **accident** in Fiji,
- without the need for any person to establish fault or negligence of any other person for the accident,

# NOT QUITE NO FAULT - 1

## Exclusions

- Claim by person where vehicle is being driven by or is in the charge of that person and who –
  - was a drunk driver
  - refused or failed a breath test
  - had no licence or didn't follow conditions of licence

# NOT QUITE NO FAULT - 2

## Exclusions

- convicted of an offence in relation to the accident.
- suicide or attempted.
- vehicle did not cause the accident.
- failed to pay the levy

## \$ HOW MUCH?

### Reg 6 - Maximum amount payable as compensation

- personal injury, not exceeding –
  - a) for **permanent partial incapacity** - \$75,000
  - b) for **permanent total incapacity** - \$150,000
  - c) for “other cases” (?) - \$75,000.
- death, \$75,000 (not clear how this works with Worker’s Compensation Act)

# HOW DOES IT WORK?

- Injured person applies on ACC application form+ medical report
- ACC assesses your claim including possibly a medical assessment by doctor and or appointed committee (makes sure you were not drunk etc) + pays you!

[well, that's the theory...]

## **S.18 - ACCIDENT COMPENSATION**

- Subject to the provisions of the Act, compensation must be paid by the Commission for any personal injury or death suffered by any person as a result of an accident in Fiji.

[but there are a lot of provisions for that to be subject to...]





# ACCIDENT COMPENSATION (LEVIES) REGULATIONS 2017

- Upon registration or renewal of registration with LTA, the owner must pay to LTA the annual Motor Vehicle Levy.
- LTA collects the levies and remits the levies to the Accident Compensation Fund.

# MOTOR VEHICLE ACCIDENT LEVIES

## MUNRO LEYS

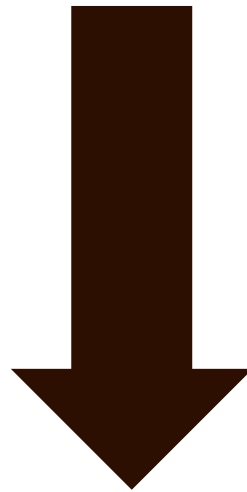
Class	Description of Motor Vehicle	Motor Vehicle Accident Levy (VEP) (\$)
1	Private	57.80
2	Commercial	57.80
3A	Light goods – no passengers	115.60
3B(1)	Light goods – 11 passengers or less	115.60
3B(2)	Light goods – over 11 passengers	115.60
3C	Heavy goods – no passengers	115.60
3D(1)	Heavy goods – 11 passengers or less	115.60
3D(2)	Heavy goods – over 11 passengers	115.60
4	Taxi (not less than 4 passengers and not more than 5 passengers) and licensed hire vehicles up to 5 passengers	123.85
5A	Minibus (not less than 8 passengers and not more than 15 passengers) and licensed hire vehicles more than 5 passengers	227.52
5B	Omnibus (not less than 16 passengers)	280.73
6	Fire brigade, ambulance	70.64
7	Motor cycle	33.03
8	Trailer	62.39
9A	Motor trade plate	62.39
9B	Tow truck	62.39
10	Rental (not more than 8 passengers)	156.88
11	Miscellaneous (tractor, hearse, roller, mobile equipment)	33.03
12	Administration fee (alteration, transfer, duplicate)	13.76

# ACCIDENT COMPENSATION FUND

- Act establishes the Fund
- Fund is managed by the PS Finance.
- PS Finance may arrange insurance or reinsurance for the Fund.
- Fund consists of –
  - a) Levies that are payable by any person under regulations made under the Act or under any interim written law
  - b) All interest and other income derived from the money and investments comprising the Fund
  - c) All monies which are appropriated by Parliament for the purposes of the Fund; and
  - d) All monies which are lawfully received for the Fund, including under any other written law.

# ACCIDENT COMPENSATION REGULATIONS

- Claims must be made on the prescribed form.



## MOTOR VEHICLE ACCIDENT COMPENSATION SCHEME

### What You Need to Know!

Vehicle Reg. No.:

\_\_\_\_\_

Name of Vehicle Owner:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Cover Period:

From: \_\_\_\_\_

(dd/mm/yyyy)

To: \_\_\_\_\_

(dd/mm/yyyy)

LTA Receipt No.

\_\_\_\_\_

MVAL Class:

\_\_\_\_\_

Chassis/Vin:

\_\_\_\_\_

Engine No.:

\_\_\_\_\_

(to be stamped and signed by  
LTA Authorising Officer)

**ACCF**

Accident Compensation  
Commission Fiji

LTA Head Office, Vualevu, Suva  
Phone: (679) 322 3330  
ragmi@rbf.gov.fj

1. **What is the Motor Vehicle Accident Levy?**  
This is a levy required by the Accident Compensation Act 2017 ("Act") to be paid to the Land Transport Authority ("LTA") by the vehicle owner when registering or renewing the registration of a motor vehicle.
2. **What is the Benefit of Paying the Levy?**  
It allows for compensation under the *No Fault Compensation Scheme* established by the Accident Compensation Commission Fiji ("ACCF").
3. **What Does the No Fault Compensation Scheme Cover?**  
The scheme provides compensation for any personal injury or death, as a result of an accident in Fiji from 01 January 2018, involving your registered motor vehicle, without the need to establish fault or negligence, however there are exclusions as listed as noted under paragraph 7.
4. **Who is Covered?**
  - All passengers inside your registered motor vehicle at the time of the accident, including the driver.
  - Any third party who suffered injury or death as a result of the accident caused by your registered motor vehicle.
5. **What Are the Compensation Payable by the ACCF?**  
Under the Act, there is a choice to either accept the pre-determined amounts, by lodging a claim for a lump sum payment under the no fault compensation scheme with the ACCF OR to institute legal proceedings for compensation.  
The maximum amounts payable by the ACCF, in respect of personal injury suffered by a person as a result of an accident in Fiji, are as follows:
  - In the case of permanent partial incapacity, \$75,000;
  - In the case of permanent total incapacity, \$150,000; and
  - In cases other than paragraphs (a) and (b), \$75,000.
 The ACCF may make a lump sum payment of \$75,000 under the no fault compensation scheme in respect of death suffered by a person as a result of an accident in Fiji.  
*Note: The compensation will be based on the medical impairment assessment that will be conducted by a medical practitioner as required under the Accident Compensation (Medical Assessment) Regulations 2017.*
6. **To Whom, How and When Should You Apply for Compensation?**  
An application claiming compensation for any personal injury or death as a result of an accident involving your registered motor vehicle must be made to the ACCF:
  - i. Using the application form which is available on the ACCF's website or at any of the ACCF's offices; and
  - ii. Within 3 years from the date of the accident.
7. **Are There Exclusions for Compensation Claims made to the ACCF?**  
Section 4 of the Accident Compensation Regulations 2017 states that the following applications are excluded from compensation:
  - (a) an application claiming compensation for a person where the motor vehicle is being driven by or is in charge of that person and who –
    - (i) is driving under the influence of alcohol over the prescribed limit or under the influence of drugs;
    - (ii) is convicted of an offence of driving with a n excess of alcohol or blood alcohol concentration over the prescribed limit;
    - (iii) fails or refuses to permit a breath test or a specimen of blood to be taken after being lawfully required to do so;
    - (iv) did not hold a valid driving licence authorising that person to drive the motor vehicle of the class or use for which it is registered; or
    - (v) has failed to comply with all the conditions of his or her driving licence;
  - (b) an application claiming compensation for a person who is convicted of an offence for any act or omission that directly caused the accident;
  - (c) an application claiming compensation for a person who suffered personal injury or death as a result of a suicide or attempted suicide;
  - (d) an application claiming compensation for any injury or death that did not directly arise from the accident;
  - (e) an application claiming compensation for the owner of a vehicle who, although has suffered personal injury or death as a result of the accident, had failed to pay the relevant levy as required by regulations for the payment of compensation for any personal injury or death as a result of an accident under the no fault compensation schemes.
 The ACCF will not consider the following:
  - (a) an application claiming compensation where the applicant refuses to provide particulars and information as required by the ACCF;
  - (b) an application claiming compensation for a person who refuses to undergo medical assessment as required by the ACCF;
  - (c) a fraudulent application; and
  - (d) an application that has been previously determined by the ACCF.

# ACCEPTANCE (or not)

- Applicant must accept an offer under no fault scheme within 28 days of receiving ACC decision
- If payment under no fault scheme is for injury covered by an insurance policy then insurer must reimburse ACC (subject to the insurance policy limits)
- Applicant does not have to accept ACC's offer (keep listening)

# ACCEPTANCE OF OFFER IS A BAR

- If applicant accepts ACC offer, no further claim is allowed
- Acceptance of ACC can be relied on by any person for an order to terminate any other claim; court must grant the order.
- If applicant does not accept ACC's decision and offer, applicant may pursue court action under the common law.



## **S.28 – PROCEEDING FOR PERSONAL INJURY OR DEATH IN A COURT PROCEEDING**

- If Court proceedings are issued, ACC must be informed
- Court cannot proceed with the case unless it is satisfied that ACC has been served and given opportunity to appear

## S.28 – IF THERE ARE COURT PROCEEDINGS

- ACC must consider proceedings and decide if it wants to award compensation under no fault scheme
- ACC may take over conduct of the proceedings
- Plaintiff not required to accept but if s/he does – proceedings end
- Again if insurance policy is in place – insurer must reimburse Commission

## S.29 – COMMISSION TO SATISFY JUDGMENTS

- The Commission must satisfy judgments issued or delivered as a result of an accident in Fiji –including costs and interest.

### **Q - Is there a limit on this amount?**

(no fault scheme has limits – Court proceedings don't Regulations appear to provide that the amount Commission pays can be limited). Effect on insurance policies and premiums yet to be seen.

- Judgment also includes an out of court settlement.

# HOW TO GET PAID FROM THE ACCIDENT COMPENSATION FUND

- ACC notifies PS Finance – PS Finance makes the payment
- Parliament must ensure that adequate funding is made available.

# IS ALL OF THIS GOING TO WORK?

- We don't know
- Good scheme for injured persons who cannot afford lawyers – theoretically quick and easy to recover?
- Compensation limits are relatively low – so there will still be court actions
- Court actions may be slower if ACC has to be notified and/or react
- Fiji statutory corporations not known for their efficiency – how well will ACC perform after the first burst of enthusiasm?
- Still need insurance but at what cost?

MUNRO LEYS

**WATCH THIS SPACE**

# #MeToo & what's new



*How well are you managing sexual harassment risks?*

**Liliwaimanu Vuiyasawa**  
**(Solicitor)**

# #MeToo

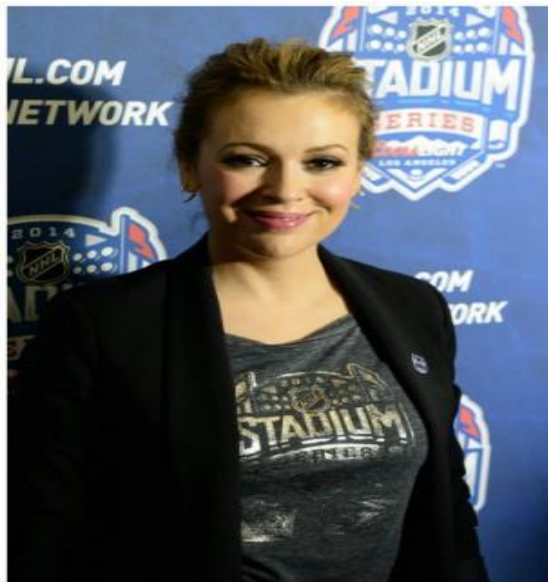
Social media campaign to demonstrate widespread prevalence of sexual assault and harassment, especially in the workplace.

Created by social media activist Tarana Burke to promote “empowerment through empathy” for women who have experienced sexual abuse.





Took off in 2017 after allegations of sexual assault and rape against movie producer Harvey Weinstein.



**#MeToo replies in 48 hours – 1.2 million**

# The Weinstein company is now about to go out of business

BBC Sign in Menu

**NEWS**

Home | Video | World | Asia | UK | **Business** | Tech | Science | Stories | Entertainment

**Business** | Market Data | Markets | Global Trade | Companies | Entrepreneurship | Techn

## Weinstein Company rescue deal collapses

© 7 March 2018

f t s e Share



GETTY IMAGES

The company co-founded by Harvey Weinstein was found to have debts of \$280m

A deal to rescue The Weinstein Company from bankruptcy has collapsed at the last minute.

## Issues in sexual harassment cases

- sexual harassment generally occurs out of sight [bad for both sides]
- “highly charged” issues – publicity is a powerful tool for the victim (thanks to #metoo)
- may take a long time to emerge (shame, fear)
- relationships may be (or appear to be) consensual for some of the time [but may actually be based on unequal power]
- more likely to be prevalent in places where workplace culture is not clearly intolerant of sexual harassment

## Issues in sexual harassment cases 2

- businesses where there is a high power imbalance (a lot of lower-paid workers) are danger zones
- greater number of female employees (retail, hospitality, manufacturing)
- industries with “macho” culture (military, construction)
- however the hazards are not just male/female – same sex harassment also a problem



## Consequences

- reputational loss – negatively affects the brand
- loss of business – some businesses will not deal with a company with a poor record on sexual harassment
- poor employee morale
- inability to recruit female employees
- high punitive and compensatory damages, legal expenses

*Closer to home...*

- ***Russell McVeagh, law firm embroiled in sexual harassment scandal***
  - Allegations of sexual misconduct towards female uni interns by senior male lawyers at Wellington office in 2016
  - Several female student law clerks alleged two incidents at an office Christmas party and at a Wellington bar
  - Photographs shared of interns classified as summer “menu”
  - 5 out of 10 clerks on the 2016 programme declined full-time job offers with the firm, despite most-sought after career in the country
  - A uni rep took matter to NZ Law Society but told nothing could be done unless formal complaint laid

**Consequences:**

- Allegations have cost two lawyers their jobs
- NZ law schools have cut sponsorships ties with RM including Maori Law Students Association

Former Russell McVeagh lawyer...



*Some examples from our files*

- Groping at bars and office functions
- Sending sexually explicit text messages, photographs
- Hand around a co-worker's waist at an office function
- Stalking on social media
- *Quid pro quo* – sleep with me and I'll promote you
- *Quid pro quo* – if you don't sleep with me I'll transfer you



*Closer to home 3*

# The Fiji Times ONLINE

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## ATS confirms sex claims

Kalesi Mele

Monday, January 08, 2018

POLICE have confirmed receiving two alleged sexual harassment complaints against two senior Air Terminal Services staff, and the ATS management has also established that one of the "accused" was still at work.

## *What does the law say?*

“Sexual harassment” means when a worker is sexually harassed in his or her workplace, or places where workers are gathered for work-related purposes including social activity, when an employer or its representative or a co worker –

- (a) Makes a request of a worker for sexual intercourse, sexual contact or any other form of sexual activity which contains an implied or overt –
  - (i) Promise of preferential treatment in that worker’s employment;
  - (ii) Threat of detrimental treatment in that worker’s employment ; or
  - (iii) Threat about the present or future employment status of that worker;
- (b) By the use of a word (whether written or spoken) of a sexual nature or materials of a sexual nature;
- (c) By physical behaviour or gestures of a sexual nature; or
- (d) Creates an intimidating, hostile or humiliating work environment by conduct, word or both on the basis of gender,

that subjects the worker to behaviour which is unwelcome or offensive to that worker (whether or not that is conveyed to the employer, its representative or the perpetrator) and which is either repeated or of such a nature that it has a detrimental effect on the worker’s employment...

## *Employer's Liability – Employment Relations Act*

76.—(1) **An employer is liable** ...together 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.

(2) An employer **must develop** and maintain a **policy to prevent sexual harassment** in his or her workplace, consistent with any national policy guidelines under subsection (3). *[2007 National Policy on Sexual Harassment in the Workplace]*

***Crimes Act 2009***

*Section 213 (1) – Indecently insulting or annoying any person*

(a) utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by the other person; or

(b) intrudes upon the privacy of another person by doing an act of a nature likely to offend his or her modesty.

Penalty — Imprisonment for one year.

**Employer may be legally responsible**

- **Corporate criminal responsibility** – a company may be held liable for crimes committed by an employee who was acting within the scope of his/her employment if a high level manager committed or permitted the offence or the corporate culture tolerated or encouraged or led to the commission of the offence or the company failed to create and maintain a corporate culture that required compliance with the relevant provision.

## *Prevention of Sexual Harassment [Risk Management]*

### *How you must work*

- Prevention is the best tool to eliminate sexual harassment in the workplace
- Must be clearly communicated to employees that sexual harassment will not be tolerated
- Take immediate and appropriate action when an employee complains.

### *What you can do*

- Develop an organisational sexual harassment policy and make sure new employees sign off when they are hired/during orientation
- Maintain and promote that policy including risky times (eg office functions)
- Provide sexual harassment training to all employees – regular repeats and updates
- Establish an effective complaint or grievance process

**These measures lower your risk of liability and damages in sexual harassment cases**

*[and yes, I can help you with these!]*

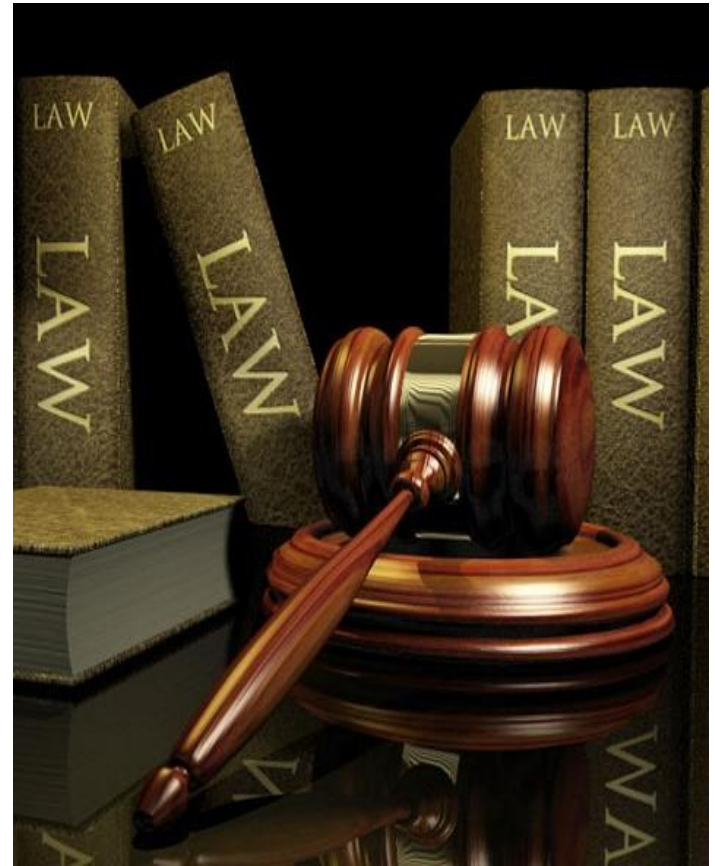
# Employment Law Roundup

- **Fiji Legislation**
- **Fiji Cases**

Jon Apted  
(Partner)

## Legislation

- Quiet year for employment law
- National Employment Centre (Amendment) Act 2017
- Employment Relations (Amendment) Act 2017



## National Employment Centre (Amendment) Act 2017

- Minor updates to National Employment Centre Act 2009 (NECA) to reflect current public service titles
- NECA established *National Employment Centre* to
  - register unemployed people (compulsory)
  - create Formal Employment Service, Self-Employment Service, Foreign Employment Service and Volunteer Service to provide “quality training
  - provide “workplace attachments” which can qualify an employer for any relevant tax incentives



## Employer's Social Responsibility to Promote Employment

- S.44 – employer with more than 50 workers must engage “suitably qualified persons as attachés or volunteers on a ratio of at least 5% of the total number of workers employed by the employer
- Not an offence if you do not comply
- No supporting regulations have yet been made to legislate how this to work and how exactly the scheme is to be funded



# Employment Relations (Amendment) Act 2017

- Employment Tribunals now appointed by the Chief Justice, not the Minister



## Recent Cases: Retirement

- Recent ERT decision – *Raju v BSP Life* 2017 has thrown the law on retirement into uncertainty



“You’re the most dedicated guy in the company, Bob. I don’t know how you do it.”

## ***Raju* and retirement - 1**

- Pre-ERP – High Court in *Fiji Human Rights Commission v SCC* (2006) found that retirement clause of the SCC Collective Agreement was unfair age discrimination in breach of the 1997 Constitution
- Judgment based on positions being “public offices”
- Also argument that Union had knowingly waived members rights was rejected on the basis that the clause pre-dated the Constitution
- Appeal died after the 2009 coup

## *Raju* and retirement 2 ERP - 2007

- S.77 not age discrimination if retirement is under a contract or law prescribing a retirement age (badly drafted)
- uncertainty clarified by ERT in *Prasad v USP* (2010) – lawful if retirement age is in the contract or a law



## *Raju* and retirement 3

- BSP collective agreement was entered into 2001 (after the 1997 Constitution)
- BSP enforced retirement under collective agreement and an individual contract
- Common clause says employer “may” retire worker at age 55

## ***Raju and retirement 4***

ERT found

- 1997 Constitution did not apply
- but collective agreement when registered offended against the Human Rights Commission Act 1999 [old law] and should not have been registered
- As to the clause in the individual contract, while this may have been lawful under the ERP in 2007, the Human Rights Commission Decree 2009 did not allow for retirement except for retirement under a law for public officers so overrode the ERP for private employment
- as a result the retirement requirement was unlawful
- contracts entered into after 2013 Constitution may be different (?)

# MUNRO LEYS





## Abandonment of employment

- Recent ERT cases (eg. *Tuifagalele v South Seas Cruises*) have dealt with “abandonment of employment”
- Many employers have policies which deem workers to have abandoned their employment if absent without notice for a specified time – often 3-7 days
- Convenient way of dealing with AWOL workers
- Treats them as having terminated their own employment so no dismissal and no disciplinary process is necessary

## Abandonment of employment 2

- Tribunal criticised employer relying on abandonment policy
- In one case, worker was reinstated
- In the other, Tribunal found that:
  - while there was employee misconduct, employee should have been dismissed after a disciplinary process
  - abandonment of employment policy was not part of the contract



## Lessons

- If you have abandonment policy, make the period **reasonable** – at least 7 days if not longer
- Ensure your contract **incorporates the abandonment policy**  
(but be careful – never incorporate all policy provisions)
- Always try to find the worker (show that you reached a reasonable view that the worker had abandoned employment)
- If the period is relatively short and you have a strong case of absence without leave, it may be better to go through the motions of discipline and dismissal

## Workmen's Comp – new approach to heart attacks

### *Labour Officer v Fiji Meat Industry Board*

- CEO suffered hypertension and died of heart attack while on leave
- Law: compensation payable if injury by accident arising out of **and** in the course of employment
- Previously employer was liable for heart attacks away from work if there was proof of work stress [and only if some evidence that heart attack might have begun at work]
- This decision means that it is enough if the cause of the heart attack (hypertension) arose out of and in the course of employment



**"Good point, Wilcox — dislocating your jaw yawning during my lecture on work related injuries is NOT a work related injury!"**

## Independent contractors

### *Pacific Fishing Company v Koroibola*

- Employment Court considered test for whether a “contractor” was really an “independent contractor” or really a worker
- Many Fiji employers use “contractors” for certain kinds of work (usually trades or work that was originally project-based or seasonal)
- Important distinction – only workers:
  - get paid leave (annual, sick, etc)
  - get redundancy processes and compensation
  - can bring unjustified and unfair dismissal claims

## **Independent contractors and FNPF**

- previously no FNPF payable for independent contractors
- changed in 2005 and again in 2011
- now - FNPF payable for contractors who are remunerated by “commission, success fees and similar payments”
- FNPF has been enforcing for all independent contractors
- when challenged, FNPF takes broad view of “success fees” as covering situations where contractors are paid on the “successful completion” of the task

# Test

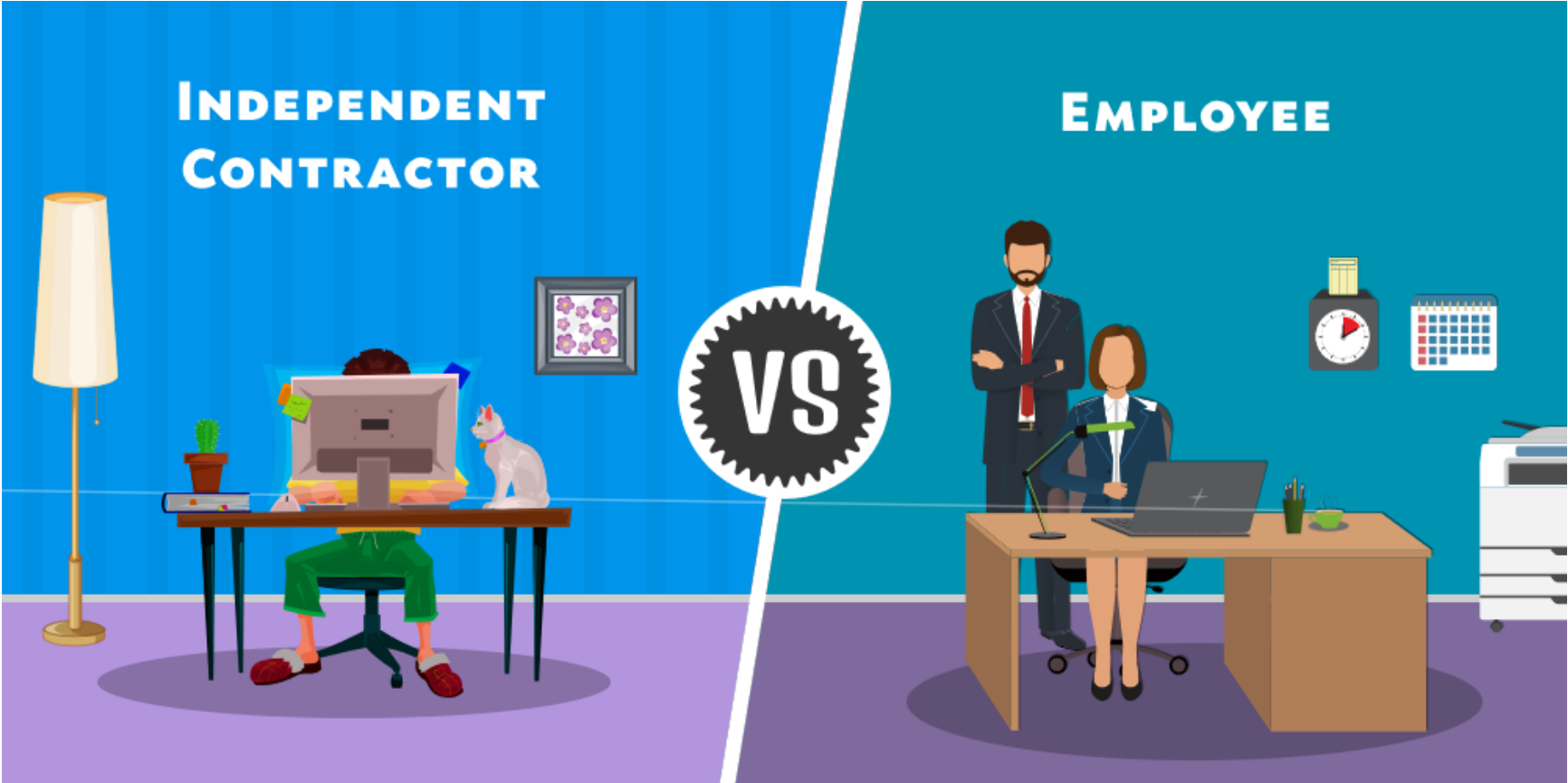
- not enough for a contract to say it is an independent contract
- Courts use 3 tests
  - degree of control exercised by employer over method of doing the work
  - integration of worker into employer's business
  - whether contractor can be said to be in business on their own



**INDEPENDENT  
CONTRACTOR**

**EMPLOYEE**

**VS**



## Courts look at thing like

- manuals
- uniforms
- licences and tax arrangement
- right to delegate
- payroll

No precise test – “if it looks like a duck...”

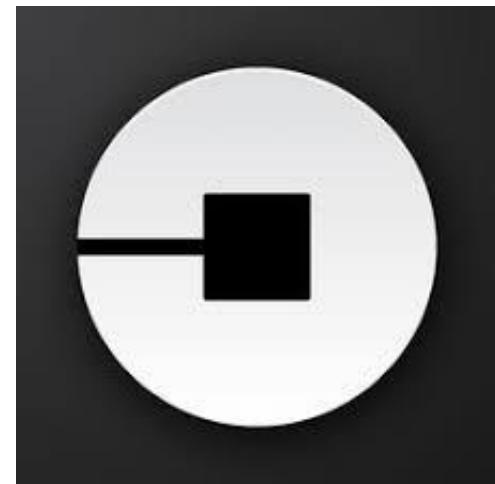


# UBER

In the UK *Uber* case, the Court found it was employment because –

- drivers had to accept minimum number of trips and were penalised if they did not reach target
- they had to go through a recruitment interview and induction process

**[Note – that's only the law in the UK]**



**And finally...**



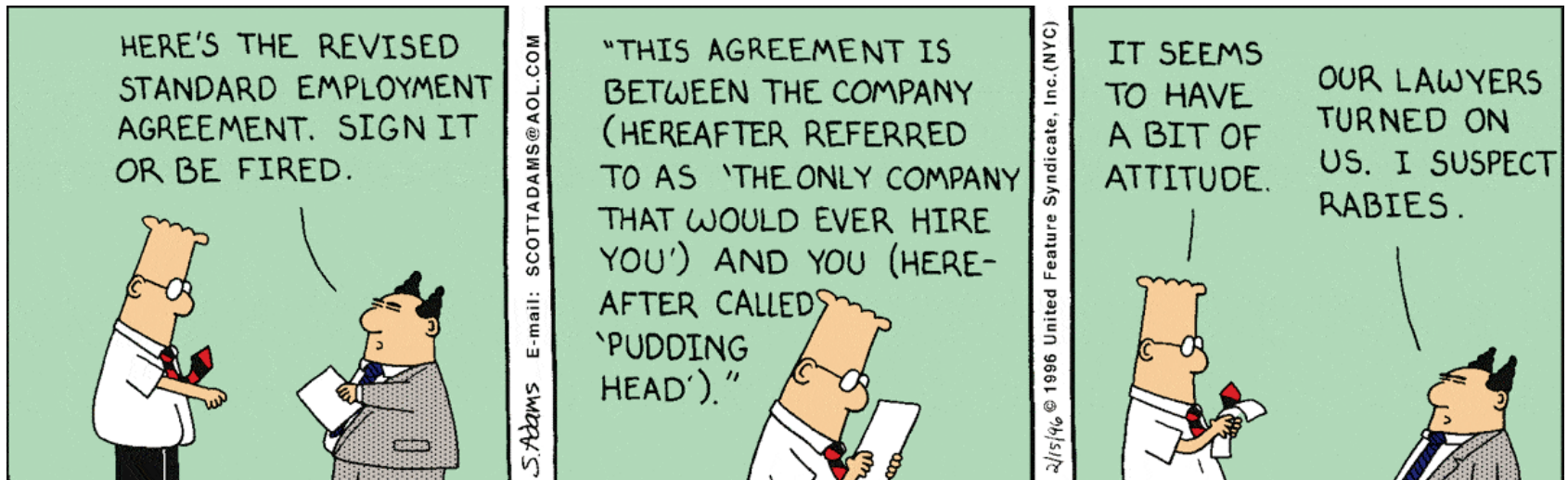
- 16 December – 70 union members walk off the job to attend a meeting with 130 others
- on returning to work 3 hours later, refused entry by management
- they congregate outside and are joined by 200 other workers
- on 17 December, the Minister declares the “strike” unlawful but does not order them back to work
- ATS refuses to let 256 workers back to work unless they sign letters prepared by the company admitting misconduct and that they had been misled
- ATS says that the workers are “suspended” without pay pending dismissal

## ATS 2

- ATS files an application in the Tribunal asking for various declarations relating to the conduct of the Union, its executives and members and an alleged unlawful strike by 256 workers between 16 and 20 December
- At first directions hearing, the Tribunal asks ATS some hard questions
- At next date, ATS seeks to withdraw its application, but (unusually) the Tribunal refuses

## ATS 3

- Tribunal then holds that ATS has unlawfully suspended its workers without pay
- Suspension without pay is unlawful unless there is a right in the contract. Here the only right to suspend is where employee is under discipline and inquiry is being held
- Tribunal orders the workers back to work and their pay to be “reinstated”



## ATS – the takeaway

- Employer has duty under the law to provide work in accordance with the contract or give pay in lieu
- Remember – unless you specifically provide for suspension without pay in your contracts (including your collective agreement) **it is unlawful to suspend** (and you will have to pay the worker back pay)
- If you have a contractual right to suspend without pay, you are limited to what that contractual right says

## Lockouts

- act of employer in discontinuing employment of workers in a consequence of a dispute or in breaking any of the employer's employment contracts or in refusing to engage workers with a view to compelling them to accept terms and conditions of or affecting employment
  - rarely used in Fiji
  - requires 28 days notice to the Registrar
  - unlawful if there is a collective agreement in force and unless the collective agreement provides for the lockout
  - unlawful lock outs like strikes are an offence
  - was this an unlawful lockout?





## **Although not commented on by the Tribunal IMHO –**

- the walk-off was technically a “strike” by 70 workers but the workers themselves ended the strike at 4pm on the same day
- ATS was entitled to discipline the 70, but its decision to refuse entry to 260 workers unless they signed a “confession” was a “lockout”

# That confession letter though...



Date \_\_\_\_\_

The Manager Human Resources  
Air Terminal Services (Fiji) Limited  
Private Mail Bag  
Nadi Airport

**Re: No Show and Return to Work**

Dear Sir,

I \_\_\_\_\_ (name) of \_\_\_\_\_ (Dept.)  
have now realised that I had made a mistake and an error in judgement by not reporting to work on  
my rostered shift to attend a meeting. I may have been influenced, misguided or misinformed  
resulting in the action I took.

I am prepared to unconditionally return to work immediately and understand that my action gives  
management the right to exercise any disciplinary action against me, provided that such measure  
does not result in the termination of my employment.

I hereby undertake not to abandon my work again except as maybe permitted under the law.

Yours Faithfully

\_\_\_\_\_

# ODDS AND ENDS (and as you near the end, it all gets more odd...)

- Ease of Doing Business rankings 2018 now out!
- lurking legislation
- other things to watch out for
- VAT monitoring

**Richard Naidu**  
(Partner)

# Ease of doing business 2016 (/189)

[www.doingbusiness.org](http://www.doingbusiness.org)

Topics	DB 2016 Rank	DB 2015 Rank	Change in Rank
<b>EASE OF DOING BUSINESS</b>	<b>88</b>	<b>86</b>	<b>-2</b>
<a href="#">Starting a Business</a>	167	156	-11
<a href="#">Dealing with Construction Permits</a>	111	109	-2
<a href="#">Registering Property</a>	55	54	-1
<a href="#">Getting Credit</a>	79	71	-8
<a href="#">Protecting Minority Investors</a>	111	109	-2
<a href="#">Paying Taxes</a>	108	107	-1
<a href="#">Trading Across Borders</a>	73	72	-1
<a href="#">Enforcing Contracts</a>	88	88	No change
<a href="#">Resolving Insolvency</a>	89	89	No change

# Ease of doing business 2017

	DB 2017 Rank	DB 2016 Rank	Change in Rank
<b>Overall</b>	<b>97</b>	<b>84</b>	<b>-13</b>
<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	<b>-79</b>
			<b>["victory for all Fijians"]</b>
<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

# Ease of doing business (out of 190 states)

Topics

DB 2018 Rank

<b>Overall</b>	<b>101</b>
<b><u>Starting a Business</u></b>	<b>160</b>
<u>Dealing with Construction Permits</u>	92
<u>Getting Electricity</u>	84
<u>Registering Property</u>	58
<u>Getting Credit</u>	159
<u>Protecting Minority Investors</u>	96
<u>Paying Taxes</u>	120
<u>Trading across Borders</u>	75
<u>Enforcing Contracts</u>	89

## Ease of doing business 2018 – Minister of Trade responds in Parliament:

- survey reflects the views of “anti-Government agencies”
- “the World Bank is not always correct”



## 2016 Bills before Parliament – just lyin' around?

Information Bill 2016

Parliamentary Powers and Privileges Bill 2016

Kava Bill 2016

Code of Conduct Bill 2016

Forest Bill 2016

Aquaculture Bill 2016

Land and Water Resources Management Bill 2016

...?





## 2016 Bills

- **Aquaculture Bill** (to regulate *cultivation, propagation or farming of aquatic organisms* - establishing Aquaculture Advisory Council, licensing committee, scientific committee, regime for authorisation and licensing of aquaculture activities, offences)
- **Kava Bill** (to regulate and administer the kava industry, register growers, processors, importers and exporters, licensing import and export of kava, labelling for export of Fiji kava)
- **Forest Bill** (replacing Forest Decree 1992 – implementing Fiji Forest Policy 2007, licensing import, export, forest management, wood processing, regulating royalty payments, forest certification, forest carbon trading, endangered species]

## 2016 Bills

- **Heritage Bill** (to establish a Fiji Heritage Register, nominate Fiji World Heritage Places, report periodically to UNESCO, manage heritage areas, etc)
- **Adoption Bill** (to regulate adoption process, implement Hague Convention on Intercountry Adoption, maintain birth parent register and regulate disclosure of birth parents...)
- **Rights of Persons with Disabilities Bill** (creates National Council for Persons with Disabilities, and 22 “rights” of persons with disabilities in accordance with UN Convention)

## 2016 Bills

- **Code of Conduct Bill** (long-promised law establishing codes of conduct for public officials, Accountability and Transparency Commission, disclosure of assets/liabilities (to Commission). Separate Codes for Ministers, MPs, judicial officers, public servants – avoid conflicts, don't solicit gifts, respect for others...)
- **Information Bill** (access to information legislation, setting out what official information may be requested, what may not, process for obtaining it and legal rights)
- **Parliamentary Powers and Privileges Bill** (modernising law on Parliamentary rights and privileges – notable for the “you can't criticise Parliament” provision – s.24)

## 2016 Bills

### Land and Water Resources Management Bill

- sets up Land and Water Resources Management Board
- gives Board right to create land and water conservation areas, and designate areas where a *land and water resource plan* is to be implemented
- issue closure and “cease work” orders for infringing works, development and other activity

## New 2018 Bills (hot off press, yesterday)

### Employment Relations (Amendment) Bill

s.88 to be repealed

“1.3 Section 88 of the Act states that an employer is not prevented from prohibiting the employment of females in underground work in mines of all kinds except—

(a) in management positions not requiring manual work;

(b) in health and welfare services;

(c) in education or training; or

(d) for occasional non-manual work.

1.4 This prohibition perpetuates gender stereotyping in the mining sector and if not remedied will continue to be a barrier for females. Females should be accorded the same employment rights as males to work wherever they choose to work.”

## Lurking around - 1

- Review of national minimum wage and Wages Council Orders – “this year” Labour Minister said yesterday

(wonder why...)



## Lurking around – 2

### Social media regulation?

“We could reasonably have expected the digital revolution to have ushered in the heyday of media freedom. The miniaturisation of technology and spread of mobile connectivity have massively increased our ability to share, interact with, and access information.

However, this has been matched by censorship in the name of national security and countering extremism, demands for protection against offensive speech and misinformation, as well as unprecedented surveillance and collection of our data. A new report by **Article 19** maps this trend, showing that media freedom is at its lowest level since 2006, with a particular increase in the government censorship of those who expose corruption and abuse.”

- **Article 19 (global free speech NGO)**

## A worrying trend worldwide

- social networks feed terrorism, disrupt democracies (Russian bots) , promote “fake news” from extreme websites
- Trump era – “CNN is fake news” encourages other leaders (in less democratic countries) to attack legitimate news as fake – excuse to censor?
- pressure on mainstream media means people express opinions on unregulated social media (*Fijileaks*) – fake news? (or at least unaccountable news)
- if you regulate identified people on social media, they become anonymous instead – potentially less accountable and more “fake”

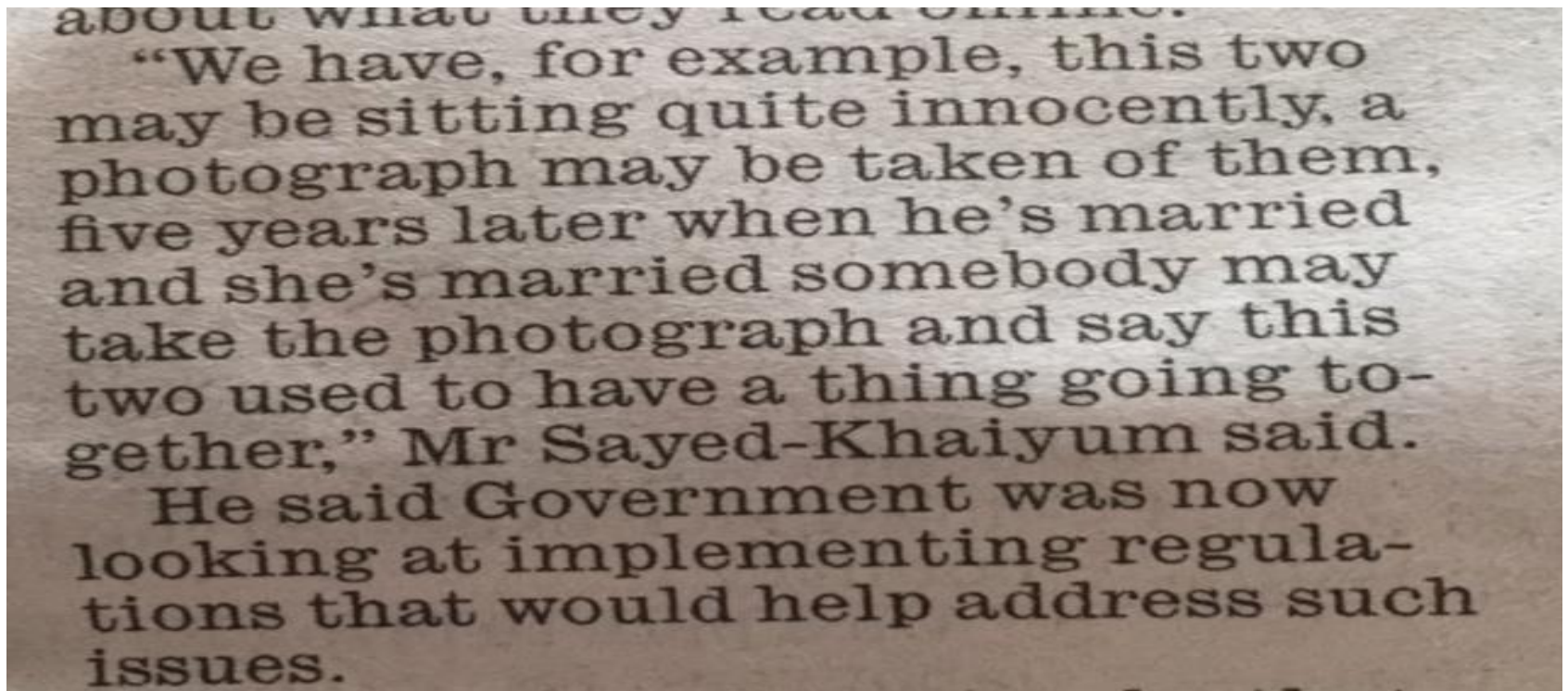
**It's all in the algorithm (?)**



## Meanwhile, back in Fiji

- **Social media regulation?**

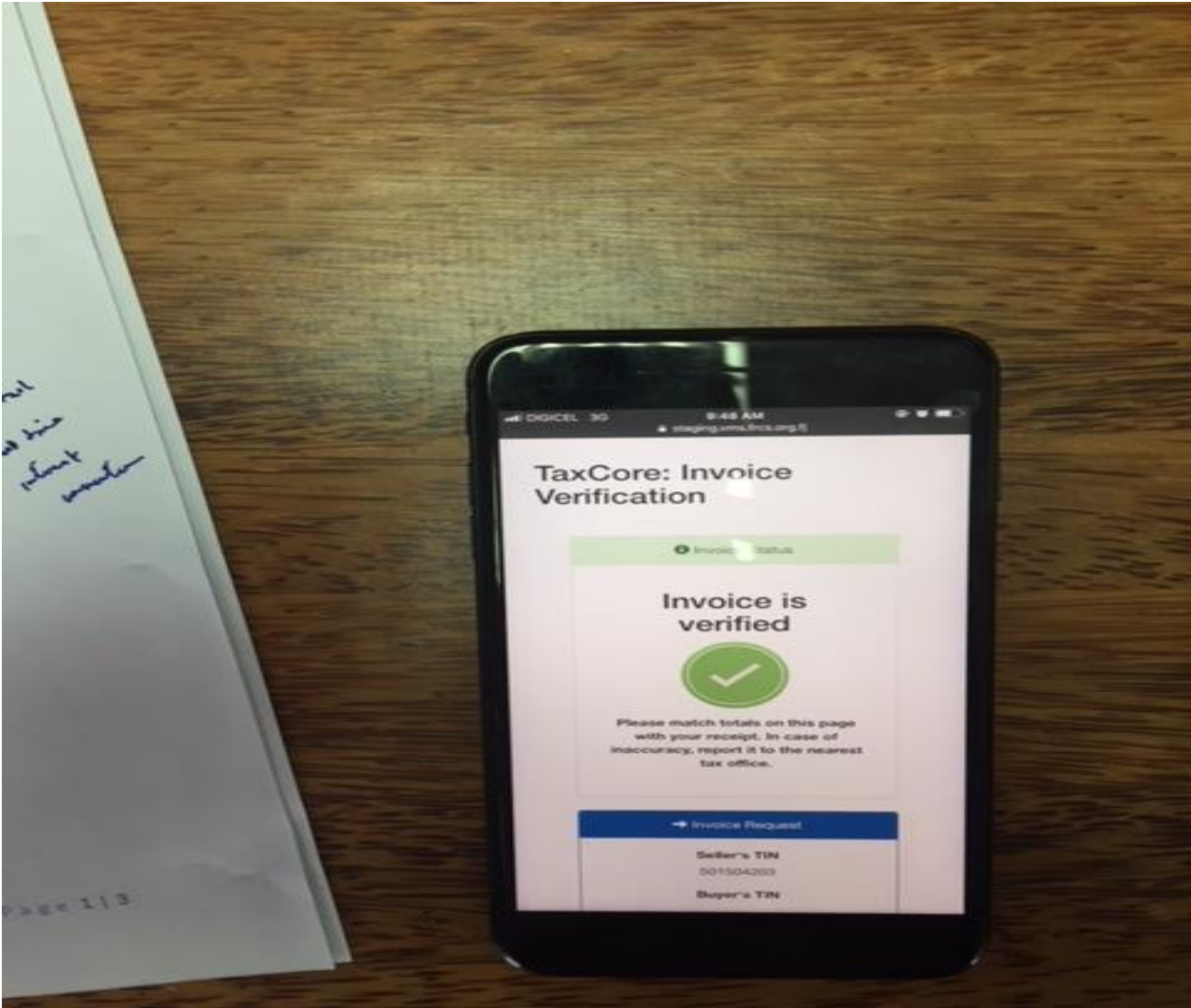
The Attorney-General explains the need in *The Fiji Times*:



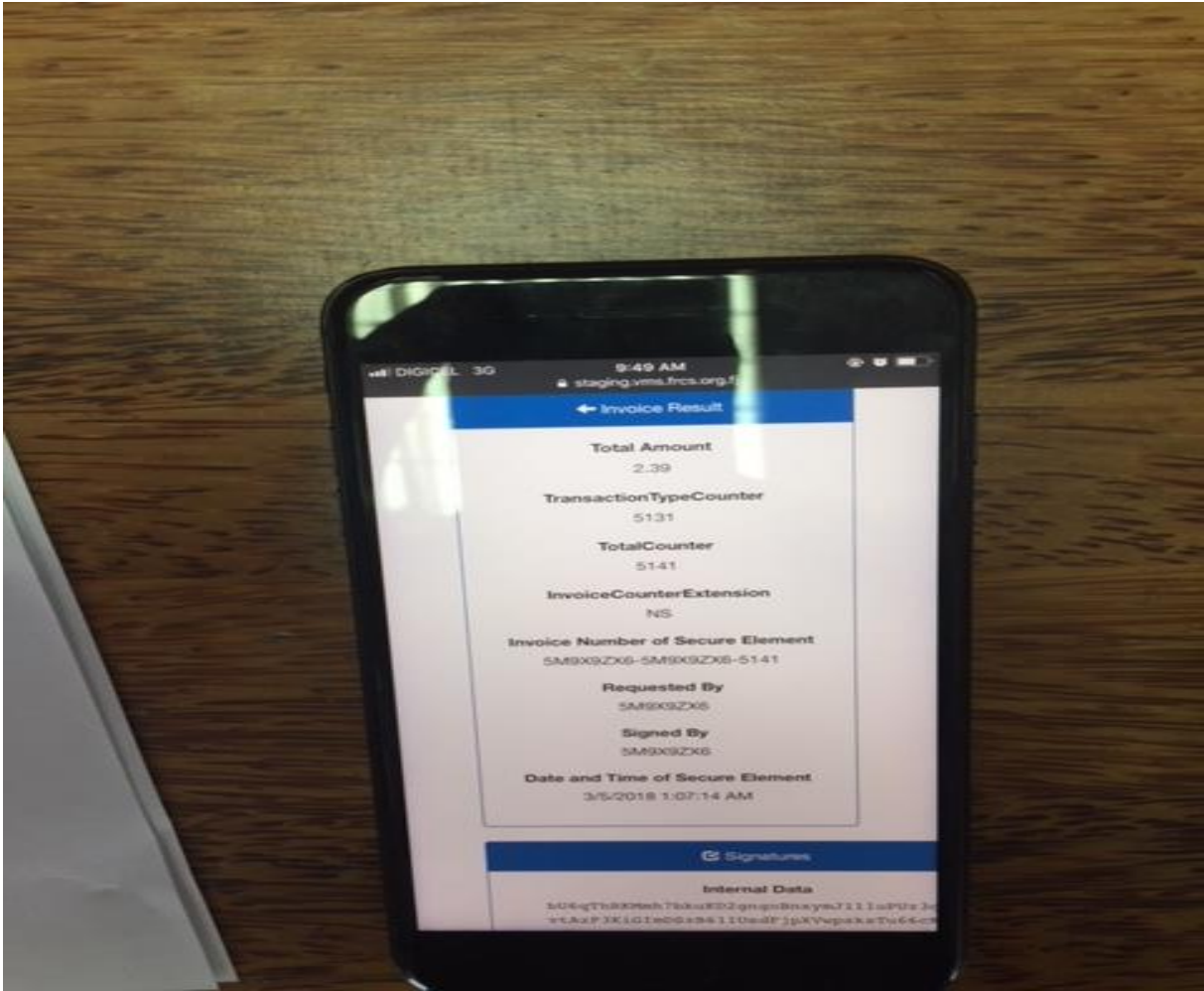
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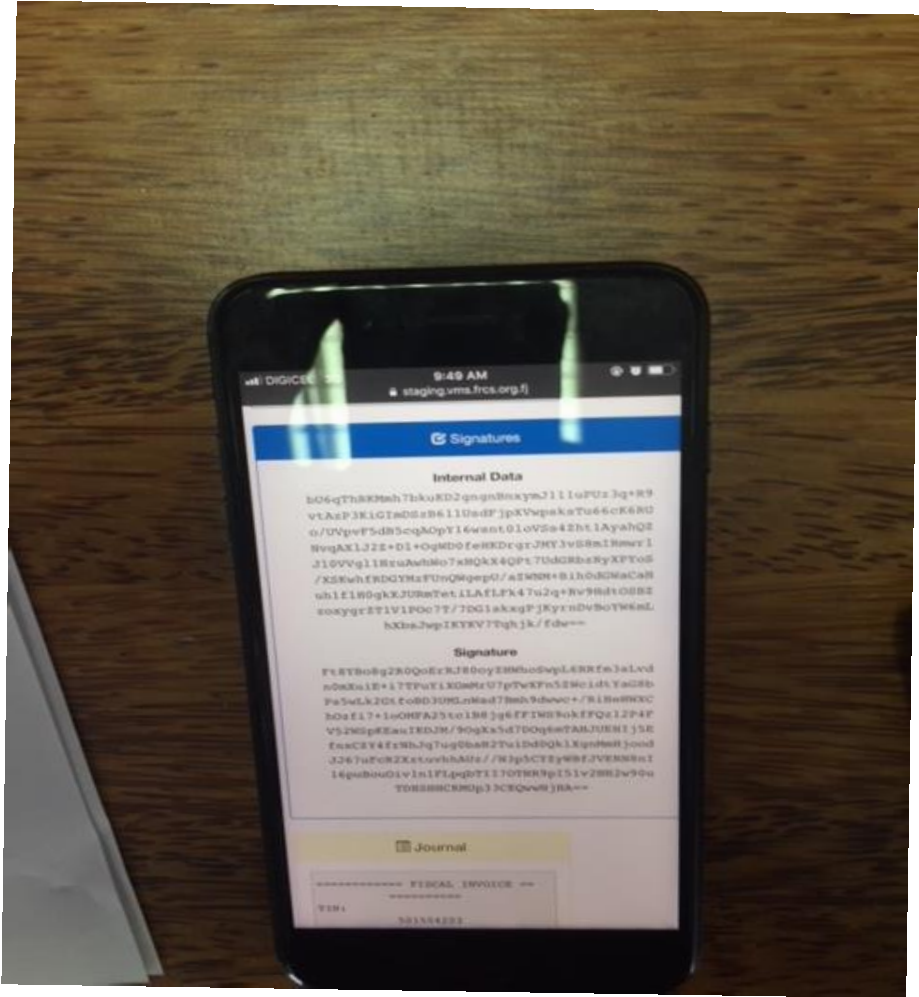
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**END OF ANNUAL SANITY CHECK**

**Thank you for coming – please switch  
back to “normal” mode**

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.