

Australasian LAWYER

australasianlawyer.com.au

Issue 3.2



Meet the finalists

RISING STARS

**Early-career lawyers who are making a name for
themselves in the Australasian legal market**



CLAIRE BIBBY
Leading Brookfield's
legal team

PHILLIP SALEM
Sparke Helmore's new
managing partner

HOT RURAL PROPERTY
Changing agribusiness
sector



Most Innovative Australian Law Firm

2015 Financial Times Asia-Pacific Innovative Lawyers Awards



Innovation
Seeing what others
haven't seen.

Innovation involves taking conventional, established practices and making them better, smarter, more successful.

At Gilbert + Tobin, we've been a leader in innovation in the legal market for over 25 years.

We have assisted leading Australian and international businesses with innovative solutions to their commercial challenges. This is why Gilbert + Tobin has become the firm of choice for our clients' most important work.



Sydney
Melbourne
Perth
gtlaw.com.au

CONNECT WITH US

Got a story, suggestion or just want to find out some more information?



twitter.com/Aus_Lawyer



plus.google.com/+AustralasianLawyerAu



facebook.com/AustralasianLawyer

CONTENTS



COVER STORY

RISING STARS

Early-career lawyers who are making a name for themselves in the Australasian legal market

PEOPLE

WIDE-EYED AND BUSHY-TAILED

Sparke Helmore's new national managing partner Phillip Salem on plans to drive the "world-class independent Australian law firm"

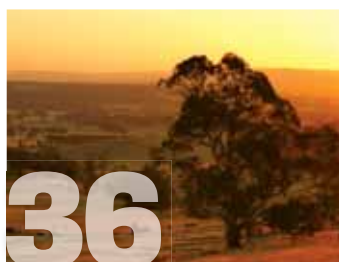
26



FEATURES

GOLDEN ERA OF INSURANCE

Insurance lawyers have been inundated with work off the back of a slowing economy



FEATURES

HOT RURAL PROPERTY

With new foreign buyer regulations coming into force, it's been a time of change in the Australian agribusiness sector



FEATURES

TACKLING THE AMERICAS

Herbert Smith Freehills' Juan-José Zentner on setting up camp in New York

UPFRONT

04 Legal insight

The Australian legal market: a salary guide

06 News analysis

Cyber threats are increasing; what was once an issue for IT professionals is now an issue for lawyers

10 Deals round-up

14 Appointments

PEOPLE

16 No day's the same

Claire Bibby, general counsel at Brookfield Property Partners, on the colourful side of being "smack bang in the middle" of the action

FEATURE

40 The Australasian Law Awards

Recognising and congratulating the finalists of these prestigious accolades for 2016



AUSTRALASIANLAWYER.COM.AU

CHECK IT OUT ONLINE



EDITORIAL



Sasha Borissenko

Onwards and upwards

Despite the broken record that is the GFC hangover, it appears there's much to celebrate. In this issue of *Australasian Lawyer*, we introduce this year's Australasian Law Awards finalists (page 40) – a nod to all the movers and shakers in the industry, if you will. A big congratulations to all the firms and in-house teams that have made the short-list, it's sure to be a wonderful night.

What better way to accompany the Law Awards finalists than to pay homage to the bright young things on page 20, who are taking the industry by storm. Each firm provided their own nominations, who were chosen not according to their age or status, but because they've led fantastic initiatives within and outside their respective firms.

Moving in-house, Brookfield's Claire Bibby dares to tackle fears around the growing number of general counsel on page 16, saying that fear not, external lawyers are here to stay.

Hannah Norton looks at the insurance (page 30) and agribusiness (page 36) practice areas, and how they're thriving despite the doom and gloom of economic strife. What's more, rather than wallowing in fear of cyber attacks, Oliver Tapper and Toby Gee discuss what's the situation and what legal mechanisms are in place on page 6.

Meanwhile it's exciting times for Herbert Smith Freehills, where Samantha Woodhill talks to Juan-José Zentner on page 54, who's recently set up camp in New York in the hope of tackling the Latin American market. Sparke Helmore too are celebrating, following the appointment of new managing partner Phillip Salem. For a taste of his career and his strategic aspirations for the firm, see page 26.

Indeed, things are looking onwards and upwards! Enjoy.

Sasha Borissenko, editor

Australasian
LAWYER
www.australasianlawyer.com.au

MARCH 2016

EDITORIAL

Editor
Sasha Borissenko
Production Editors
Roslyn Meredith
Moira Daniels

CONTRIBUTORS

Toby Gee
Oliver Tapper
Samantha Woodhill
Hannah Norton

ART & PRODUCTION

Design Manager
Daniel Williams

Designer
Kat Vargas

SALES & MARKETING

Sales Manager
Paul Ferris
Marketing and Communications Manager
Lisa Narroway
Traffic Coordinator
Lou Gonzales

CORPORATE

Chief Executive Officer
Mike Shipley
Chief Operating Officer
George Walmsley
Managing Director
Justin Kennedy
Chief Information Officer
Colin Chan
Human Resources Manager
Julia Bookallil

EDITORIAL ENQUIRIES

+61 2 8011 3367

sasha.borissenko@keymedia.com.au

SUBSCRIPTION ENQUIRIES

subscriptions@keymedia.com.au

ADVERTISING ENQUIRIES

+61 2 8437 4703

paul.ferris@keymedia.com.au



Key Media

www.keymedia.com.au

Key Media Pty Ltd, regional head office,
Level 10, 1-9 Chandos St, St Leonards, NSW 2065, Australia
tel: +61 2 8437 4700
fax: +61 2 9439 4599

Offices in Sydney, Auckland, Denver, Toronto, Manila

Australasian Lawyer is part of an international family of B2B publications and websites for the legal industry

AUSTRALASIAN LAWYER

sasha.borissenko@keymedia.com.au
T +61 2 8011 3367

samantha.woodhill@keymedia.com.au
T +61 2 8437 4704

NZLAWYER

sasha.borissenko@keymedia.co.nz
T +61 2 8011 3367

samantha.woodhill@keymedia.com.au
T +61 2 8437 4704

Copyright is reserved throughout. No part of this publication can be reproduced in whole or part without the express permission of the editor. Contributions are invited, but copies of work should be kept, as *Australasian Lawyer* magazine can accept no responsibility for loss.

A photograph of a modern office interior with large glass windows. Several people are standing near the windows, looking out. The office has a clean, minimalist design with dark frames and light-colored walls. The floor is dark and reflective.

Congratulations and good luck to all of the New Zealand In-House Team of the Year Finalists

Russell McVeagh is proud to sponsor the New Zealand
In-House Legal Team Award.

RUSSELL McVEAGH

www.russellmcveagh.com

AUCKLAND
VERO CENTRE 48 SHORTLAND STREET
PO BOX 8 AUCKLAND NEW ZEALAND DX CX10085
TELEPHONE 64 9 367 8000 FAX 64 9 367 8163

WELLINGTON
157 LAMBTON QUAY
PO BOX 10-214 WELLINGTON NEW ZEALAND DX SX11189
PHONE 64 4 499 9555 FAX 64 4 499 9556

STATISTICS

THE AUSTRALIAN LEGAL MARKET: A SALARY GUIDE

A report conducted by Hudson provides a guide to salaries for the legal profession

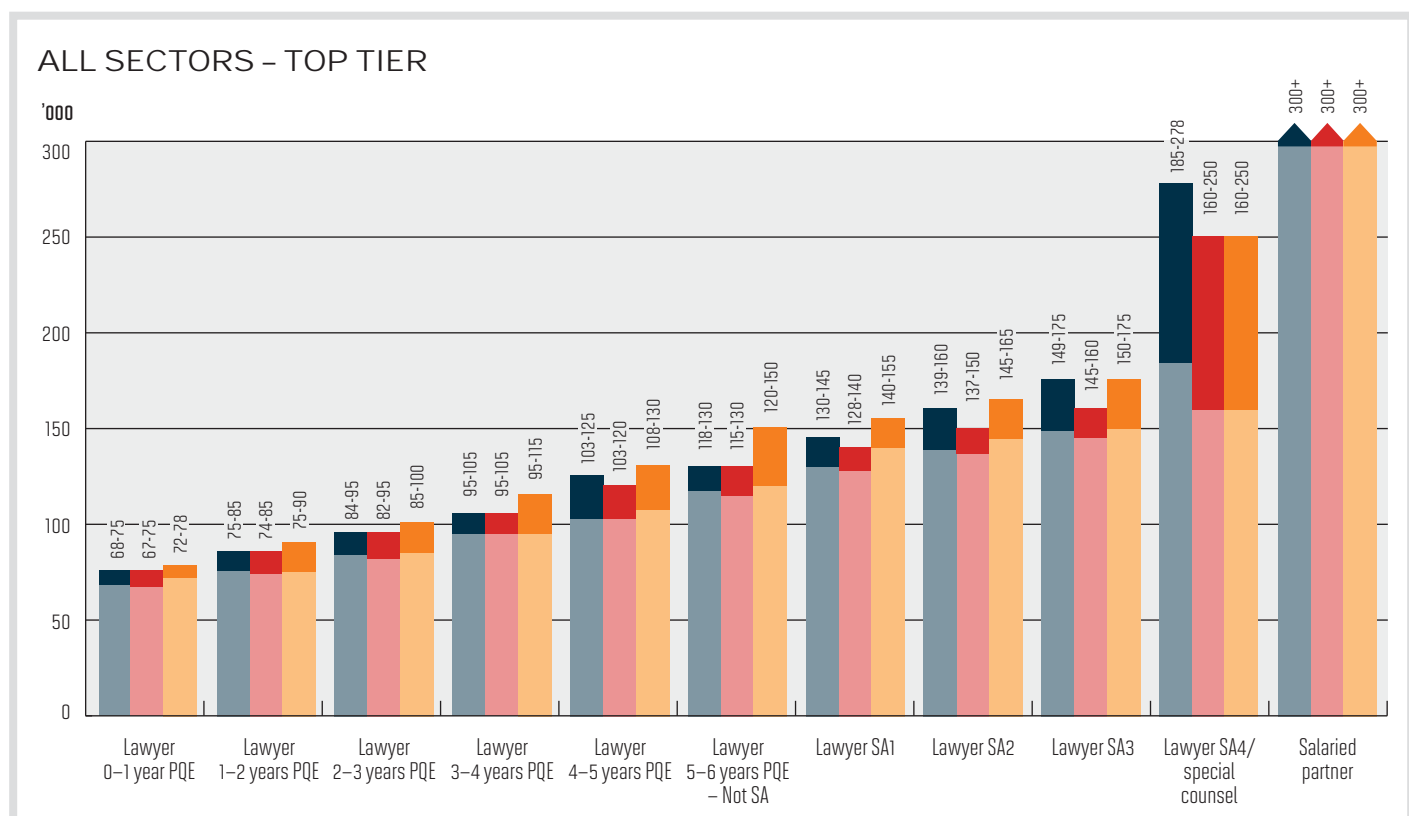
THE 2016 Hudson Salary Guides are a compilation of salary and market information provided by Hudson's consultants, clients, candidates and other sources across Australia. Information was gathered by drawing on the knowledge of the recruitment consultants working across Hudson's specialist practice groups.

All legal salaries are inclusive of superannuation but do not include bonuses, incentive schemes or stock options. Further, they incorporate placements at both small to medium companies (defined as having a turnover of less than \$100m) and large companies (defined as having a turnover of more than \$100m).

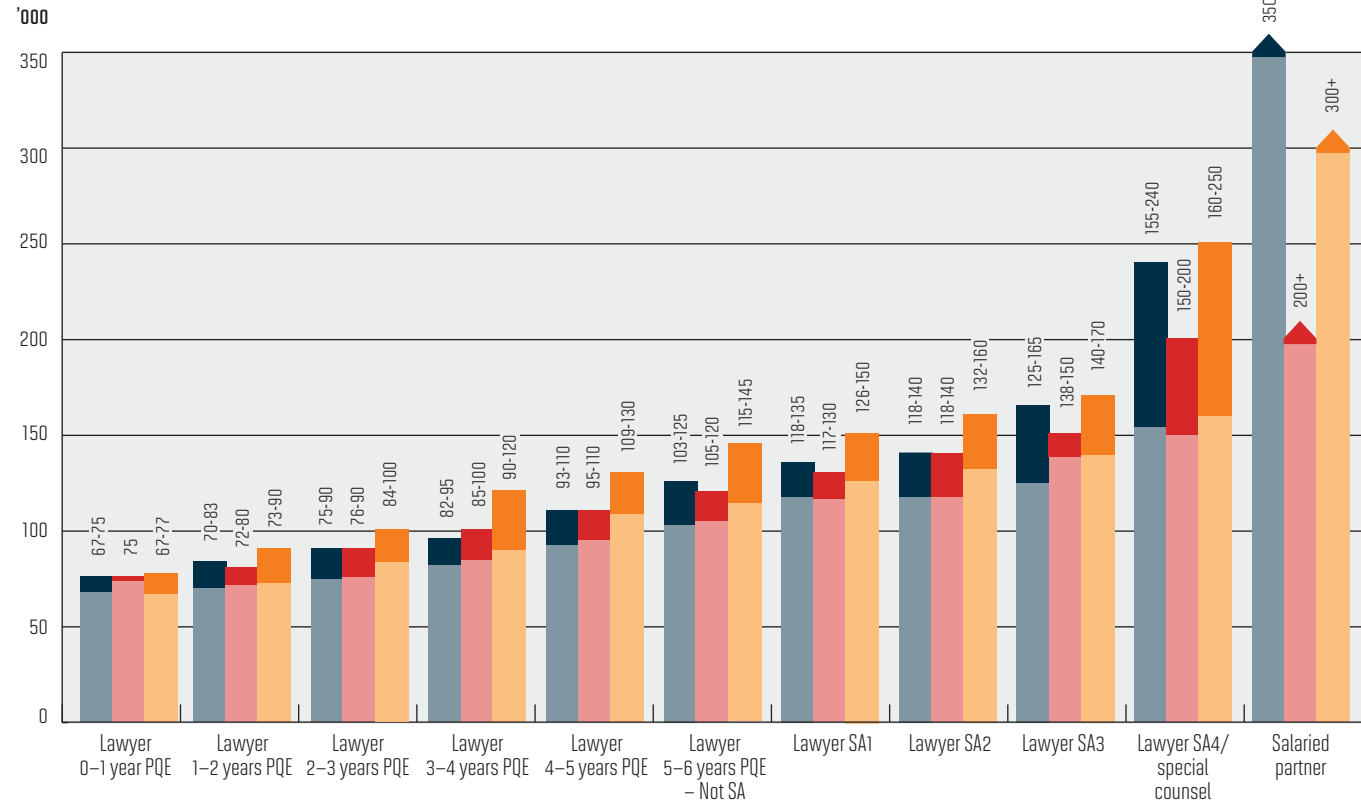
MELBOURNE

BRISBANE

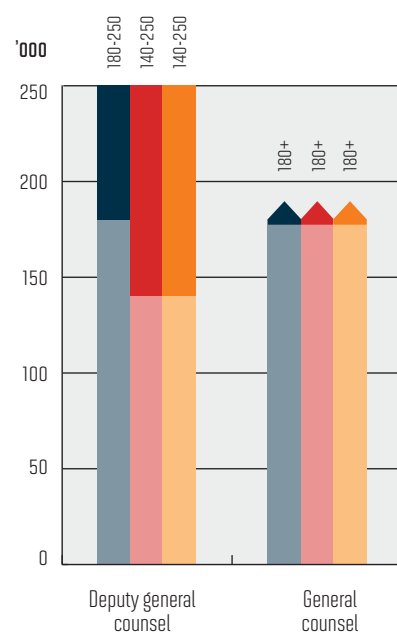
PERTH



ALL SECTORS - MID TIER

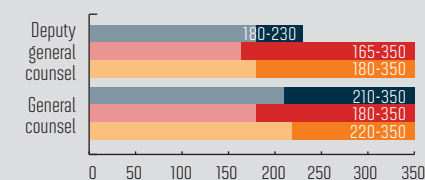


ALL SECTORS - IN-HOUSE

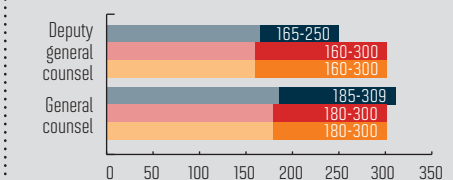


IN-HOUSE SECTORS ('000)

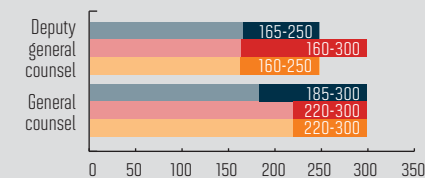
CORPORATE



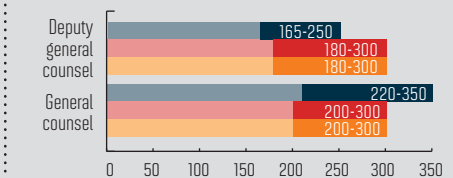
IT & COMMUNICATIONS



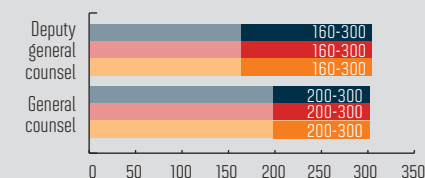
FINANCIAL SERVICES



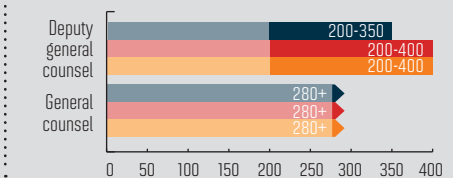
PROPERTY/CONSTRUCTION



FMCG/INDUSTRIAL



RESOURCES



Source: Hudson Salary Guides 2016

WHAT NEXT FOR CYBER RESILIENCE?

Cyber threats facing Australasian businesses are growing in scale and complexity. What was once largely an issue for IT professionals is now a crucial consideration for all of us. Lawyers are no exception. **Toby Gee** and **Oliver Tapper** report

BUSINESSES ARE increasingly recognising cyber security and cyber resilience requires active and vigilant engagement by the board and senior executive team, and should not be restricted to the IT department. With the introduction of mandatory data breach legislation in Australia expected later in 2016, it's never been more important for all levels of an organisation to turn their attention to cyber risk and how their organisation might be vulnerable.

So where is cyber security and resilience heading, and how does a lawyer's role fit into the picture?

The World Economic Forum lists cyber attacks as among the top five risks in terms of a combination of probability and impact. And in 2015, PWC reported that cyber risk

is the top concern for insurers in Australia.

In addition to detection problems, a further difficulty in measuring the incidence of cyber crime is that due to the sensitive reputational issues surrounding a data breach or cyber attack, many cyber attacks go unreported: As Una Jagose, acting head of New Zealand's Government Communications Security Bureau recently said, it is concerning that in a recent survey of major businesses in Australia, 43% of respondents said they did not report cyber incidents as they saw no benefit in doing so. It can be inferred that published data are probably a significant underestimate of the true prevalence and cost of cyber events.

The statistics demonstrate that cyber security incidents continue to be common and recurrent for Australasian businesses.

However, despite these risks, many Australasian businesses are neither confident in their information securities nor have cyber security strategies in place. In New Zealand, for example, 56% of businesses have reportedly been attacked at least once in the past year. Yet only 65% of New Zealand businesses are confident that their information technology systems are effective. And globally, Grant Thornton reports that





only about half of the businesses surveyed (52%) in their International Business Report said they currently have a cyber security strategy in place.

Australasian regulatory response

In the face of such significant risks, the governments of Australia and New Zealand are increasingly taking steps to protect and guide businesses, including through

resilience guidelines, the expected mandatory reporting of data breaches, beefing up national systems to address cybercrime,

personal information during the stages of its lifecycle. The information lifecycle involves the following steps:

“The statistics demonstrate that cyber security incidents continue to be common and recurrent for Australasian businesses. However, despite these risks, many Australasian businesses are neither confident in their information securities nor have cyber security strategies in place”

and promoting national and international co-operation between regulatory bodies and industry.

The Office of the Australian Information Commissioner (OAIC), for example, recommends that all organisations governed by the Privacy Act 1988 (Cth) should have a data breach response plan in place, as doing so will assist an organisation in meeting its obligations under Australian Privacy Principle (APP) 11 (which requires an organisation to take ‘all reasonable steps to protect the information it holds’). A data breach response plan should set out a business’s organisational and procedural framework for managing a data breach, and the response plan should be tested regularly.

In 2015, the OIAC also released the ‘Guide to securing personal information’, which provides further guidance on what constitutes ‘reasonable steps’ under APP 11. While the guide is not legally binding, the OIAC will refer to it when undertaking Privacy Act functions, including when investigating whether an organisation has complied with its personal information security obligations or when undertaking an assessment. In short, the guide emphasises the importance of managing and protecting

1 Consider whether to collect information – i.e. whether it is necessary to collect and hold personal information in order to carry out an organisation’s functions.

2 Privacy by design – how are personal information protection and handling procedures embedded in an organisation’s practices and policies?

3 Assessment of risks associated with the collection of personal information due to a new process or change to an existing process, or as business as usual.

4 Taking appropriate steps and implementing strategies to protect personal information held by an organisation.

5 Destruction or de-identification of personal information when it is no longer required.

The Australian Securities & Investments Commission (ASIC) is also supporting

NEWS ANALYSIS

businesses in their efforts to improve cyber resilience, including through the publication in 2015 of the report “Cyber Resilience: Health Check”. The report contains guidance

would need to publish a public notice (i.e. on its website), and take reasonable steps to publicise the notice (for example, through a social media post).

“The impact of cyber-attacks on organisations such as Sony, Target, Ashley Madison, eBay and Microsoft, as well as Australian retailers David Jones and Kmart, demonstrates the significant economic and reputational risks now faced by businesses both domestically and internationally”


for small to medium sized businesses as well as large organisations such as banks and major infrastructure providers. ASIC sets out a number of key regulatory and compliance matters, including that a cyber attack may trigger Corporations Act breach reporting requirements, such as that a cyber attack may need to be disclosed as market sensitive information; the expectation that officers of an organisation may need to consider cyber risks when discharging their duties to consider risk management issues; and that the board should be actively engaged in managing cyber risks.


Importantly, the Australian Government has also committed to introducing a mandatory data breach notification scheme, and is currently inviting public comment on the draft Bill before introducing legislation later this year. The Bill would require government agencies and businesses subject to the Privacy Act to notify the OIAC and affected individuals following a serious data breach, or when there are reasonable grounds to believe that such a breach has occurred. Where it would not be practicable to notify each affected individual, the organisation


What businesses should focus on


Part of the response from the government and professional organisations to cyber threats is to help educate boards, executives and others about how to respond to cyber risks (both before and after a cyber event).

The Australian Government recommends four key mitigations for businesses, which it says may reduce vulnerability to cyber attack by up to 80%:

 Application ‘white-listing’: Allow only a defined list of applications to run on a network.

 Patching system vulnerabilities: Computer system vendors constantly release operating system versions containing new patches to address vulnerabilities as they are discovered.

 Patching application vulnerabilities: Similarly, applications like Java, PDF viewers, Microsoft Office release patches which should be installed.


 Restricting administrative privileges to operating systems in accordance with the user’s duties.


Steps to improve cyber security include improving IT-related steps as above. But they also include addressing employee risks such as the need to train employees in how to be vigilant in relation to passwords, confidentiality of data and scam emails; reducing the quantity of any marketable data held by the business, and the period for which it is held, to reduce the attractiveness of the business as a target; and including cyber security checks and terms in contracting with suppliers.


How can lawyers assist businesses?

Lawyers play a key role in cyber resilience, which should enable them to participate actively, not merely after cyber events, but also in helping to increase the cyber resilience of the Australasian business community, and also cyber security – at least in relation to non-IT aspects of cyber security.

Lawyers can assist their clients by ensuring that they:

 Are fully compliant with relevant regulatory regimes in relation to the protection of data held by them or their third party service providers.

 Understand what cyber threats their organisation is vulnerable to, including assisting the organisation to identify and understand the potential impact that a cyber security incident could have on the organisation’s business operations, reputation, profitability and intellectual property.

 Have a data breach response plan in place, which clearly sets out the framework for identifying, notifying

“Lawyers play a key role in cyber resilience, which should enable them to participate actively, not merely after cyber events, but also in helping to increase the cyber resilience of the Australasian business community, and also cyber security”

CYBER THREATS ARE GETTING BIGGER AND MORE SOPHISTICATED, TAPPER AND GEE SAY



Toby Gee



Oliver Tapper

Cyber threats have seen exponential growth in the last few years. Symantec detected 19.4 million new pieces of malware globally in the month of November 2015 alone, and 317 million new pieces of malware in 2014 – that’s nearly a million new cyber threats every day. Cyber threats are also becoming more sophisticated. They are likely to operate undetected for longer and potentially cause greater harm: cyber security firm Mandiant found that in 2015


the mean number of days between infection and detection was 205.


Incidents range in severity from the targeting of individuals and small businesses, such as demanding a ransom to permit the business resumed access to its own system, to significant corporate espionage of large organisations, putting valuable intellectual property, business plans, pricing and acquisition strategies at risk.

Such cyber threats are taking a serious toll on business. The impact of cyber attacks on organisations such as Sony, Target, Ashley Madison, eBay and Microsoft, as well as Australian retailers David Jones and Kmart, demonstrates the significant economic and reputational risks now faced by businesses both domestically and internationally. Research from Grant Thornton reveals that the total cost of attacks globally is estimated to have been more than US\$315bn in 2015. And regionally, cyber attacks are estimated to have cost businesses in the Asia Pacific US\$81bn in 2015. The same report shows that the average “successful” cyber attack costs a business the equivalent of 1.2% of annual revenues. In addition, there are also extensive indirect costs, such as a reduction in a business’ ability to trade, or reputational damage – which can be particularly severe where customer loyalty relies heavily on trust.



and managing serious data security breaches, including that appropriate immediate advisory services are in place to manage the situation and contain any damage, and that all aspects of the plan are tested regularly to ensure their effectiveness.

 Assess and mitigate their supply chain risk, including checking trading partners’ cyber security processes and requiring suitable cyber security measures on the part of such partners, and ensuring there are appropriate provisions in supply contracts (e.g. provisions relating to data ownership and access, privacy and data protection, compliance with specified security standards and data destruction).

 Have in place suitable insurance to cover both first-party and third-party losses, together with event containment measures if appropriate.

As businesses increasingly move their key assets and systems to the digital sphere, and cyber risks continue to grow in volume and complexity, cyber security will become a growing critical concern. Whatever steps businesses and their legal advisors do or do not take, cyber risks are set to loom large in the coming years. Smart approaches in addressing them are likely to lead to market advantage and greater business sustainability. **AL**

TRANSACTIONS

DEALS ROUND-UP

Allens advises global IT services provider on \$427.6m acquisition of UXC

Allens has advised global IT services provider Computer Sciences Corporation (CSC), on the \$427.6m acquisition of UXC Ltd, Australia's largest publicly owned IT services company.

CSC acquired 100% of UXC by way of a scheme of arrangement. CSC made an initial non-binding proposal in October last year and a scheme implementation deed was entered into between the parties on 25 December. The scheme received overwhelming shareholder support and was implemented on 26 February this year.

UXC is a leader in mid-market enterprise applications, IT consulting and professional services. The acquisition advances CSC's global growth strategy and builds on the momentum created with the recent spin-off of CSC's US public sector business.

Lead partner on the deal Vijay Cugati said Allens was delighted to be chosen, reflecting its experience in significant public deals in the Australian M&A market, as well as its deep understanding of the local TMT sector.



Transaction	Value (A\$)	Adviser	Client	Lead lawyer(s)	Other firms involved
Computer Sciences Corporation acquisition of UXC Ltd	\$427.6m	Allens	Computer Sciences Corporation	Vijay Cugati	
Coöperatieve Rabobank U.A. Debt Issuance Programme (2016 Update)	\$15bn	Ashurst	Coöperatieve Rabobank U.A.	Paul Jenkins	
L-Bank \$60m issuance of 3.00% fixed rate notes under its \$5bn Australian and New Zealand Debt Issuance Programme	\$60m	Ashurst	L-Bank (Landeskreditbank Baden-Württemberg Förderbank)	Paul Jenkins	
Issue of \$50m 4.25% fixed rate notes due 12 May 2026 (Series 60, Tranche 3)	\$50m	Ashurst	Coöperatieve Rabobank U.A.	Paul Jenkins	
CBA on PERLS VIII capital notes	Seeking to raise up to \$1.25bn	Ashurst	Commonwealth Bank of Australia, Goldman Sachs Australia, Commonwealth Bank of Australia, ANZ Securities, Goldman Sachs Australia, J.P. Morgan Australia, Morgan Stanley Australia, Morgans Financial, UBS AG, Westpac Institutional Bank	Sarah Dulhunty	Herbert Smith Freehills – legal advisers to CBA
Base Resources \$10m equity capital raising	\$10m	Ashurst	Base Resources	Roger Davies	Ashurst, Clayton Utz, Baker McKenzie
Sale of the Otahuhu Power Station site to Stonehill Property Trust	NZ\$30m	Buddle Findlay	Contact Energy	Charlotte von Dadelszen, Louise Brazier	Bay Law Office

MAKE SURE YOUR FIRM'S WORK IS RECOGNISED

To ensure your firm and its lawyers get the recognition they deserve for their fantastic work, send all your deal details to sasha.borissenko@keymedia.co.nz

Transaction	Value (A\$)	Adviser	Client	Lead lawyer(s)	Other firms involved
Corporatisation, acquisition and listing of Co-operative Bulk Handling	\$3bn	Gilbert + Tobin	Consortium comprising Australian Grains Champion (AGC), GrainCorp and HRL Morrison	John Williamson Noble, Tim Gordon	
Perseus Mining merger with Amara Mining	\$118m	K&L Gates	Amara Mining PLC	James Green, Adam Levine	Corrs Chambers Westgarth
KWM advises DEXUS on proposed merger with Investa Office Fund	\$23.4bn	KWM	DEXUS Property Group	Susan Hilliard, Daniel Natale, Amanda Isouard, Miriam Kleiner	Herbert Smith Freehills
Queensland Investment Corporation's acquisition of Energy Australia's Iona gas plant	\$1.78bn	KWM	Queensland Investment Corporation	Louis Chiam, Jonathan Mitchell, Claire Rogers, Brendan Smith, Chris Allfrey, Ros Anderson, Carola Toledo Da Silva, Caroline Coops	
NAB demerger of CYBG PLC and its listing on ASX	\$3.2bn	KWM	National Australia Bank	Diana Nicholson, Peter Stirling, Ian Paterson, Will Heath, Samantha Kinsey, David Bryant, Agata Bober, Jack Hill	Clifford Chance, Allen & Overy, Linklaters
Acquisition of Affinity Education Group by Anchorage Capital	\$258m	MinterEllison	Anchorage Capital Partners	Ricky Casali, Costas Condoleon, Michael Barr-David, John Mosley, Stewart Robertson, David Crane, Jakob Paartalu	
Acquisition of Hussmann Corporation by Japan's Panasonic Corporation	US\$1.545bn	MinterEllison and Minter Ellison Rudd Watts	Panasonic Corporation	Glen Sauer, Mark Forman, Luke Walker, Paul Schoff	White & Case
Acquisition of Freedom Aged Care by Aveo	\$215.5m	MinterEllison	Aveo Group	Gary Goldman, Robin Lyons, Darren Sumich, Danielle Lim, Rob Marshall	Ferguson Cannon



Minter Ellison advises Aveo on \$215.5m retirement village deal

The Aveo Group, Australia's leading owner, operator and manager of retirement communities, has acquired 100% of Freedom Aged Care Pty Ltd for \$215.5m, comprising cash, scrip and assumption of debt.

Freedom owns and operates more than 1,000 units in 15 retirement communities in Queensland, NSW, Victoria and Tasmania, as well as a development pipeline of 533 units.

The acquisition is a key component of Aveo's strategy to increase the levels of care and support services to its residents, and is designed to facilitate Aveo's target of growing its return on retirement assets.

It boosts Aveo's total portfolio to 95 retirement communities with 17,000 homes around the country.

The acquisition is another significant milestone in the implementation of Aveo's pure retirement-play strategy.

The deal was led by partners Gary Goldman and Robin Lyons.

TRANSACTIONS



Norton Rose Fulbright advises Tiger Resources on its \$162.5m senior debt facility

A cross-border team from global law firm Norton Rose Fulbright advised ASX-listed Tiger Resources on its \$162.5m senior debt facility with the International Finance Corporation, the private arm of the World Bank Group, and Taurus Mining Finance Fund in respect of the Kipoi Copper Project. This project is located in the central part of the Katanga Copper Belt of the Democratic Republic of the Congo (DRC).

The new senior debt facility served to refinance Tiger's existing debt facilities with Taurus and Gerald Metals (Tiger's exclusive off-taker) as well as to provide approximately US\$25m to fund the expansion of Kipoi. The expansion aims to increase the capacity of the SXEW plant from 25,000tpa to 32,500tpa of copper cathode by November this year.

The senior debt is secured by cross-border security over the Tiger Group entities, including in the DRC, the British Virgin Islands, Australia, South Africa, and Mauritius.

The lead partners for the debt financing were Jake Howard (Perth), Poupak Bahamin (Paris) and Steve Chemaly (Johannesburg), while James Stewart (Melbourne) led the equity capital raising.

Transaction	Value (A\$)	Adviser	Client	Lead lawyer(s)	Other firms involved
Merger of Queensland energy retailers Ergon and Energex	\$24bn	MinterEllison	Queensland State Government	Mark Carkeet, Joel Reid	
Acquisition of J&P Richardson Industries	\$85m	MinterEllison	VINCI Energies	Ben Liu	
Acquisition of Open Door Pub Company	\$53.5m	MinterEllison	Dixon Hospitality Group	Bart Oude-Vrielink	
Strategic brand acquisitions by Parmalat Australia	\$41m	MinterEllison	Parmalat Australia	Gary Goldman, Steven Grant	
Sale of 50% interest in Sydney's World Square	\$285m	MinterEllison	Brookfield WS Retail Landowner Pty Ltd	Virginia Briggs, Kiri Purdy	
Sale of Woolworths Head Office	\$336m	MinterEllison	Mirvac Group	Julie Purbrick	
Merger and listing of travel businesses	\$90m	MinterEllison	AOT Group	Bart Oude-Vrielink	
Take-private of China Cord Blood Corporation by Golden Meditech Holdings	RMB7.6bn	MinterEllison	Nanjing Xinjekou Department Store Co., Ltd.	Barbara Mok	
Sale of subsidiaries by Kasen International Holdings	Approx. RMB493m	MinterEllison		Barbara Mok, Anne Ko	
Acquisition of equity stake in Chengdu Xingang Sponge Co	Approx. RMB81.74m	MinterEllison	Sinomax Group	Barbara Mok	
Acquisition of New Zealand SaaS provider	US\$624m	MinterEllison	Diligent Corporation	Jeremy Blackshaw	
AEP Investment Management in innovative Shariah compliant deal	\$159.8m	Norton Rose Fulbright	AEP Investment Management	Natalie Breen, Michael French, Dale Rayner, John Moutsopoulos, Davide Barzilai	
Tiger Resources on the refinancing of the Kipoi Copper Project	\$162.5m	Norton Rose Fulbright	Tiger Resources	Jake Howard, Poupak Bahamin, Steve Chemaly, James Stewart, Christian Navarro, Kagiso Maine, Katherine Werren, Chris Mitchell, Sabine Bertin, Fabio Miceli	

INSURING AGAINST DISHONEST EMPLOYEES

Banks and other financial institutions usually rely on internal controls to prevent or identify dishonesty by employees. However, given the often large sums of money at stake, if the internal controls fail the consequences can be catastrophic.

Fidelity insurance may be available where employees have control over funds and, therefore, the opportunity to defraud their employers. In the recent New Zealand Court of Appeal case of *Vero Liability Insurance Limited v Heartland Bank Limited (formerly Marac Finance Limited)* [2015] NZCA 288, Marac held a Crime Insurance policy with Vero, which was a form of fidelity insurance providing cover for loss caused by acts of dishonesty committed by employees. At issue was whether Vero was liable to indemnify Marac under that policy.

Marac succeeded in the High Court. However, on appeal, the Court of Appeal held that Vero was not liable because the dishonest acts had not been committed with the clear intent to cause Marac a loss (and because Marac had not suffered any additional loss during the relevant period of cover under the policy). On 3 November 2015, the Supreme Court declined leave to appeal against the Court of Appeal's decision.

THE UNAUTHORISED LENDING

Marac provided finance facilities to Rapson Holdings Ltd, a distributor of motor vehicles. In 2002, Marac appointed one of its employees, Mr Atkinson, to take responsibility for managing Rapson's account.

In October 2003, Mr Atkinson opened a new account, under which he made advances to Rapson that often exceeded his delegated authority. Mr Atkinson concealed from Marac's credit committee and board the fact of the new

account and the advances. In 2010, Marac discovered the unauthorised advances and made a claim under its Crime Insurance policy. Rapson subsequently went into liquidation owing over NZ\$4 million to Marac under the new account.

In essence, to be indemnified under the policy Marac had to establish that Mr Atkinson had acted dishonestly and with the clear intent to cause Marac a loss.

DISHONESTY

The Court of Appeal confirmed that a person is dishonest if they do not act in a way that an honest person would act and that:

...although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be described as dishonest, it is irrelevant that the defendant has different standards and does not appreciate that his conduct, by ordinary standards, would be regarded as dishonest.

The High Court found that, although Mr Atkinson had not set out to deceive Marac from the beginning, by 2005 he realised that what he had done was beyond his authority and that he would be in very serious trouble if Marac's credit committee came to know of the increased exposure. At that point, an honest person would have come clean about the problem to his superiors. However, Mr Atkinson did not tell his superiors about the unauthorised lending. Instead he continued to make further advances, which he knew he was not authorised to make. On that basis, both the High Court and Court of Appeal held that Mr Atkinson had acted dishonestly.

CLEAR INTENT TO CAUSE MARAC A LOSS

The High Court concluded that Mr Atkinson had acted with a clear intent to cause Marac a loss. The Court of Appeal disagreed. In relation to the meaning of "clear intent", in the Court of Appeal it was accepted that:

In every case it is a question of fact as to whether the employee intended to cause loss. But proof of intent to cause loss does not require proof that the employee also desired that outcome.

The Court of Appeal concluded that Mr Atkinson's dishonesty lay in his attempts to avoid the credit committee discovering that the advances he had made exceeded his delegated authority, so as to reduce the risk of dismissal or internal discipline. Mr Atkinson had not recognised the inevitability of loss through his actions. Mr Atkinson's conduct was directed towards recovery of Marac's debt, rather than an intention to cause loss. Accordingly, Vero succeeded with its appeal.

CONCLUSION

The case highlights that fidelity insurance will usually be limited to classic embezzlement cases, where the employee's gain is inevitably the employer's loss. This reinforces the need for appropriate internal controls to ensure that employees do not engage in unauthorised lending or trading.

This article was written by David Broadmore, a senior associate based in the Auckland office of Buddle Findlay. David specialises in commercial litigation and has extensive experience in insolvency, construction, insurance, professional negligence and contractual disputes.



David Broadmore
 DDI: +64 9 358 7010
david.broadmore@buddlefindlay.com

MARKET MOVEMENTS

APPOINTMENTS

Presented by

Mahlab



■ ASHLEY TSACALOS JOINS CLAYTON UTZ AS A PARTNER

Ashley Tsacalos is one of Australia's leading advisers to government in the areas of dispute resolution and litigation, and administrative law. His areas of specialisation include contractual disputes, tort claims, judicial review, merits review, regulatory enforcement, public law, government information law and privacy, tendering issues, and insurance law.

Tsacalos acts for a range of government departments and agencies at federal and state level, as well as ministers and senior public servants. He has extensive experience in managing complex and often-sensitive disputes for government and has also conducted a number of investigations and reviews for government departments and agencies. Tsacalos also acts for a range of private sector clients within his areas of expertise.

In addition, Tsacalos has significant experience and expertise in relation to inquiries and Royal Commissions. In the last 12 months, he has represented significant parties in three major inquiries: the Royal Commission into Institutional Responses to Child Sexual Abuse; the Royal Commission into Trade Union Governance and Corruption; and the Special Commission of Inquiry into Greyhound Racing in NSW. He also acted for the Commonwealth Government in the Montara Commission of Inquiry in 2010 following the worst oil spill in the history of Australia's offshore petroleum industry in 2009.

LATERAL PARTNER APPOINTMENTS

NAME	PRACTICE AREA	LEAVING	GOING TO
Ben Allen	Dispute resolution	Norton Rose Fulbright	Gadens
Con Boulougouris, Wissam Abwi	M&A	Norton Rose Fulbright	MinterEllison
David Davies	Employment	Sparke Helmore	Thomson Geer
Jane Hall	Health and safety	Corrs Chambers Westgarth	Seyfarth Shaw
Peter Hodges	Commercial litigation	McLachlan Thorpe	Mills Oakley
Nick Humphrey, Hal Lloyd, Daniel Atkin	Corporate	Sparke Helmore	K&L Gates
Simon Johnson	Litigation and commercial dispute resolution	Norton Rose Fulbright	Corrs Chambers Westgarth
Ilan Kraus	Commercial	Kalus Kenny Intalex	Kliger Partners
Meg Lee	Property, construction and planning	Allens	Gadens
Steven Mackay	Property/real estate	Addisons	Gilbert + Tobin
Marshall McKenna	Litigation	Allens	Gilbert + Tobin
Josh Messing	Technology, media and communications	Herbert Smith Freehills	HWL Ebsworth
Ruth Neal	Financial products and services	HWL Ebsworth	Gadens
Gary Newton	Property	Colin Biggers & Paisley	TressCox Lawyers
Alastair Oxbrough	Property, construction and planning	MolinoCahill Lawyers	Gadens
Sabine Phillips	Health and aged care	Russell Kennedy	Gadens
Aidan Prebble	Resource management	Cavell Leitch	Buddle Findlay
Marina Raulings	Tax	MinterEllison	Hall & Wilcox
Matt Roser	Commercial litigation	Ashurst	Mills Oakley
Mahoney Smith	Property	DLA Piper	DibbsBarker
Bernard Tan	Property	ClarkeKann Lawyers	Keypoint Law
Ellen Thomas	Tax	Baker & McKenzie	Norton Rose Fulbright
Debra Tippet	Commercial/ICT and procurement	MinterEllison	Henry Davis York
Ashley Tsacalos	Government	Ashurst	Clayton Utz
Anthony Whealy	Environment	Gadens	Mills Oakley
Chris Wille	Real estate	Holding Redlich	K&L Gates

SENIOR ASSOCIATE APPOINTMENTS

FIRM	LAWYERS PROMOTED
Buddle Findlay	Anna Bloomfield, Keri Johansson, Rishalat Khan, Jonathan Simons
Gadens	Emily Lett
Gilbert + Tobin	Elizabeth Hill, Adrian Chotar
Hall & Wilcox	Amanda Leong
K&L Gates	Jess Bayly, Shaun Blacker, Daniel Brando, Sarah Bullock, Bridget Camilleri, Nick Cerche, Chloe Mitchell, Kathryn Maric, Adam Moore
Rigby Cooke Lawyers	Joseph Santhosh
Wotton + Kearney	James Sharpe

OTHER

NAME	FIRM/COMPANY	TITLE
Eleanor Kwak, Georgina North, James Cameron, James Shirbin, Jennifer Dean, Kirsty Davis, Leanne Dorricott, Megan Russell, Rachael King, Rhys Lloyd-Morgan, Ruth Hart	Corrs Chambers Westgarth	Special counsel
Tejaswi Nimmaḡadda	King & Wood Mallesons	Special counsel
Savannah Hardingham, Hannah Jankiewicz, Kristy Peacock-Smith, Gregg Sivyver, Anna Trist, Nicole Ward	K&L Gates	Special counsel

PARTNER PROMOTIONS

FIRM	LAWYERS PROMOTED
Buddle Findlay	Miriam Andrews, Nick Bragg
Clyde & Co	Benjamin Hirasawa
K&L Gates	Steven Wulff, Lucy Williams, Nick Humphrey, Hal Lloyd, Daniel Atkin
Mills Oakley	Aaron Gadiel
Norton Rose Fulbright	Peter Lamont



■ CLYDE & CO APPOINTS LEADING HOSPITALITY AND REAL ESTATE PARTNER

Partner Benjamin Hirasawa has joined Clyde & Co to take up the role of head of hospitality, Asia-Pacific.

Hirasawa advises major hospitality and leisure companies across the globe; his recent experience includes advising on projects in Asia, Australasia, Europe, North America,

the Middle East and Africa, with a particular focus on Thailand, Singapore, Myanmar, Indonesia, Japan, the Philippines and Australia.

In his new role at Clyde & Co, Hirasawa will be responsible for coordinating and expanding the firm's Asia-Pacific hospitality and leisure practice. His core practice focuses on advising real estate, corporate and hospitality clients on various international business transactions, including private equity financings, joint ventures, cross-border mergers and acquisitions, and the acquisition, development, operation and disposition of hotels, commercial and residential projects and master-planned communities. He has extensive experience in advising on all aspects of the project development cycle, including providing advice regarding the multi-jurisdictional development of timeshare, fractional, branded residence, franchise and mixed-use projects.

Our business is to find the best lawyers for your business.

www.mahlab.com.au Melbourne (03) 9629 2111 Sydney (02) 9241 1199

Mahlab

CLAIRE BIBBY

No day's the same

Claire Bibby, general counsel at Brookfield Property Partners, talks to **Sasha Borissenko** about the colourful side of being “smack bang in the middle” of the action

BROOKFIELD PROPERTY Partners' senior vice president and general counsel Claire Bibby “absolutely loves” working at Brookfield, a company that prides itself as being one of the world's largest global alternative asset managers. She has almost 4,000 clients that she services with a team of six people, which keeps her “gloriously busy”, she says.

running the deli counter at Woolies. At 7am I start my day with a coffee and sort out my agenda, but come 8am the doors open and the queues begin!”

Bibby hails from England but moved to Western Australia when her parents decided to set up camp there when she was eight. And although her grandfather and brother

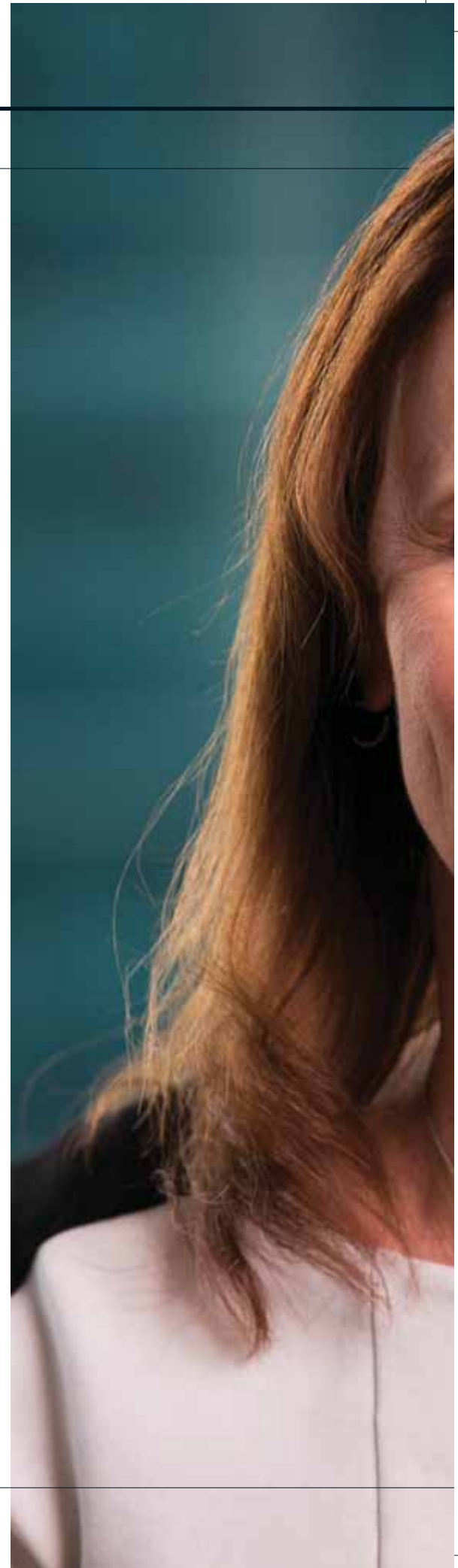
“I joke that running my desk is similar to running the deli counter at Woolies. At 7am I start my day with a coffee and sort out my agenda, but come 8am the doors open and the queues begin!”

“The best word to describe my practice is that it's like a kaleidoscope. The colourful nature and variety of legal issues that I deal with, set against a backdrop of the strength and processes of working in a global business like Brookfield, is such that no one day is ever the same.

“I joke that running my desk is similar to

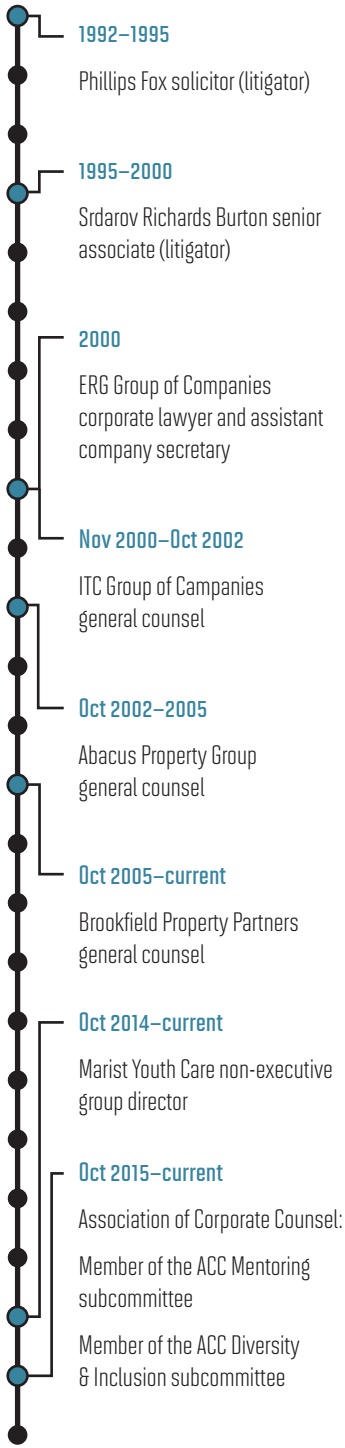
were both police officers, she is the first in the family to be a lawyer.

“Well, there may have been some lawyers way back in the family. My mother is a keen genealogist and has tracked our lineage all the way back to Oliver Cromwell's court. I'm sure we've had a few lawbreakers on the way, mind you.”





CAREER



CLAIRE BIBBY

Law school and beyond

In fact, Bibby fell into law, she says. After securing a commerce scholarship for high achievers to attend Bond University in Queensland, her grades after her first semester were such that the law school then offered her a second scholarship to complete a law degree as well.

“It was a case of being in the right place at the right time. I thought to myself, well OK, if you want to pay for me to continue living on the Gold Coast and study, then I’m very happy to do that! My parents were both very supportive of me continuing my studies for as long as I wanted to. I’ve been very lucky in that regard. It’s about making the most of opportunities.”

“Yes, in-house lawyers are becoming more prominent, but we absolutely know the value of external lawyers, and, importantly, to be good we need to know what it is that we don’t know and where to get it. I don’t see that changing...”

Bibby then got her grounding in private practice by being a litigator in a commercial capacity for eight years before moving in-house, and she’s been working in this area for over 16 years.

Reaching senior associate level in a top-tier law firm, she decided fairly early on in the piece that the partnership path was not for her.

“Being a litigator taught me the art of negotiation. It taught me a great understanding of the court system and the desire to not leave your destiny in the hands of someone else. But I wanted to work within a company and be smack bang in the middle of deal-making. Moving into a general counsel role gave me a chance to embed myself in a business and to be in the thick of it. I love the art and science of negotiating and deal-making.”

More in-house counsel

External lawyers are specialists, and general counsel are generalists, Bibby says.

“I sometimes feel like I’m running a mini law firm inside a corporate structure with the exception of timesheets. I don’t feel that external law firms need to be concerned with the growing number of in-house lawyers. We use external lawyers to help and support us with the work we don’t either have the time or the resources to do ourselves. As in-house lawyers, there is a lot of pressure on us from the business to continually add value. A lot of the work I brief out I could do myself, but that’s not what my job is.

“My role changes every day. Just this morning I’ve dealt with licensing issues,

opined on securities laws, responded to a human resources matter, worked on a government tender, and purchased six properties. I can’t personally take all of these things to the very end though. I need support from external counsel. On any one day I can be dealing with anything from 50 external lawyers on a wide array of legal topics, all of which my clients feel should be my top priority that day.

“Yes, in-house lawyers are becoming more prominent, but we absolutely know the value of external lawyers, and, importantly, to be good we need to know what it is that we don’t know and where to get it. I don’t see that changing. My ideal external lawyer is one that understands me and the client base that I am supporting. A lot of the external lawyers I use at Brookfield have been with me since day one.”

Whether it’s giving advice to reception when being served with a subpoena, or advising the company CEO in preparation for a board meeting, each of my clients has their own needs and is attended to with absolute care, Bibby says.

“Our door is open to everyone who is in the Brookfield chain. Four thousand people is a lot of people to service. While I’m probably seen as a service provider predominantly to senior management, equally I’m there to advise anyone who comes my way with a legal issue, and I’m absolutely happy to help.”

It’s the company and the people she is surrounded by that makes her job worthwhile, she says.

“Everyone is highly motivated and smart. We’re building, developing and managing awesome properties and assets all around the world, and we are known for being the ‘best in class’. The commercialisation of our transactions are such that we set market standards and people follow. I love working with really clever folks who are always doing exciting and innovative things. I feel very fortunate.”

Tackling issues within the profession

More generally, however, mental health is something the legal industry really needs to be acutely aware of, Bibby says. Recent studies show a third of solicitors are at a high or very high risk of suffering from a diagnosable mental illness.

Bibby’s aim is to raise the profile of mental illness, both among Brookfield’s in-house lawyers and within the legal industry, and to reduce the stigmas associated with it, she says.

“I check in on my team’s wellbeing and their capacity at least once a week, and whilst I’m not their mother, they know that their state of feeling secure and supported is always at the top of my agenda.” Bibby is currently looking into implementing the Tristan Jepson Memorial Foundation guidelines for lawyers at Brookfield and is working with a number of her external lawyers to learn what they are doing in this space. “We need

to look after our people and ensure we're not working them too hard."

Law is always going to be a highly stressful job, Bibby says. It's about how managers provide support to their staff, and it's also important for individuals to ensure there's support around them.

Whether it's related to the type of people who are attracted to law, or the nature of the work, it's likely that the law is always going to have high rates of mental illness, she says.

"We put a lot of pressure on ourselves to provide high-quality legal advice. We are also expected to provide the right response to our clients every time. It's therefore important

"We put a lot of pressure on ourselves to provide high-quality legal advice. We are also expected to provide the right response to our clients every time. It's therefore important that we look after each other"

that we look after each other.

"My team are awesome – both as lawyers and as people. I don't want them to leave and work somewhere else. Rather, I want them to enjoy what they're doing as much as I do and to know that I have always got their

back, so to speak. I want to take them along for the ride with me. I want them to enjoy their work, feel secure and have realistic expectations as to what can be achieved.

"As an internal lawyer I can't give work to an external lawyer at 8pm and expect the work to be completed by 8am the next day, for example. That's unfair to put that sort of pressure on anyone, and I will be the first to call out this type of behaviour if I see it. It's inappropriate to pass stress on to someone else in this sort of way."

DIVERSITY WITHIN THE PROFESSION



Bibby is a great advocate for diversity within the profession.

She is an active contributor to the Brookfield diversity committee and is proud of the work she has done in supporting the women of Brookfield in particular. And while it's still early days, she is an inaugural member of the newly formed Diversity & Inclusion committee of the NSW branch of the Association of Corporate Counsel (ACC). That committee is venturing out into the less-chartered waters of considering diversity for lawyers who are part of the LGBTI community, or who may be disabled

or who come from an indigenous background.

"We want to go beyond gender diversity but also look to increase the representation for various smaller segments in our community. A lot of great work is being done by others, and the ACC is keen to make a mark for in-house lawyers in different areas.

"You can also influence your external lawyers with their promotion of diversity through your buying power. I'm a large buyer of legal services and approximately 20 law firms get the bulk of my work. They know the issues that I'm passionate about and a number of them support the causes I care for, whether that's through attending events I am a part of, volunteering as sponsors of functions, or providing pro bono legal advice for NFPs I work with. There's something to be said in that regard."

Gender diversity is as important now as it ever was, she says.

"It's not something we should just talk about on International Women's Day. It's high on people's radars and it needs to stay there until we can put our hands on our hearts and say we have achieved gender equity. It's fantastic to see, for example, the Male Champions of Change and other senior men in industry articulating the business case for diversity. There's plenty of statistics to support the impact on the bottom line achieved by embracing diversity. We'll only have overcooked the issue when we have more women than men in senior management, and, quite frankly, that's a long way off, if ever."

Personal brand

Overall, developing one's personal brand is something that should be highly important to all lawyers, Bibby says. Success comes from self-packaging.

"Whether it's using your internal or external contacts, I think it's important for lawyers to consider having mentors, but equally it's very important to look for a sponsor, someone who is vested in your career and who believes in you. It's so valuable to have somebody who is going to back you in what you do and provide help and champion you. No man is an island."

Outside of the law, Bibby finds some reprieve through gardening. Last year her partner surprised her with a trip to New Zealand's Hobbiton Movie Set, which is based on the *Lord of the Rings* trilogy.

"I love getting down and dirty in my garden. I love growing vegetables, and I know it sounds uncool and naff but I find it really relaxing. I hope to have my very own 'Hobbiton' one day at home. When I get a call saying [director Peter Jackson] wants to film the next instalment of the *Lord of the Rings*, I'll know I've made it." **AL**

RISING STARS

RISING STARS

Australasian Lawyer profiles early-career lawyers who are already making a name for themselves in the Australasian legal market

THE LAWYERS in this list are all bright young things, but they are already taking the lead in significant cases and major transactions across a range of practice areas. Outside of the office, these lawyers are contributing to the wider community through participation in legal associations, legal education and pro bono work. Each generation of lawyers leaves its mark on the profession, and no doubt many of these faces will be leading law firms through the changes and challenges facing the profession over the coming years.



JAMES ARNOTT

K&L Gates

Arnott is a senior associate in the Melbourne technology and outsourcing team and over the last 12 months has led a number of significant transactions for the firm's clients across Australia. These include acting for a leading Australian energy retailer, advising a state government-owned utility, advising an ASX 20 integrated energy company, acting for a government-owned utility, and working with a Singapore government-owned corporation on the roll-out of a new virtual private cloud service to be offered to enterprise clients across the APAC region. In addition to his impressive legal skills, Arnott is an innovator when it comes to practice management. He has developed informative reports for his key clients, set KPIs that are meaningful and relevant to the client, and developed targeted alternative fee arrangements whether for small matters or large outsourcing projects. He also acts as a mentor and supervisor to the junior lawyers in his team and is a great role model within the team.



BIANCA BATTISTELLA

Piper Alderman

Battistella is a corporate senior associate who has uniquely positioned herself as a trusted adviser to a diverse range of clients in the food and agribusiness sectors. She has recently advised Sundrop Farms on their world-first solar-powered desalination greenhouse project; acted on the sale of one of Australia's leading rock lobster businesses; and is acting for one of the short-listed bidders for S. Kidman & Co. As an extension of Battistella's industry focus, she has recently taken a leadership role in collaborating with Primary Industries and Regions South Australia in implementing their 'Women Influencing Agribusiness and Regions Strategy', which sets to promote, recognise and celebrate the role women play in the traditionally male-dominated agribusiness sector.



FELICITY DALEY

Corrs Chambers Westgarth

Felicity Daley is a corporate law specialist who recently returned to Corrs Chambers Westgarth as special counsel in the corporate advisory team based in Sydney, after three years as senior in-house counsel at AMP. Daley has more than 10 years' experience, including substantial experience in M&A, equity capital markets, venture capital and corporate advisory; her focus is on advising financial services and technology companies. Throughout her career, Daley has advised on many market-transforming corporate deals, including the investment by an Australian company into the largest pension provider in China, and the demerger of the Fosters and Treasury Wine Estates businesses. She is known for her ability to navigate complex transactions and influence multiple stakeholders to drive successful matter outcomes for her clients.



DAVID CAROLAN

Hall & Wilcox

David Carolan is a fourth-year lawyer in the firm's general insurance team where he practises general insurance litigation. His expertise includes indemnity disputes, public and product liability, property damage and accident towing disputes. He has particular expertise in litigated fraud claims and has successfully defended a number of clients in the Magistrates' and County Courts. Carolan is respected by his peers and is the firm's 'go to' person on questions of evidence. He plays an active role on the firm's pro bono committee and recently assisted in a number of applications to the High Court on behalf of asylum-seeker clients. Carolan balances his workload with part-time study and is halfway through his Master of Laws at Melbourne University. Prior to practising law Carolan undertook two internships at United Nations criminal tribunals.

RISING STARS



BRONWYN FURSE

Thomson Geer

Bronwyn Furse is a senior associate with a reputation as an outstanding specialist IP lawyer. She is a member of the Board of Trustees for LESANZ (Licensing Executives Society of Australia and NZ) and immediate past president of its SA Chapter; a member of the Franchising Council's SA Committee; and former member of UniSA's Human Research and Ethics Committee. Furse regularly presents at conferences, including the LESANZ National Conference, the Tech Transfer Summit Australia and the National Franchise Convention. She is also known as an outstanding franchising lawyer, having prepared numerous submissions for franchising reforms and Small Business Commissioner reforms throughout Australia.



JOANNE HARDWICK

Mills Oakley

Commercial disputes and insolvency partner Joanne Hardwick has a diverse commercial litigation practice with a focus on insolvency and restructuring work. Hardwick and her team have been kept busy over the past 18 months coordinating over 1,400 individual legal proceedings on behalf of the liquidators of Timbercorp Finance Pty Ltd for recovery of its loan book, estimated to be worth \$350m. As a mother of three young children, Hardwick is passionate about gender diversity and the progression of women and has played a key role in the introduction of several important new policies in this area at the firm, including enhanced Paid Parental Leave entitlements, a new equitable briefing policy for female barristers, and improved flexible working arrangements.



KATHERINE HAYES

Carter Newell Lawyers

In the developing field of cyber-related risks and claims, senior associate Katherine Hayes has established herself as a 'go-to' person in the fast-paced cyber space. Through her own research and development, Hayes has formed contacts with leading industry providers, including prominent IT security and crisis management experts and key insurance industry players. To assist in educating her clients with respect to the exposure of cyber-related risks, Hayes created and presented a simulated cyber attack involving a content security specialist. This presentation held in Brisbane and Sydney was well attended, and feedback included "A different spin cyber; Very interesting, informative entertaining; relevant content!"



JAMES HAWES

Simpson Grierson

A partner in Simpson Grierson's corporate team, Hawes has played a key role in some of New Zealand's most high-profile transactions over the past few years. His work with Shanghai Maling Aquarius Co. on its potential purchase of 50% of the business of Silver Fern Farms is of particular note. This is a highly significant deal for New Zealand. Silver Fern Farms is New Zealand's biggest meat processor and second biggest primary industry exporter. The investment by the China-based Shanghai Maling was high-profile and garnered considerable media coverage.



GEORGINA HEY

Norton Rose Fulbright

Georgina Hey is a special counsel in Norton Rose Fulbright's national intellectual property team. She focuses on all aspects of trademark and brand management, managing the global brand portfolios of a large number of Australian clients and the Asia-Pacific portfolios of many overseas-based international clients. Hey also devotes considerable effort to delivering pro bono IP portfolio advice to large not-for-profit clients. Clients consistently say that what sets her apart is her ability to provide excellent commercially focused strategic advice, which helps them achieve their business needs. For pro bono clients, exploiting IP is often a key source of revenue for their businesses. Hey has extensive expertise in all aspects of brand and portfolio management, from creation to exploitation.



CLINTON JACKSON

Cooper Grace Ward

Since returning from London, senior associate Clinton Jackson has managed to build an immense client and referral base and refined his specialist skills in the areas of complex tax, duty, superannuation, structuring, succession planning and commercial transactions. His expertise has resulted in Jackson becoming the chosen adviser of a number of entrepreneurs, high net worth family groups and iconic businesses. Jackson's expertise has been recognised industry-wide and seen him become a highly sought after speaker with the Tax Institute, the Television Education Network and the Queensland Law Society, and at SMSF Association and Institute of Chartered Accountants national conferences.



LAURA LITTLEWOOD

Bell Gully

Senior associate Laura Littlewood has a natural ability to build solid relationships with her clients and work closely with them to ensure successful outcomes. She has a superb knowledge of the technology, retail and consumer sectors and has recently advised Macpac on the sale of the company to CHAMP Ventures, Fiskars on the New Zealand aspect of its US\$437m acquisition of WWRD Group, and Archer Capital's A\$220m acquisition of Dun & Bradstreet. Littlewood has also advised companies such as Air New Zealand, Sony and Apple on a number of privacy and cyber security-related matters and has proven invaluable on secondment to Vodafone and Virgin Management.



ANDREW WHITESIDE

Maddocks

Special counsel Andrew Whiteside has established himself as a leading commercial lawyer to the government. He has a strong practice advising all levels of government, with a particular focus on Commonwealth commercial and public sector technology work. His clients include Commonwealth Government departments, Victorian state government agencies, Victorian councils and private sector technology clients. At the Commonwealth Government level, Andrew's work has included drafting multibillion-dollar Commonwealth agreements. Whiteside has built a reputation with clients for being approachable, practical and reliable and delivering value-for-money legal services to the highest possible standard.

RISING STARS



BIANCA JANOVIC

Herbert Smith Freehills

As part of the disputes team, Bianca Janovic's practice includes complex commercial litigation, construction disputes, class actions, commissions of inquiry, ADR and pro bono work. Janovic is seen as a natural leader and role model, and mentor for junior lawyers. She excels not only in her core work but as a leader in diversity and pro bono initiatives. She is co-chair of the firm's LGBTI Network and in 2014 won the Law Institute of Victoria's Rising Star of the Year award in recognition of her technical skills as a commercial litigator, leadership in LGBTI rights and involvement in indigenous and pro bono work. She has volunteered with the Homeless Persons Legal Clinic and undertaken secondments to Bupa in 2012–13 and an Aboriginal organisation in the Kimberley in 2013.



MELISSA KOO

Squire Patton Boggs

Construction team associate Melissa Koo specialises in providing contentious and non-contentious advice on major construction, engineering and infrastructure projects. Koo has also represented clients in the Supreme Court and District Court of Western Australia and the State Administrative Tribunal. Koo is passionate about business development and promoting the advancement of women in construction, securing committee member positions with the National Association of Women in Construction and the Young Constructors' Committee of the Society of Construction Law Australia. Koo has won the respect of her colleagues by taking the lead in developing business development and marketing plans as well as driving a proactive approach to industry involvement with her fellow associates and mentoring junior lawyers.



ALICE MUHLEBACH

Ashurst

Alice Muhlebach is a partner in Ashurst's competition and consumer protection group. She joined Ashurst in 2005 and has rapidly forged a reputation as one of Australia's best competition lawyers. Muhlebach's work in recent years has traversed the most complex merger clearance challenges, ground-breaking work in the emerging law on access to infrastructure, and other regulatory, investigative, transaction structuring and cartel work. Recently, Muhlebach was recognised among the very best young competition lawyers in the world, in the Global Competition Review's '40 under 40' survey of the world's best competition practices. Muhlebach was the only Australian competition lawyer in the latest survey by the world's leading antitrust and competition law journal and news service.



CAROLINE LABAND

DLA Piper New Zealand

Caroline Laband is a former London barrister who joined DLA Piper as a partner in 2016. From early on in her career she was running multimillion-dollar insurance and reinsurance litigation in the London market. As a highly experienced insurance litigator, Laband regularly advises local and international insurers to help them navigate their way through complex disputes. Laband is passionate about the benefits of operating within the global business. This includes the opportunity to contribute to and access an international knowledge bank and forward-thinking capability – most recently, utilising cyber security training developed by DLA Piper's cyber experts in the US, and sharing ideas with partners from Australia, the UK, Spain, Netherlands, Hong Kong, Singapore and the US at a recent Australian partners' conference.



JENNA SILCOCK

Buddle Findlay

Jenna Silcock has been an integral part of the team who advised the Crown on its 'All of Government' submission on the proposed Christchurch Replacement District Plan. The Plan is being reviewed under a unique and expedited process to assist Christchurch's recovery in the post-earthquake environment. Silcock has worked tirelessly, under significant time pressures, in presenting the Crown's case at multiple hearings before an Independent Hearings Panel, as both junior and lead counsel.



SAMY MANSOUR

Clayton Utz

Corporate team senior associate Sammy Mansour has worked on some significant energy, resources, transport and infrastructure projects in Australasia. His recent work includes acting for one of Australia's largest gas producers, a leading international steel producer, a government body, and a railway manufacturer. Mansour is passionate about helping younger lawyers develop their skills, and mentors a number in the firm. He has also designed and presented at the firm's corporate and national induction programs.



KATE PAPAILIOU

DLA Piper

As transactional finance specialist, senior associate Kate Papailiou focuses on the energy and infrastructure sectors, leading the project finance workstream on deals across Australia and the Asia-Pacific. In the past year, her diverse deal sheet has included renewable energy, social PPPs and the transformational Queen's Wharf Development. Regarded as an approachable, whip-smart, efficient and commercial lawyer, Papailiou's commitment extends beyond clients. She has also led initiatives to enhance mentoring and the development of junior colleagues.

MARIE WISKER

Chapman Tripp

Marie Wisker is a senior associate who specialises in employment law and health and safety. She acts for large employers on health and safety investigations and prosecutions. As New Zealand's new Health and Safety at Work Act comes into effect in April, Wisker has proactively kept employers informed of the upcoming changes through a number of different channels, while coordinating with the IoD and WorkSafe. She also has a lead role in one of New Zealand's most high-profile disputes, coordinating her team to ensure the client's needs are met. Wisker continually impresses clients with her "absolute determination to deliver".



TROY PILKINGTON

Russell McVeagh

Troy Pilkington is a senior associate with significant experience in competition, consumer and regulatory law and litigation. He has recently acted for Progressive Enterprises, as well as Spark, Visy and Dell, and for GlaxoSmithKline on its US\$23bn transaction with Novartis. Pilkington is ranked by Chambers as an 'associate to watch'. He has presented with the New Zealand Commerce Commission on unfair contract terms, is a regular contributor to American Bar Association antitrust publications and a board member of the Competition Law and Policy Institute of New Zealand.

PHILLIP SALEM

WIDE-EYED AND BUSHY- TAILED

Phillip Salem, national managing partner at Sparke Helmore, talks to **Sasha Borissenko** about his plans to drive the “world-class independent Australian law firm”

WHILE NEWLY appointed Sparke Helmore national managing partner Phillip Salem has been in the role for just a few weeks, he's raring to lead the implementation of its strategy with the vision of being a world-class independent Australian law firm that clients value for their people and performance.

Before joining Sparke Helmore in 1998, Salem was a deputy director and senior government solicitor with the NSW Office of Australian Government Solicitor, where he headed the business and commercial team. He was in the government sector for 13 years.

Taking the plunge

It was his privatisation work on several airports that meant he got to interact with a lot of the bigger private firms, and with the prospect of setting up a government practice at Sparke Helmore, he decided it was time for a change in scene, he says.

“I thought to myself, well I've done quite a lot in government and I was enthused by the

prospect of building a government practice from scratch at the firm.

“It was certainly daunting and exciting but it was a huge challenge because I was given a blank canvas. It was wonderful to be given a lot of freedom to do what needed to be done. It's so exciting to see a practice grow.

“I was quite surprised to find that other than my ability to be a lawyer, I have quite an entrepreneurial side to my personality. I would have never found that out about myself otherwise.”

While the managing partner role requires different skills, management is nothing new for Salem who held a number of managerial positions during his 18 years at the firm, including being a member of the board, a national practice group leader, and a national service line leader in the government and commercial team.

“Now it's a very different dynamic insofar as you're seeking to make sense of many moving parts all at the same time. I'll be having to

“Without a solid understanding of the firm and its people, I certainly won't be productive in the decision making process”



PHILLIP SALEM

make calls for the benefit of the entire firm as opposed to clients on a particular matter. It's a very different skillset. To do that well I think you need good communication skills, good listening skills and decisiveness."

With just a few weeks under his belt, Salem has enjoyed getting to know staff around the country. He hopes to visit all nine offices in the country in the first three months of his tenure.

"I would have never been able to do that otherwise. I'm really enjoying sinking my teeth into the role. It's still early days. Maybe ask me in six months' time and the story might be different.

"It's certainly challenging and but I'm finding it also very exciting that I have an opportunity to help shape the organisation into the future."

Salem plans to do "a lot of listening, rather than talking" to ensure he's across the business and the firm's aspirations are as good as possible before any strategy is implemented, he says.

"Without a solid understanding of the firm and its people I certainly won't be productive

"[Being a managing partner is a] very different dynamic insofar as you're seeking to make sense of many moving parts all at the same time. I'll be having to make calls for the benefit of the entire firm as opposed to clients on a particular matter. It's a very different skillset. To do that well I think you need good communication skills, good listening skills and decisiveness"

in the decision making process."

In his capacity as managing partner, he hopes to make sure the firm is value driven.

"I want to ensure our organisation has a culture where our values guide everything that we do. That's something important to me. Client-focus, integrity, honesty, agility, positive change and collaborative responses should be

the heart of this firm. We want to continue to walk the talk."

What he does hope to implement is a new growth strategy that will see the company into the next five years or so.

"With over 600 people in the firm we have to focus on growth and growing well in a competitive market is critical."

A TALE OF TWO CITIES

Phillip Salem was born in Lebanon and migrated to Australia with his family at the age of 10.

"We came to Sydney for a better life. Beirut had the sort of problems you now see on the television in places like Syria and Iraq. There was a lot of war and strife and my family moved for our safety.

"I'm sure my parents thought there was no future left there for us. They came here penniless and sacrificed a lot for me and for my siblings. We were very lucky and I thank my parents for the sacrifice."

It was his idealism, that the law could be used to make a difference to people's lives, that prompted him to go to law school, he says.

There he earned a Bachelor of Economics, a Bachelor of Laws and a Master of Laws degree. He's otherwise an Accredited Specialist in Government & Administrative Law and a member of the Specialist Accreditation Committee of Law Society of NSW in that area.

"I wanted to help people find justice, righting wrongs motivated me."

"I do still believe in justice but I suppose that translates more broadly in what I do for my clients now. I think you can keep your idealism and still be practising in a private law firm. There's a lot of good work that can be done in this sphere."

Now, he is involved in the community but on a much broader scale, he says.

He serves as the senior vice president of Sydney University's Australian Lebanese Foundation, for example and he's written a lot in his capacity as former Adjunct Professor in the School of Law at the University of Queensland.

"We do work to help foster education and to create a more positive image for the Lebanese community in Australia."

Outside of his work in his Lebanese community, he takes up a peripheral role in helping his wife with her humanitarian work in Rwanda.

"My wife is a much better person than me."



What's more their "working smarter initiative" similarly recognises the competitive market, he says. The firm has recently signed off on a big IT capital expenditure that aims to upskill staff while focusing on cost efficiencies.

"Having talented lawyers isn't enough these days; the initiative hopes to ensure our lawyers are skilled up in other areas such as technology, various tools and processes, project management, for example."

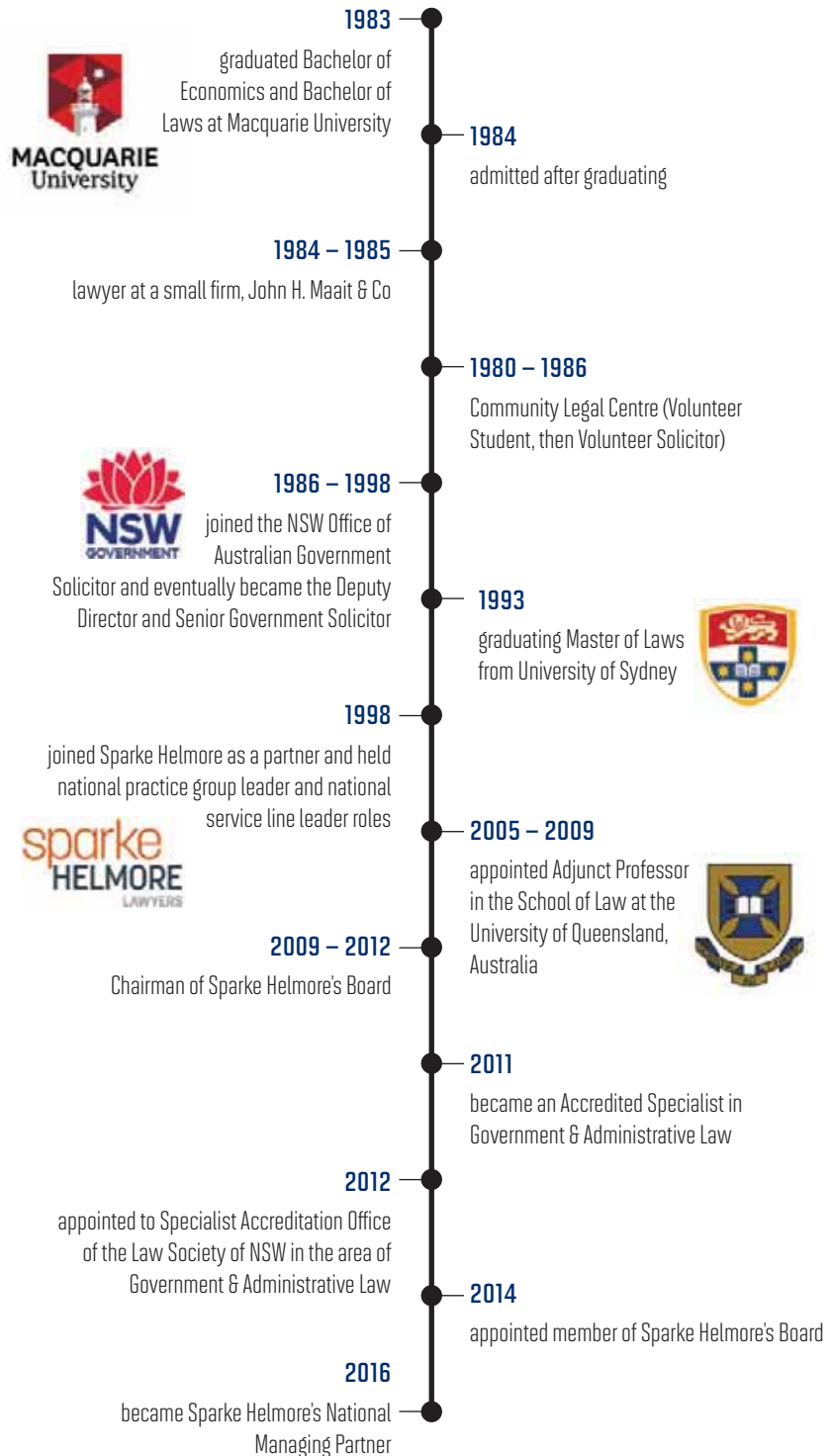
"Having talented lawyers isn't enough these days; the initiative hopes to ensure our lawyers are skilled up in other areas such as technology, various tools and processes, project management, for example"

Meanwhile, his appointment has coincided with the move to the new Sydney office, which is a great start, he says.

"I'm passionate about the need for us to be innovative and for us to develop in a way that is exciting. I want this not for me but for our clients and every person who works here.

"Sparke Helmore is in a very good place at the moment. We have a very solid foundation in terms of financial wellbeing with its blue chip client base. What I'm hoping to achieve is a "pre-eminent national law firm of Australia and that's something I'm passionate about and unconditionally committed to. It aligns with the firm's vision, which is to be a world class independent Australian law firm valued by our clients for our people and performance". **AL**

CAREER TIMELINE



INSURANCE LAW

CLAIM TO FAME

Insurance lawyers have been inundated with work off the back of a slowing economy.

They talk to **Hannah Norton**



A SLOWING Australian economy is resulting in the country's insurance lawyers being inundated with work – but it also means they are seeing more solicitors in the firing line, a senior partner at Carter Newell Lawyers says.

“The ongoing difficult economic conditions have seen a continued increase in claims activity across a number of sectors,” Paul Hopkins says.

“This includes claims against professionals in the financial services industry as disappointed investors in the financial markets, property market and business owners bring claims against their accountants, solicitors, banks, financial advisers, mortgage brokers, business brokers, real estate agents and valuers.”

For the same reason, there is also the ongoing trend of class actions – from claims against company directors by liquidators, regulators and disgruntled shareholders, to claims against employers for unfair dismissal and discrimination, to fraud, fidelity and cyber claims, Hopkins says.

“The situation is unlikely to change while investment returns, company profits and the employment market remain under pressure.

“The collection and analysis of claims data and trends continues to be a focus of the industry and legal practice, which is enabling the adaption of alternate client service delivery models and methods.”

Sparke Helmore Lawyers' national insurance team has been busy across all areas of practice: aviation, Commonwealth compensation, construction risks, compulsory third party (CTP) and major claims, directors and officers, workplace risks, healthcare, liability, professional indemnity and state compensation.

“This is mostly due to our long-standing relationships with most of the country's major insurers, underwriters and brokers and the way we shape our practice according to their needs,” says James Johnson, Sparke Helmore's National Insurance Group leader.

“For example, we have recently strengthened our insurance team with new partner and senior lawyer appointments in Sydney, Brisbane, Melbourne, Canberra and Perth in response to client demand.

“We have also restructured our practice to better align with insurers' legal procurement models, which is reflected in the strong growth of our commercial insurance lines.”

These areas include professional indemnity, liability, D&O, aviation, medical malpractice, life, construction risks and industrial special risks, employment practices liability and workplace risks.

“In terms of front-end work, we are seeing an ongoing demand for product development and policy wording advice, education activities, including advising boards, and we are working with insurers to address first-party liability.”

The firm's state and Commonwealth workers' compensation teams remain very busy, Johnson says.



“The ongoing difficult economic conditions have seen a continued increase in claims activity across a number of sectors”

Paul Hopkins, CARTER NEWELL LAWYERS

“In part this is due to the changes to some of the workers' compensation regimes, including the amendments to the NSW workers' compensation scheme, which partially came into effect in October 2015 – with the remaining changes to come into effect in mid-2016 and the reversal of the Newman Government changes in Queensland.”

John Van de Poll, partner at Holman Webb Lawyers, echoes these industry sentiments.

“Work which had previously suffered a marked decline due to tort reform appears to be on the upswing.

“Plaintiff law firms are apparently confident of more substantial awards due to some elements of bracket creep in the case of personal injury litigation, and a sense that the pendulum may have swung back to favour plaintiffs more than defendants in that space.

“This shift is sometimes only slowly

recognised and can lead to expectation versus outcome disparity, especially for underwriters not present in the local market who may not identify that the tide has turned.”

Challenges in the sector

Hopkins identifies cyber security as a key consideration for the sector.

“Cyber risk is constantly evolving at a fast pace and requires a swift response to mitigate loss and damage.

“Understanding and appreciating the nature of the threat requires a constant monitoring of the latest breaches. Insurers have not yet developed an industry standard, and so it is difficult to compare the various offerings.”

The firm is also seeing a marked increase in

the volume of employment practices liability claims, which is becoming a real concern for some underwriters, he says.

“As well as an increasing number of unfair dismissal claims being brought, we are also seeing many more general protections claims, where damages are uncapped and there is a reverse onus of proof.

“In addition, the Fair Work Commission [FWC] has strongly signalled an intention in the past few months to increase damages payments – particularly for bullying and harassment – to reflect current community sentiment.”

Johnson identifies a number of industry-wide challenges.

“At an industry level, the market is fragmented in terms of traditional corporate insurers and underwriting agency businesses,” he says. “On top of that, market disruptors/challengers – new entrants such as online retailers, unauthorised foreign insurers and

INSURANCE LAW

banks – are causing a slow-down in premium growth for traditional insurers.

“This has led to increased focus on reducing expenses and improving customer experience through technology to streamline policy and claims management systems.”

Addressing emerging risks in Australia continues to pose both opportunities and challenges for the insurance industry and its lawyers, Johnson says.



“In terms of front-end work, we are seeing an ongoing demand for product development and policy wording advice, education activities, including advising boards”

James Johnson, SPARKE HELMORE

“These issues include managing cyber security/cyber risk, nanotechnology, climate change or environmental risks.”

Meanwhile, two key challenges stand out for Van de Poll: “attracting the right candidates to a career in insurance and in some respects balanced against that the understandable client imperatives for greater cost-efficiencies”.

“On the first, overcoming commonly held perceptions of insurance law is critical; a career in insurance can expose you to more areas of law, more travel and greater advocacy than any other in my view.

“On the second, I think we have now moved away from some of the wow factor with having the latest technology; we are now implementing technology that can actually drive greater cost reduction through rationalisation of the time some legal tasks require.

“The adoption of electronic court solutions before many other common law jurisdictions will not only facilitate that but also place Australian candidates ahead of the pack.”

Legislative reforms

Hopkins identifies a number of legislative reforms that affect the sector.

“With respect to personal injury the change of state government in Queensland in January 2015 has resulted in further changes to the workers’ compensation legislation, which has reversed amendments introducing a 5% impairment threshold for access to common law damages.

“There will be a time lag before the effect of these changes is seen in claim numbers.”

In the cyber security and privacy space,

the Federal Government released its serious data breach notification bill for comment, Hopkins says.

“Any submissions on the bill were due by 4 March 2016. The NSW Government is also considering a legislative response to breaches of privacy.”

Hopkins adds that the introduction of the Federal Court’s new Insurance List for short matters (matters of not more than two hours’ duration) will assist with policy interpretation and construction of insurance legislation.

“The aim is to allow parties to deal with discrete issues without the need to wait for final hearing of the entire dispute.

“This is a very new initiative, with the first sitting dates in Victoria last week and in NSW next week.”

Johnson says workers’ compensation reform has been increasingly prevalent, with key legislative changes introduced in NSW and Queensland, and significant reforms commencing soon in SA and potentially under the Commonwealth scheme.

“In NSW, there is likely to be an increase in disputes about WPI [whole person impairment] following the amendments to the workers’ compensation scheme. For example,

the difference between 20% and 21% WPI affects whether medical expenses are paid for five years only or have no time limit.

“An assessment of 21% WPI also affects the payment of weekly benefits after 130 weeks. The difference of 1% may mean an extra \$60,000 or more in lump sum benefits.”

Van de Poll also notes that the final tranche of amendments to the Insurance Contracts Act came into effect from the beginning of the year, including changes to the Duty of Disclosure.

“Whilst it may be some time before the effects of those amendments are felt in terms of non-disclosure cases, most insurers by now should have amended their proposal questions and renewal procedure, particularly for domestic and personal lines insurance.”

Looking ahead

Cyber security is of increasing concern to both business and insurers, Hopkins says.

“Business is appreciating the increasing exposure and insurers are still determining the precise nature of this evolving risk with as yet no real consistency in market offerings.”

The law is also evolving with the Federal Government releasing its serious data breach notification bill for comment, Hopkins says.

\$3,735m

profit of Australia's insurers in 2015



5

natural disasters in 12 months to June 2015 cost the industry about \$3.6bn



67.2%

industry's loss ratio in 2015 – increased from a 5-year low of 61.6% in 2014



Source: KPMG General Insurance Industry Review 2015

"The NSW Government is also considering a legislative response to breaches of privacy, and we anticipate that the common law will also respond to cases involving breaches of sensitive data.

"We predict an increase in both small and big security breaches, with the law developing along with it."

Johnson echoes his sentiments.

"There is growing concern about the threats, both to the financial system and the global economy, posed by cyberattacks.

"This is no different for the insurance industry where we are seeing a growing number of insurers entering the market with products to mitigate cyber risks."

Nationally, insurance lawyers are also seeing an increase in significant work injury liability claims affecting multiple defendants, and employment practices liability claims for activities such as wrongful termina-



"Cyber risk is constantly evolving at a fast pace and requires a swift response to mitigate loss and damage"

Paul Hopkins, CARTER NEWELL LAWYERS

tion, discrimination and sexual harassment, Johnson says.

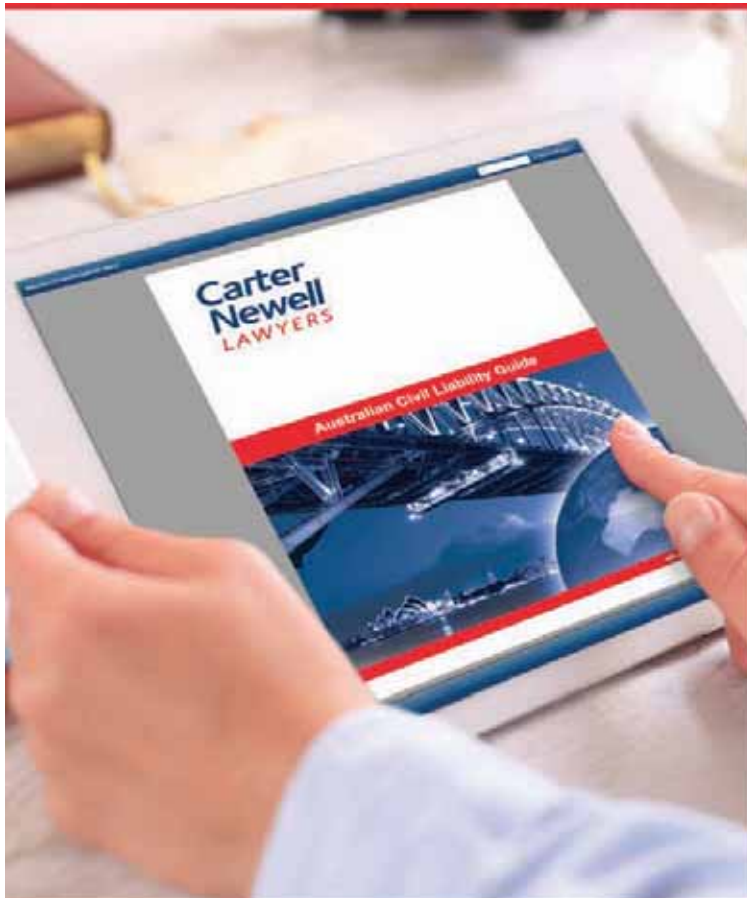
"I also think the changes to the workers' compensation regimes will be further tested through the Workers Compensation Commission and the courts, which means recovery actions for workers' compensation payments will also continue to increase.

"With the prevalence of litigation funders, the number of class action suits is also likely to continue to rise. As a result of those actions, more companies and directors are also likely to have recourse to D&O insurance."

Van de Poll expects to see a greater focus on regulation of claims management processes – "perhaps limited to the life insurance sector, which has not had great press lately".

"If the trends in liability and professional indemnity claims continue upwards, I expect the local insurance market may finally harden, opening them up to more competition from the international market.

"CTP reform seems to be back on the NSW Government's agenda, which I suspect will cause some disruption." **AL**



Carter Newell Lawyers... a specialist law firm.

Keep up to date with latest developments in the insurance industry. www.carternewell.com/page/Publications

Insurance Publications available:

- Australian Civil Liability Guide
- A Guide to Directors' and Officers' Liability and Insurance
- A Legal Guide to Contract Works and Construction Liability Insurance in Australia
- Asia Pacific Carriers' Liability Guide
- Australian Airports Liability and Compliance Guide
- Injury Liability Gazette
- Professional and Management Liability Gazette
- Workplace Relations Gazette
- Property and Real Estate Gazette

BRISBANE • SYDNEY • MELBOURNE
www.carternewell.com

**Carter
Newell**
LAWYERS

LIFE INSURANCE – AN INDUSTRY ON LIFE SUPPORT?

The life insurance industry has been in the spotlight for years for all the wrong reasons, and the recent allegations against CommInsure are indicative of systemic industry issues

By Colin Pausey, Consultant, Sparke Helmore Lawyers



There are four fundamentals in the life insurance chain: the product, which includes its cost, distribution, premium payment and claim payments.

For life insurance, distribution has been a public perception and public relations problem for years. In 2013, *Commonwealth Financial Planning Ltd v Couper* received significant public attention. In that matter, Couper, on the advice of his advisor, switched his life insurance cover from one company to another. He was left uninsured after his new insurer voided the contract for non-disclosure. The NSW Supreme Court of Appeal found the advisor was negligent and engaged in misleading or deceptive conduct by not properly warning of the risk of moving from one policy to another.

More recently, a Financial Services Inquiry has been undertaken by the Senate Economics References Committee and the *Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016* has now been before the Senate. On 2 March 2016 the terms of the inquiry were widened to include a review of the need for further reform and improved oversight of the life insurance industry; whether life insurers are engaging in unethical practices to avoid meeting claims; and whether a life insurance industry code of conduct is required.

Aside from distribution and commissions, issues of product fairness and claims practices continue to make the news, with CommInsure being the latest – but not the only – example.

At the heart of the problem are language, procedural robustness and fairness.

The industry is, by necessity, closely aligned to the medical profession, which is moving rapidly in terms of medical progress and diagnostic practices. One of the key issues facing policy writers is that it is very difficult to ensure policies are reviewed regularly enough to reflect current diagnostic practices. For example, much has been made about the requirements of the definition of “heart attack” in the CommInsure policy, which experts say include matters they now do not rely upon when determining if a patient has had a heart attack. A quick check of a number of other insurers’ policies also reveals the reliance on levels of Troponin in their definitions of “heart attack”. There are a number of other out-dated examples of medical language in life, TPD and trauma policies, including some classifications of cancer that are decades out of date.

When dealing with policies that may be out of date, it is hard for claims assessors to do anything other than to follow the policy. But there needs to be more rigour in the process of declining claims. Currently, when a claim comes in a claims assessor either accepts the

claim or declines it based on policy coverage or other issues. A claimant then has the option of requesting an internal claim review. While every company has its own procedure for claim reviews, they often end up justifying the declined claim rather than adopting a more rigorous process, including advocating the claimant’s position and reviewing the fairness of the decision. This would allow consideration of a discretion, which is included in many heart attack definitions, to be properly tested during the review process.

Lawyers can help address some issues causing the negative public perceptions of the industry, particularly product and claims assessment issues, and help insurers keep the sector healthy. For example, I am working with one life insurer to demystify its policies using plain English. But, as important as plain English policies are, using contemporary and more easily understood or more flexible medical terms in a policy is paramount. Lawyers can also assist in identifying the need to engage leading medical specialists to test a definition.

While historically life insurers have managed most claim denial processes internally, engaging lawyers to help avoid litigation by legally testing whether denial of claims are appropriate could prove valuable both financially and reputationally.



Australian
National
University

The ANU College of Law

Australia's National Law School

Ranked among the world's top 20 law schools*, the ANU College of Law has a reputation for excellence in education and research.

Balancing global outlook with local focus, we seek to:

- shape and influence public policy, placing an emphasis on the values of law reform and social justice; use our position to help understand and address the major legal, social and political challenges of the 21st century; and
- remain a leader in legal education and research, with the outstanding calibre of our graduates as a key measure of success.

Across undergraduate, postgraduate and research degrees, the ANU College of Law provides a unique understanding of current law and policy, with our alumni working not only as lawyers, but as agents for social change, improving public policy and enhancing global diplomacy.

And while our capital city location links us with the nation's key law-making and legislative bodies, our commitment to innovation in legal education – including the first fully online Juris Doctor from a Group of Eight law school – is allowing more Australians to study with us, regardless of their location.

- > Bachelor of Laws (Honours)
- > ANU Juris Doctor (Online)
- > ANU Juris Doctor (On-Campus)
- > Graduate Certificate of Law
- > Master of Laws
- > Graduate Diploma of Legal Practice
- > Master of Legal Practice
- > Graduate Certificate in Australian Migration Law & Practice
- > Higher Degree Research

The advanced legal qualification that allows students to pursue specific interests or specialise in areas such as International Law, Environmental Law, Government & Regulation and Migration Law.

Find out more at law.anu.edu.au

AUSTRALIA'S 2020 LAW SCHOOL	The ANU College of Law is Australia's only 20/20 Law School – a top 20 law school at a top 20 university*.
--	--

TIMES HIGHER EDUCATION #1 GLOBAL EMPLOYABILITY RANKING	Graduates from ANU have been named the most employable of any university in Australia for the third year running**.
---	---

ANU LAW 17,160 ALUMNI	In Australia and abroad, our alumni continue to make substantial contributions in and outside of law.
--	---

CRICOS# 00120C

*QS World University Rankings – 2015/16

**Global Employability University Rankings – 2015

HOT RURAL PROPERTY

With new foreign buyer regulations coming into force, it's been a time of change in the Australian agribusiness sector. But agribusiness lawyers tell **Hannah Norton** that Aussie farms are still coveted by overseas buyers

A CRACKDOWN on foreign investors hasn't translated to a slowdown in transactions in the agribusiness sector, lawyers say.

"Despite the tightening of Foreign Investment Review Board [FIRB] requirements, we have seen a continued flow of inbound investment from Asia – in particular China and Malaysia – for broad-acre farming properties and agribusiness operations over multiple areas," says Allion Legal principal Michael Swift.

"The low Australian dollar and Australia's high quality of product on offer has continued to attract foreign investors."

Recent reforms to Australia's foreign investment regime, including the Foreign Acquisitions and Takeovers Act 1975, came into effect late last year.

And, according to Norton Rose Fulbright's global head of energy, Simon Currie, they were generally welcomed – on the basis that they simplify the application process and clarify some of the ambiguities previously set out in the FIRB's policies.

"However, the reforms also provide for some increased scrutiny with respect to acquisitions of land and in the agricultural

sector, including agricultural land and agribusinesses.

"Additionally, the reforms formalise FIRB's ability to review acquisitions and investments by foreign government investors."

What do the changes mean for the sector?

As of February 2016, all foreign owners of Australian agricultural land had to have registered their holdings with the ATO's Agricultural Land Register.



"Australia continues to welcome and support foreign investment that is not contrary to our national interests"

Scott Morrison, TREASURER

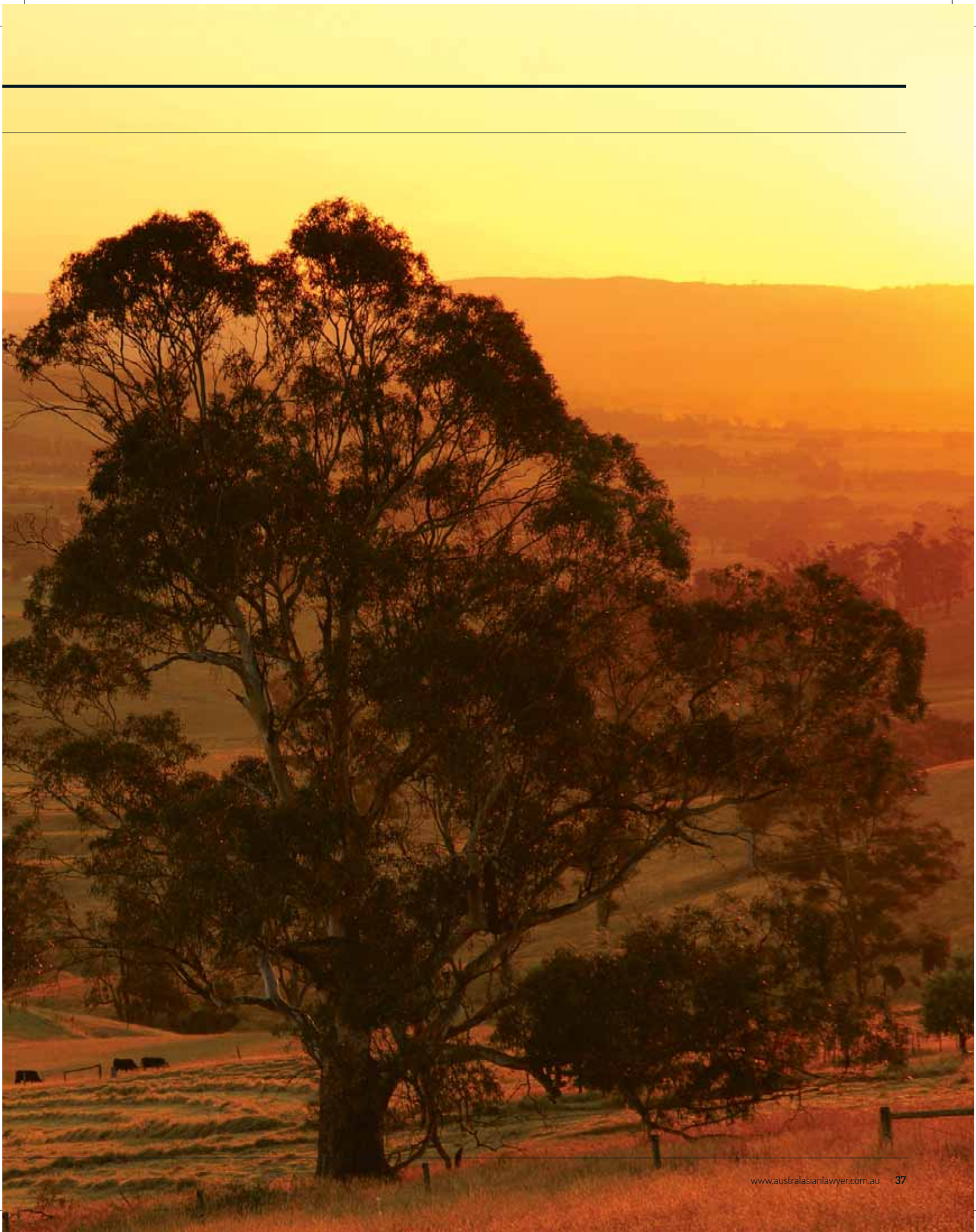
"The Coalition Government welcomes foreign investment, which plays an important role in the growth and productivity of our agriculture sector," the deputy prime minister and minister for agriculture and water resources, Barnaby Joyce, said at the time.

"However, we have clearly heard and understood the concerns of the Australian community that the government should have more thorough oversight and more accurate data in relation to foreign investment in agriculture, to properly ensure that such investments are in our long-term national interest.

"Our agricultural land is one of our nation's most valuable assets, so it is important that we have a clear and accurate picture of foreign investment levels in our agriculture sector,

and that those investments are subject to appropriate consideration and scrutiny," Joyce said.

Treasurer Scott Morrison added that, through the Agricultural Land Register, the ATO would be collecting comprehensive



AGRIBUSINESS

information on foreign ownership of agricultural land, as part of the government's commitment to increasing scrutiny and transparency around foreign investment in Australian agriculture.

"This is why we have introduced the foreign land ownership register, along with reducing the threshold for Foreign Investment Review Board scrutiny of private sector foreign purchases of agricultural land from \$252m to a cumulative total of \$15m."

The tightening of FIRB requirements has had an impact on sentiment, and it remains an issue that foreign investors (particularly Chinese) ask about up front, says Allion Legal principal Jon Cane. "Although in practice

"The national interest test also considers a range of factors, including national security, the impact on competition, the character of the investor, and the impact on the economy and the community."

Moon Lake Investments have given guarantees that all current VDL employees will be offered ongoing employment with Moon Lake on terms no less favourable than their current employment arrangements, Morrison said.

"Moon Lake has also committed to undertake a number of investment projects in the VDL farms, which will provide additional economic activity to the Tasmanian economy, and based upon Moon Lake's estimates will

to purchase VDL was not contrary to the national interest.

"It will ensure increased employment and investment in an important industry sector in Tasmania, while the safeguards we have put in place will ensure they pay their tax.

"Australia continues to welcome and support foreign investment that is not contrary to our national interests.

"Ongoing foreign investment remains a key part of growing Australia's output and employment and, through this, our standard of living."

Looking ahead: the agribusiness sector

"We still see a buoyant sector with significant activity for the year ahead, with Australian assets still seen as world class and much sought after," Cane says.

"One challenge in the sector for large investors is finding enough agribusiness operations of a significant size to match the demand for large-scale operations from local institutional investors and foreign investors," Swift adds.

"Local sellers may need to think how they market their operations for sale and whether packaging their business with other sellers to achieve sufficient scale may have a mutually beneficial result for all parties."

Swift and Cane's positive outlook for the sector was reiterated in research released by both Colliers International and Rabobank, which showed brighter predictions for the agriculture sector generally in 2016.

Commercial real estate firm Colliers International says Australia's rural and agribusiness sector is undergoing a revolution as investors begin to recognise the industry's long-term potential.

The rural and agribusiness sector is now included in investors' long-term strategies as the sector develops higher-grade assets, Colliers' latest *Rural and Agribusiness Research and Forecast Report* says.

Colliers national director of transaction services Shane McIntyre says the falling Australian dollar, free trade agreements with major Asian partners, and good food security have had a discernible impact on the Australian market, with a number of rural regions and sectors beginning to experience



"Despite the tightening of Foreign Investment Review Board requirements, we have seen a continued flow of inbound investment from Asia"

Michael Swift, ALLION

there has been minimal impact on the sector," he says, "with almost all – with a couple of high-profile exceptions – FIRB applications being approved."

One of those was an application by Chinese investor Moon Lake Investments to buy Tasmanian dairy giant Van Diemen's Land Company from the New Plymouth District Council – subject to tax conditions – in February.

It was the first application to be subject to new tax conditions requiring it to comply with ATO directions to provide information in relation to the investment and to advise the ATO if it entered into any transactions with non-residents to which the transfer pricing or anti-avoidance measures of the tax law might potentially apply, Morrison said in a release.

In forming his view, he said he had carefully considered "the national interest test and how it applies to this case, including the likely impact on local jobs and increased investment to support economic growth".

result in a near doubling of employment at VDL.

"This will guarantee more than 140 local jobs, generate an intended additional investment of over \$100m and an expected additional 95 jobs."

Moon Lake advised that it intended to continue to supply the milk produced at VDL under the same contractual terms as are currently in place, Morrison said.

"This provides assurance that there will not be an impact on the supply of milk and milk products in Australia. Indeed, the investment that Moon Lake proposes to undertake may result in an increased supply."

The land on which VDL operates has important cultural and natural heritage considerations and Moon Lake committed to honour the terms of all environmental and cultural agreements entered into by VDL, including with the local Aboriginal community, Morrison added.

Given these considerations, Morrison was satisfied that the Moon Lake proposal



“We still see a buoyant sector with significant activity for the year ahead, with Australian assets still seen as world class and much sought after”

Jon Cane, ALLION

growth in land values.

“Investors are drawn to rural and agribusiness assets in pursuit of stronger yields as the market becomes short of opportunities in traditional asset classes,” McIntyre says.

“The spotlight this year is on beef, cotton and water sectors.”

In its *Agribusiness Outlook 2016* research report, Rabobank predicted that further depreciation of the Australian dollar would act as a “tail wind” for Australian agriculture, while low oil prices would help ease input cost pressures but are also likely to weigh on agricultural commodity prices.

“Further depreciation of the Australian dollar, which is expected to drop to 64 US cents by the end of the year, will be a boon for producers – particularly for those commodities at historically low levels in US dollar terms – such as grains and oilseeds,” said Todd Charteris, Rabobank Australia national manager of country banking.

Rabobank’s general manager of food and agribusiness research, Tim Hunt, added that there had been significant devaluation of the currencies of Australia’s key global competitors, which had muted market signals by encouraging production of

agricultural commodities in some regions despite high global stocks and falling USD prices.

“For example, the Russian ruble has depreciated by around 50 per cent against the US dollar since the beginning of 2014, compared to a 20 per cent depreciation in the Australian dollar over the same period,” he said.

“This has helped to underpin returns for Russian wheat producers despite US prices remaining under pressure. And we’ve seen a similar dynamic in the Brazilian sugar sector.” **AL**

SQUIRE
PATTON BOGGS

**“Guitar groups are on the way out...
the Beatles have no future in show business.”**

Head of Decca Records on hearing The Beatles for the first time

Just because you might not have heard of us – don’t make the mistake of not giving us a second glance.

We’re a top 15 global law firm, with a rapidly expanding office in Sydney – and a rapidly expanding reputation for the quality of our work.

Our Sydney office has doubled in size in just 12 months and is a key part of a national network which includes Perth and Darwin, plus a global network of 44 offices across 21 countries.

Want to know more?

Contact

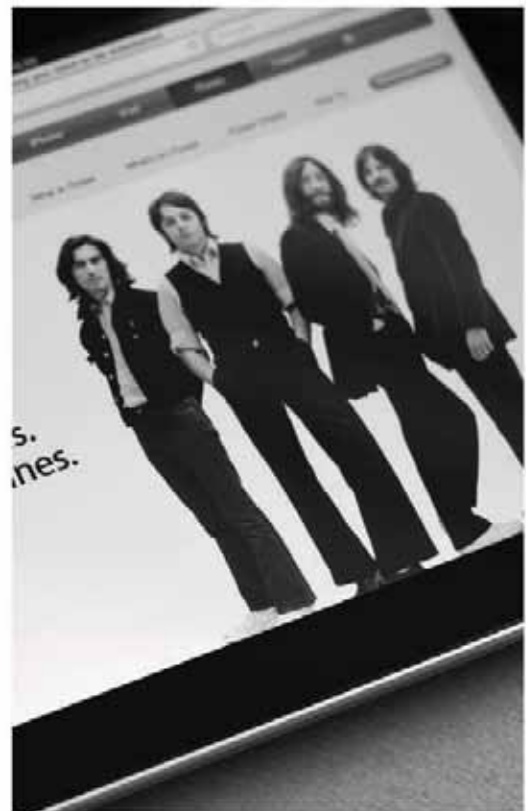
Campbell Davidson

Partner, Sydney

T +61 2 8248 7878

E campbell.davidson@squirepb.com

squirepattonboggs.com





OFFICIAL PUBLICATION

Australasian
LAWYER

AWARD SPONSORS



LAWYERS

EVENT PARTNER



CRITICAL THINKING AT THE CRITICAL TIME™



AUSTRALASIAN LAW AWARDS²⁰¹⁶

THURSDAY 19 MAY 2016
THE STAR SYDNEY

A record number of nominations came in from across the legal industry for this year's Australasian Law Awards. These are the best of the best

THE AUSTRALASIAN Law Awards returns in 2016 for what is set to be another highlight event on the legal industry calendar.

In January–February this year, *Australasian Lawyer* once again sought nominations from across the legal profession, receiving a record number of entries. Over the following pages you will discover who has made the grade as this year's finalists. Congratulations to all the firms and in-house teams that have made the shortlist.

For more information about the event and to book your table, visit www.auslawawards.com.au.



RUSSELL McVEAGH

SCARLIS



sparke
HELMORE
LAWYERS

AUSTRALASIAN LAW AWARDS FINALISTS 2016

CORPORATE CITIZEN FIRM OF THE YEAR

FINALISTS

- Arnold Bloch Leibler
- Clayton Utz
- DLA Piper
- Gilbert + Tobin
- Herbert Smith Freehills
- King & Wood Mallesons
- Maurice Blackburn Lawyers
- Salvos Legal & Salvos Legal Humanitarian

JLT EMPLOYEE HEALTH & WELLBEING AWARD

FINALISTS

- Buddle Findlay
- Carter Newell Lawyers
- DibbsBarker
- Herbert Smith Freehills
- Hive Legal Pty Ltd
- Maddocks
- Simpson Grierson
- Workdynamic Australia

AWARD SPONSOR



EMPLOYMENT LAW SPECIALIST FIRM OF THE YEAR

FINALISTS

- Australian Business Lawyers & Advisors
- FCB Workplace Law
- Goldstein Ryder
- Harmers Workplace Lawyers
- MDC Legal
- People & Culture Strategies
- Workdynamic Australia



AIG INSURANCE SPECIALIST FIRM OF THE YEAR

FINALISTS

- **Barry.Nilsson.**
- **Carter Newell Lawyers**
- **Clyde & Co**
- **Curwoods Lawyers**
- **Holman Webb Lawyers**
- **Sparke Helmore**
- **TurksLegal**
- **William Roberts Lawyers**
- **Wotton + Kearney**

AWARD SPONSOR



IP SPECIALIST FIRM OF THE YEAR

FINALISTS

- **AJ Park**
- **Baldwins Intellectual Property**
- **Bird & Bird**
- **Davies Collison Cave (DCC)**
- **Griffith Hack**
- **Phillips Ormonde Fitzpatrick**
- **Wrays**

SCARLIS PRINGLE LAW FIRM LEADER OF THE YEAR

FINALISTS

- **Chris Freeland, Baker & McKenzie**
- **Rob Cutler, Clayton Utz**
- **John Weber, DLA Piper**
- **Danny Gilbert, Gilbert + Tobin**
- **Sue Kench, King & Wood Mallesons**
- **John Nerurker, Mills Oakley Lawyers**
- **Gary McDiarmid, Russell McVeagh**
- **Luke Geary, Salvos Legal & Salvos Legal Humanitarian**

AWARD SPONSOR




AUSTRALASIAN LAW AWARDS FINALISTS 2016

INTERNATIONAL FIRM OF THE YEAR

FINALISTS

- **Allen & Overy**
- **Ashurst**
- **Baker & McKenzie**
- **Bird & Bird**
- **DLA Piper**
- **Herbert Smith Freehills**
- **King & Wood Mallesons**

STATE/ REGIONAL FIRM OF THE YEAR

FINALISTS

- **Carter Newell Lawyers**
- **Chamberlains Law Firm**
- **Finlaysons**
- **HHG Legal Group**
- **McCabes Lawyers**
- **NDA Law**
- **Russell Kennedy Lawyers**
- **Thynne + Macartney**

FTI CONSULTING AUSTRALIAN BOUTIQUE FIRM OF THE YEAR

FINALISTS

- **Clarendon Lawyers**
- **Coleman Greig Lawyers**
- **Keypoint Law**
- **KHQ Lawyers**
- **Lantern Legal Group
(Harwood Andrews and
Sladen Legal)**
- **Nexus Law Group**
- **Proximity**
- **Speirs Ryan**

AWARD SPONSOR



AUSTRALIAN LAW FIRM OF THE YEAR (UP TO 100 LAWYERS)

FINALISTS

- **Barry.Nilsson.**
- **Carter Newell Lawyers**
- **Cooper Grace Ward
Lawyers**
- **Holman Webb Lawyers**
- **Madison Marcus
Law Firm**
- **McCabes Lawyers**
- **Salvos Legal & Salvos
Legal Humanitarian**

HUON IT AUSTRALIAN LAW FIRM OF THE YEAR (100-500 LAWYERS)

FINALISTS

- **Arnold Bloch Leibler**
- **Gilbert + Tobin**
- **Hall & Wilcox**
- **Maddocks**
- **Mills Oakley Lawyers**
- **Piper Alderman**
- **Russell Kennedy Lawyers**
- **Sparke Helmore Lawyers**

AWARD SPONSOR



FTI CONSULTING AUSTRALIAN LARGE LAW FIRM OF THE YEAR

FINALISTS

- **Allens**
- **Clayton Utz**
- **Corrs Chambers
Westgarth**
- **Gadens**
- **HWL Ebsworth**
- **MinterEllison**

AWARD SPONSOR



AUSTRALASIAN LAW AWARDS FINALISTS 2016

BANKING & FINANCIAL SERVICES IN-HOUSE TEAM OF THE YEAR

FINALISTS

- ANZ
- Challenger Limited
- Citi
- National Australia Bank
- Travelex Limited
- UBS AG, Australia Branch
- Westpac

SPARKE HELMORE LAWYERS INSURANCE IN-HOUSE TEAM OF THE YEAR

FINALISTS

- ACE Insurance Limited, a Chubb Company
- AIG Australia Limited
- Berkley Insurance Australia
- DUAL Australia Pty Limited
- QBE
- Suncorp – Vero Insurance Limited

AWARD SPONSOR



GILBERT+TOBIN INVESTMENT BANK IN-HOUSE TEAM OF THE YEAR

FINALISTS

- Bank of America Merrill Lynch
- Credit Suisse
- Deutsche Bank
- Morgan Stanley Australia Legal
- UBS AG, Australia Branch

AWARD SPONSOR



CLAYTON UTZ AUSTRALIAN IN-HOUSE TEAM OF THE YEAR

FINALISTS

- Brookfield
- Caltex Australia Petroleum Pty Ltd
- FOX SPORTS Australia – Team Legal
- IBM ANZ Legal Team
- McDonald's Australia Limited
- Murray Goulburn Co-operative Co. Limited
- Santos Limited

AWARD SPONSOR


CLAYTON UTZ

FTI CONSULTING AUSTRALIAN IN-HOUSE LAWYER OF THE YEAR

FINALISTS

- Karen Schutte, ACE Insurance Limited, a Chubb Company
- Damien Sullivan, Boral
- Claire Bibby, Brookfield
- Tim Knowles, Citic Pacific Mining Management Limited
- Christina Allen, FOX SPORTS Australia
- Fiona Smith, Murray Goulburn Co-operative Co. Limited
- Rachel Launderers, Nine Entertainment Co Holdings Ltd
- Christian Paech, Santos

AWARD SPONSOR


FTI
CONSULTING

RUSSELL MCVEAGH NZ IN-HOUSE TEAM OF THE YEAR

FINALISTS

- AIG NZ
- ANZ
- ASB
- Auckland Council – Legal Services
- Fletcher Building Limited
- Fonterra Co-operative Group Limited
- UBS New Zealand Limited

AWARD SPONSOR


RUSSELL McVEAGH


AUSTRALASIAN LAW AWARDS FINALISTS 2016

DEBT MARKET DEAL OF THE YEAR

Australian Unity corporate bond offering

Firm: King & Wood Mallesons

Banks: ANZ, National Australia Bank

Adviser: Evans and Partners

Financing of TPG's iiNet acquisition

Firms: Ashurst, Ashurst New York, Conyers Dill & Pearman

Rabobank Nederland Tier 2 notes issue

Firm: Allens

TransGrid privatisation

Firms: Allens, Gilbert + Tobin, Herbert Smith Freehills, Linklaters, Norton Rose Fulbright

Warehouse securitisation of GE assets

Firms: Ashurst, Bell Gully, Herbert Smith Freehills, HWL Ebsworth, King & Wood Mallesons, Mayne Wetherell

Banks: Bank of America Merrill Lynch, Citi, Credit Suisse

Advisers: Ernst & Young, Moelis & Co, Morgan Stanley

ENERGY & RESOURCES DEAL OF THE YEAR

Ararat Wind Farm

Firms: Herbert Smith Freehills, Norton Rose Fulbright

Bank: Macquarie Capital

Adviser: PwC

Barrick dual sale of NSW and PNG gold mine assets

Firms: Allens, Corrs Chambers Westgarth, Davies Ward Phillips & Vineberg LLP, Fangda Partners, Fasken Martineau, Fujian Zenith Law Firm, Herbert Smith Freehills, Leahy Lewin Lowing Sullivan Lawyers, Lex Caribbean, Maples and Calder, White & Case

Banks: Credit Suisse, Standard Chartered Bank

Advisers: Ernst & Young, PwC, Record Point

Hornsedale Wind Farm

Firms: Baker & McKenzie, Herbert Smith Freehills

Sale of Apache's Australian oil and gas business

Firms: Allens, Citi, Clifford Chance, Corrs Chambers Westgarth

Sirius Resources' interconditional merger with Independence

Firms: Ashurst, Herbert Smith Freehills

Advisers: Euroz Securities, Hartleys Limited, Treadstone Partners, UBS

Transgrid privatisation

Firms: Allens, Gilbert + Tobin, Herbert Smith Freehills, Linklaters, Norton Rose Fulbright

EQUITY MARKET DEAL OF THE YEAR

CBA capital raising

Firms: Ashurst, Herbert Smith Freehills, Russell McVeagh, Sullivan & Cromwell

Bank: Goldman Sachs

Advisers: CBA Equities, Morgan Stanley, PwC, UBS

Link Group IPO

Firms: Allen & Overy, Allens, DLA Piper, Gilbert + Tobin, MinterEllison, Rothschild, Sidley Austin

Banks: Citi, Deutsche Bank, Macquarie Capital

Advisers: UBS, KPMG

MYOB IPO

Firms: Clayton Utz, Ropes & Gray, Sullivan & Cromwell

Banks: Citi, Goldman Sachs

Advisers: Bell Potter Securities, JBWere, Merrill Lynch Equities, PwC, Reunion Capital Partners, UBS

NAB capital raising

Firms: Allen & Overy, Clayton Utz, Clifford Chance, King & Wood Mallesons, Linklaters, Russell McVeagh, Sullivan & Cromwell

Banks: Bank of America Merrill Lynch, Macquarie Capital

Adviser: Morgan Stanley

Origin Energy PAITREO

Firm: Clayton Utz

Bank: Macquarie Capital

INSOLVENCY & RESTRUCTURING DEAL OF THE YEAR

Atlas Iron restructure

Firms: Ashurst, Gilbert + Tobin, Jones Day, K&L Gates, Sullivan & Cromwell

Advisers: Hartleys Limited, Houlihan Lokey, JP Morgan, Lazard

BIS Industries Group restructure

Firms: Ashurst, Gilbert + Tobin, King & Wood Mallesons

BrisConnections receivership and sale of AirportlinkM7

Firms: Allens, Clayton Utz, King & Wood Mallesons

INTERNATIONAL DEAL OF THE YEAR

Barrick dual sale of NSW and PNG gold mine assets

Firms: Allens, Corrs Chambers Westgarth, Davies Ward Phillips & Vineberg LLP, Fangda Partners, Fasken Martineau, Fujian Zenith Law Firm, Herbert Smith Freehills, Leahy Lewin Lowing Sullivan Lawyers, Lex Caribbean, Maples and Calder, White & Case

Banks: Credit Suisse, Standard Chartered Bank

Advisers: Ernst & Young, PwC, Record Point

SPIC acquisition of Pacific Hydro

Firms: Herbert Smith Freehills, King & Wood Mallesons

Telstra's acquisition of Pacnet

Firms: Appleby, AZB, Gilbert + Tobin, Jun He, Kelly Drye, Mori Hamada & Matsumoto, Shearman and Sterling, Shin and Kim, Sullivan and Cromwell, Tsai and Tsai, Wong Partnership

York Capital Management/Pepper acquisition of PrimeCredit

Firms: Arnold Bloch Leibler, King & Wood Mallesons, Li & Partners, Slaughter & May

AUSTRALASIAN LAW AWARDS FINALISTS 2016

M&A DEAL OF THE YEAR

Amcom merger with Vocus Communications

Firms: Clayton Utz, MinterEllison

Bank: Credit Suisse

Advisers: FTI Consulting, Lazard, PwC

GE sale of consumer lending business

Firms: Ashurst, Buddle Findlay, Herbert Smith Freehills, HWL Ebsworth, King & Wood Mallesons, Mayne Wetherell

Banks: Bank of America Merrill Lynch, Citi, Credit Suisse

Advisers: Ernst & Young, Latitude Financial Services New Zealand, Moelis & Co, Morgan Stanley

Japan Post acquisition of Toll Holdings

Firms: Clayton Utz, Herbert Smith Freehills, Simpson Grierson

Bank: Gresham

Adviser: Lazard

Macquarie acquisition of ANZ's Esanda portfolio

Firms: Ashurst, Clayton Utz, King & Wood Mallesons

Banks: ANZ, Credit Suisse, Deutsche Bank, Macquarie Capital

NSW Electricity Networks acquisition of TransGrid

Firms: Allens, Gilbert + Tobin, Herbert Smith Freehills

Bank: Deutsche Bank

Advisers: Ernst & Young, UBS

Sale of Crown Castle Australia

Firms: Allen & Overy, Cravath, Hamos Horton Lusk Limited, Herbert Smith Freehills, MinterEllison, Norton Rose Fulbright, Swaine & Moore

Sirius Resources' interconditional merger with Independence

Firms: Ashurst, Herbert Smith Freehills

Advisers: Euroz Securities, Hartleys Limited, Treadstone Partners, UBS

TPG's takeover of iiNet

Firms: K&L Gates, MinterEllison

Bank: Macquarie Capital

Adviser: Azure Capital Limited

AUSTRALIAN DEAL OF THE YEAR

Finalists to be announced on the evening

PROPERTY, INFRASTRUCTURE & PROJECTS DEAL OF THE YEAR

Novion/Federation Centers merger

Firms: Allens, Ashurst, Herbert Smith Freehills, MinterEllison

Bank: Macquarie Capital

Advisers: Greenwoods & Herbert Smith Freehills, PwC

Parramatta Square redevelopment project

Firms: Clayton Utz, King & Wood Mallesons, Maddocks

Sydney Light Rail

Firms: Ashurst, Corrs Chambers Westgarth, Lander & Rogers Lawyers, Norton Rose Fulbright

Banks: Ernst & Young, Everything Infrastructure Group

Toowoomba Second Range Crossing PPP

Firms: Allen & Overy, Ashurst, Baker & McKenzie, Clayton Utz, Intesa Sanpaolo SpA, Maddocks

Bank: ING Bank (Australia) Limited

Transurban Queensland's bid for AirportlinkM7

Firms: Allens, Clayton Utz, King & Wood Mallesons

WestConnex Stage 2

Firms: Allens, Ashurst, Clayton Utz, King & Wood Mallesons, MinterEllison

AUSTRALIAN DEAL TEAM OF THE YEAR

- Allens, M&A
- Ashurst, Corporate
- Ashurst, Finance
- Gilbert + Tobin, Corporate Advisory
- Herbert Smith Freehills, Corporate – Equity Capital Markets
- Herbert Smith Freehills, Corporate – M&A
- King & Wood Mallesons, M&A
- Norton Rose Fulbright, Infrastructure

NZ DEAL TEAM OF THE YEAR

- Bell Gully, Corporate
- Chapman Tripp, Corporate & Commercial
- Russell McVeagh, Capital Markets
- Simpson Grierson, Corporate Advisory

AUSTRALASIAN LAW AWARDS FINALISTS 2016

EVENT PARTNER



FTI Consulting, Inc. is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring.

CONTACT:

W: www.fticonsulting.com

AWARD SPONSORS



American International Group, Inc. (AIG) is a leading international insurance organisation serving customers in more than 100 countries and jurisdictions. AIG companies serve commercial, institutional, and individual customers through one of the most extensive worldwide property-casualty networks of any insurer.

CONTACT

W: www.aig.com.au / www.aig.co.nz

CLAYTON UTZ

Clayton Utz is a leader in legal services, with a uniquely independent culture.

Our success reflects our focus on our two key assets: our people and our clients.

We celebrate diversity and we're passionate about access to justice – having performed over 500,000 pro bono hours since 1997.

CONTACT:

Rob Cutler, Chief Executive Partner

E: rcutler@claytonutz.com

T: 02 9353 4104

W: www.claytonutz.com

BROUGHT TO YOU BY



Key Media organises industry awards and professional development events in association with our leading magazine titles. These include the Australasian Law Awards, New Zealand Law Awards, Australian HR Awards and the Australian Mortgage Awards.

To enquire about the limited sponsorship opportunities still available for the Australasian Law Awards, please contact:

Paul Ferris

P: + 61 2 8437 4703

E: paul.ferris@keymedia.com.au



Gilbert + Tobin is a leading independent corporate law firm and a key player in the Australian legal market. From our Sydney, Melbourne and Perth offices, we provide innovative, relevant and commercial legal solutions to major corporate and government clients across Australia and internationally, particularly in the Asia-Pacific region.

CONTACT:**Sydney office**

P: +61 2 9263 4000

E: info@gtlaw.com.auW: www.gtlaw.com.au

Hulon IT are industry renowned Legal Technology Specialists, with a focus on providing strategy, Cloud, IT management, systems integration and 24x7 support to law firms with offices in Sydney, Melbourne and Brisbane.

Established in 1989, Hulon IT has long-term partnerships with firms across Australia. Working alongside both upper management and technical departments within their clients' organisations, Hulon IT helps to align technology systems with executive vision to maximise business performance.

CONTACT:**Damian Huon**, Chief Executive Officer

T: 1300 HUON IT (4866 48)

E: dhuon@huonit.com.auW: www.huonit.com.au

JLT is a wholly owned subsidiary of Jardine Lloyd Thompson Group, one of the world's largest providers of insurance, risk and employee benefits related advice. With 20 offices across Australia and more than 1,200 staff JLT provides flexible, efficient and quality solutions to our clients.

CONTACT:**Neil Robinson**, National Manager – Life

T: 0429 216 560

E: Neil.Robinson@jlta.com.auW: www.jlta.com.au**RUSSELL McVEAGH**

Russell McVeagh is an award-winning firm with an established history of excellence.

We represent leading corporations, financial institutions, state-owned enterprises, Government entities and multinational companies on their most complex, challenging and high-profile transactions. Russell McVeagh is committed to understanding our clients and providing commercially focused solutions.

CONTACT:**Gary McDiarmid**, Chief Executive Officer

P: +64 9 367 8091

E: gary.mcdiarmid@russellmcveagh.comW: www.russellmcveagh.com**SCARLIS PRINGLE**

Scarlis Pringle was established in 1995 as a boutique Australian Legal Executive Search and Consulting firm. Scarlis Pringle has completed over 250 Senior Legal Search assignments and various consulting assignments for leading Australian and International law firms, and for major corporates.

Today Scarlis Pringle has a unique comprehensive insight into the changing Australian legal market and the issues that concern law firms and their partners. Scarlis Pringle builds long-term strategic relationships with its key clients.

CONTACT:**Steven Scarlis**, Managing Director

P: 02 9222 9000

E: sscarlis@scarlispringle.com.auW: www.scarlispringle.com.au

Sparke Helmore Lawyers is a firm of 600 people working from nine offices across Australia, serving the needs of the insurance, government, financial services, mining, construction and property sectors. Our expertise spans corporate and commercial to construction, workplace to insurance, IP to IPOs, mining to manufacturing, and property to procurement.

CONTACT:**Rhett Slocombe**

T: +61 2 9373 3555

E: info@sparke.com.auW: www.sparke.com.au

JUAN-JOSÉ ZENTNER

TACKLING THE AMERICAS

Herbert Smith Freehills' Juan-José Zentner talks to **Samantha Woodhill** about setting up camp in New York and the firm's hopes to take on Latin America

FRESHLY SEASONED New Yorker Juan-José Zentner had his sights set on calling New York's trendy West Village home when he packed up his Melbourne life two months ago.

The move was part of a strategic decision by Herbert Smith Freehills to have Latin America-focused work but from a centralised location. Now, the firm's New York office is growing continuously as international business flocks to the region in order to take advantage of the opportunities in Latin America's various emerging markets.

Having previously had the Latin American work spanning its Melbourne, Sydney, Perth, and even Madrid and London offices, Herbert Smith Freehills made the move to practice in a centralised location to enhance coordination and collaboration, Zentner says.

"New York would be a great place for those of us to set up practice because so much of the financing that's done for infrastructure projects in South America originates from New York," he says.

It's much easier to get down there, and

many of the companies that are active in Latin America have a New York presence, he says.

A change in direction

Zentner started his legal career as a banking lawyer working on finance projects, before heading to the Department of Transport as a commercial adviser for a change of pace.

It was his 2004 secondment to Chile that influenced his Latin America practice, he says. And with Argentinian parents and the language down pat, it's a neat fit.

"While I would never hold myself out as being able to practice domestic law in Latin America, and by no means am I an expert in those jurisdictions, the key issues that come up in transactions or on documents, quite often, are the very same issues or very similar to what you face under Australian law," Zentner says.

The mining sector

Of all the thriving sectors in Latin America, the mining sector is particularly busy as a

LATIN AMERICA FAST FACTS



GDP at current prices
\$5.774trn



Exports (2013)
US\$1.115trn



Foreign direct investment
\$120.706bn



GDP growth rate
3%



Imports (2013)
US\$1.009trn



Latin America market
value of listed companies
\$1.169trn



“New York would be a great place for those of us to set up practice because so much of the financing that’s done for infrastructure projects in South America originates from New York”

result of depressed commodity prices, Zentner says. He predicts there will be more activity as asset-purchasing opportunities arise.

“I think there’ll be some really good asset sales coming up,” he says.

“Even with large established miners that have traditionally had really strong balance sheets, they’re now not looking as strong as they once were.

“So for those companies that can raise the capital there’ll be some very good opportunities to buy some quality mining assets in South America – some really good copper assets in particular.”

Zentner says an upturn in activity may result in a spiked interest from private

equity companies, rather than just mining companies.

“For me, it’s really around the mining space where a lot of the key opportunities are, but there are also some fantastic opportunities in the oil and gas space.

“I think Brazil as a whole is a place which represents a lot of opportunity, as does Argentina, because for different reasons they’re two of the countries with the greatest challenges in Latin America, but as a result, asset prices are very compelling in both those places.”

Varied cultures

What’s interesting about doing business in

CHILE

Chile is a safe place to invest as its market is mature, Zentner says.

“It’s got a lot of foreign investment; it’s very competitive so the price that people pay for assets there is very high, but that’s because it’s a good place to do business – it’s quite transparent.

“Lots of companies like Chile because it’s a relatively stable place to park their investments, but if you’re talking about riskier forms of investment, private equity companies and organisations with a higher appetite for risk, some of the other jurisdictions are probably more interesting than Chile.”

Statistics from the Foreign Investment Promotion Agency estimate that Chile accounts for 28% of the world’s global copper reserves and that mining companies plan to invest US\$104,000m in Chile over the next eight years.



JUAN-JOSÉ ZENTNER

South America is that each country is unique. With varying paths to independence, Zentner says the economies in each country are at various stages of development.

"Chile is a vastly different place to Argentina in terms of doing business," he says.

"It's a reflection of the political history of the countries; it's a reflection of the cultural history of the countries.

"All of the countries I think have nuances in terms of how people like to do business."

But for the companies that are investing in South America, the opportunities are rife as governments continue to encourage foreign investment.



"Law firms like ours need to create long-term and sustainable relationships with domestic law firms, and relationships that allow us all to do an interesting and significant amount of work"

"Most companies will talk about Chile, Columbia, Peru, Mexico and increasingly Argentina, and Brazil – again – will be of interest," Zentner says.

"The biggest issue is the cultural differences between those countries, and there are quite a lot of regional animosities between [them].

"What's probably one of the major misconceptions for those companies that haven't been active in Latin America is that there is more in common ... [but] the reality is they're all quite different."

Infiltrating the market

Law firms and companies alike should be looking to undertake lengthy due diligence before entering any emerging market, Zentner says. But for Latin America in particular, be prepared for the long haul.

"There's got to be a long-term commitment to the region; I think it needs to be a sustainable commitment.

"Law firms like ours need to create long-term and sustainable relationships with

domestic law firms, and relationships that allow us all to do an interesting and significant amount of work."

It's all about relationships, he says, so partnering with local firms will accelerate the relationship-building process.

"If you're trying to generate those contacts from scratch that could take a very, very long time in those countries," Zentner says.

"A lot of the anecdotes that I have as to how we've done work relate to a real investment in relationships over a long period of time.

"From that perspective it's exactly the same as other emerging markets where long-term mutually beneficial relationships result in

really good outcomes for everybody.

"I think its developing relationships with local business people as well that begins that long-term vision."

Herbert Smith Freehills now has a number of bilingual Spanish speakers in their New York office, including Australian senior associate Marianna Schneider, who is of Mexican decent. But despite having the language, Zentner says cultural differences can still be a significant barrier to doing business.

"If you come from outside the region then you're not familiar with the culture; even if you do have the language but not the culture, you'll have a lot of problems navigating through the business environment," he says.

And the legal system is completely different to Australia.

"All of those countries have a civil code, which is derived from the Napoleonic code as opposed to common law," Zentner says.

"Therefore the differences are quite significant between the law in Australia and the law in each of those countries." **AL**

CAREER TIMELINE

1996–2000

Graduated from the University of Melbourne with a BA, History and B Laws (LLB), Hons

1998–2001

Worked as a paralegal in litigation support, IP and corporate groups

2001

Joined Freehills as a solicitor in Melbourne (including two three-month secondments to Pacific Hydro in Chile)

2006

Promoted to senior associate (including one further three-month secondment to Pacific Hydro in Chile)

2007

Worked as an adviser to the Victorian Department of Infrastructure on rail projects

2008

Returned to Freehills

2012

Made partner at Herbert Smith Freehills

2012

Appointed to the Latin America Steering Group

Zentner is a past director of the Australia-Latin America Business Council (2015–2016).

AND THE AWARD GOES TO...



BOOK YOUR TABLE NOW

THURSDAY 19 MAY 2016 | THE STAR SYDNEY
www.auslawawards.com.au

Event Partner



CRITICAL THINKING AT THE CRITICAL TIME™

Award Sponsors



CLAYTON UTZ



LAWYERS



Official Publication

Australasian
LAWYER



RUSSELL McVEAGH

SCARLETT

PRINGLE





OWNERS ADVISORY
BY MACQUARIE

Do-it-yourself investing

Own more control. Own more choice

Special offer: 30 days FREE!
Code: OALAW416



Take advantage of this special offer at: ownersadvisory.com

Join today and we'll give you free membership to Owners Advisory for your first month.

Find out how Owners Advisory can supercharge your investing decisions.

