



# Australasian LAWYER

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Issue 3.1

## BRISBANE REPORT

Brisbane's lawyers  
look at 2015  
and beyond

## BACK TO LAW SCHOOL

Postgraduate options  
for new lawyers

## EMPLOYMENT LAW

Prosperity despite  
a challenging  
economic landscape

# UNCHARTED WATERS

Herbert Smith Freehills' joint CEOs Sonya Leydecker  
and Mark Rigotti on the trials and tribulations of  
operating one of Australia's leading global law firms

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CHECK IT OUT ONLINE







Sasha Borissenko

## New year, new you

I would like to take this opportunity to introduce myself as the new editor of *Australasian Lawyer*. Although I chose a career in journalism, law has always been my mistress, and I'm so excited to take up this opportunity.

It seems I'm not the only one attempting to embrace the mantra of "new year, new you". It's no secret law firms the world over are having to compete with demanding forces such as technology, globalisation, volatile foreign markets and clients wanting more bang for their buck.

For a taste of the situation at home and beyond, take a look at the news analysis feature on page six, the Brisbane city report on page 22 and our international interview with Dubai-based lawyer Hamish Walton on page 48.

Exciting times ahead no doubt, where gone are the days of legal pomp and ceremony, cubicle-ridden offices and a conservative reluctance to embrace the 'interweb'

But with bleak times comes possibility. Some are tackling these challenges with gusto, such as Herbert Smith Freehills, where joint-CEOs Sonya Leydecker and Mark Rigotti launched the firm's pop-up office in Perth, in conjunction with the existing document review centre in Belfast. What's more, the firm is continuing to globally diversify with aspirations of setting up camp in China (page 28). Then there's Nicholas Stewart of Dowson Turco Lawyers, who decided to ditch his corporate job to work for a firm that aims to service a market who identify as LGBTIQ (page 40).

Exciting times ahead no doubt, where gone are the days of legal pomp and ceremony, cubicle-ridden offices and a conservative reluctance to embrace the 'interweb'. Ahoy, 2016.

*Sasha Borissenko, editor*

FEBRUARY 2016

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# OUT THINK

To lead the market requires innovation and the restless ambition it takes to see a vision through. For over 25 years, Gilbert + Tobin's partners have been sought out by clients needing an edge – something different – to achieve their commercial objectives.

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"very commercial, very  
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*Chambers Global 2015*

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practical and both strategic  
and extremely tactical."

*Chambers Asia Pacific 2014*

Neil Pathak, Partner  
M&A and Corporate Advisory

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# THE AUSTRALIAN LEGAL MARKET: TODAY AND TOMORROW

A recently-released report examines the changing local legal landscape and considers the steps firms will need to take to survive in the increasingly competitive space

**THE PAST** decade has seen transformative change to the legal profession in Australia, according to The Melbourne Law School and Thomson Reuters Peer Monitor's *State of the Legal Market: Australia 2015* report.

The report examines an industry whose clients continue demanding more value at a lower price, and which has been forced to deal with serious effects of the GFC in the past few years on both the employment and profitability fronts.

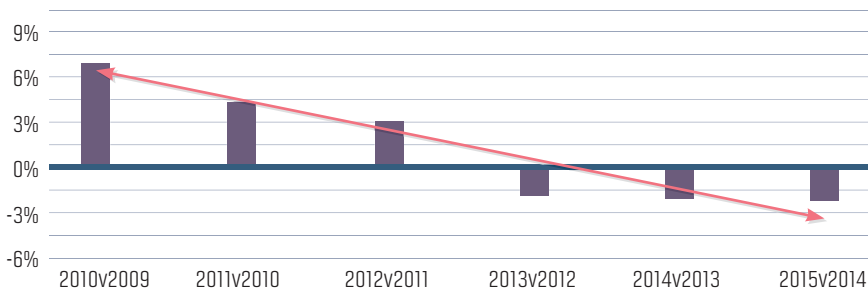
The report focuses on the segment of the market that includes the 'Big 8'

firms (Allens, Ashurst, Clayton Utz, Corrs Chambers Westgarth, Herbert Smith Freehills, King & Wood Mallesons, Minter Ellison and Norton Rose Fulbright) and several selected large commercial law firms, with a view to assessing the current climate and trends against a range of indicators.

As the report says, complacency and mediocrity will not be tolerated, and only those firms and practitioners committed to innovating to meet customer needs will thrive in the new world.

## DEMAND

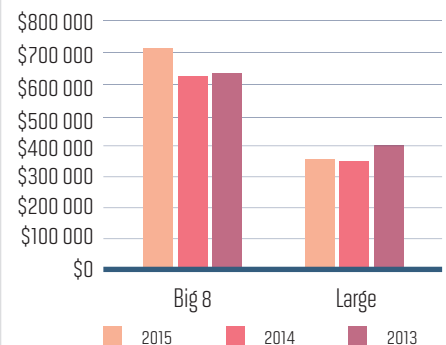
2015 continued a five-year trend of declining demand for commercial legal services. In the last financial year, demand fell by a further 2%. The key contributor to that decrease is a decline in demand for the legal profession's three biggest practice groups – dispute resolution, banking & finance and corporate general (those practices representing 48% of all legal services).



Source: The Melbourne Law School and Thomson Reuters Peer Monitor's *State of the Legal Market: Australia 2015*

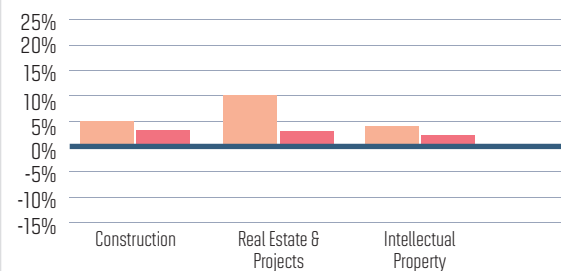
## PROFITABILITY

The report analyses the profitability of the Big 8 firms and large firms, calculating that profitability by dividing total firm profit by the total number of equity partners (regardless of their point allocation)



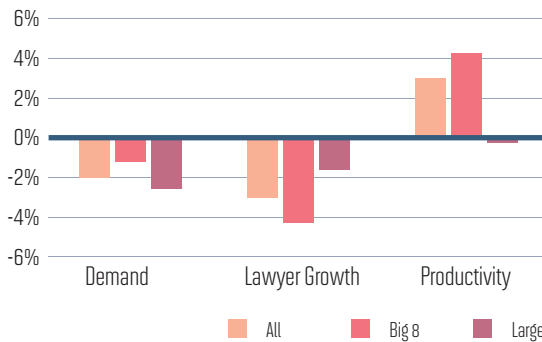
Source: The Melbourne Law School and Thomson Reuters Peer Monitor's *State of the Legal Market: Australia 2015*

## GROWTH IN TRANSACTIONAL



## PRODUCTIVITY

The industry last year saw a drop of 3.8 per cent in the number of lawyers employed and a 2 per cent drop in demand for services. Given that the drop in number of practitioners exceeded the decline in demand, each firm's lawyers was required to service a higher proportion of the total demanded legal work and, consequently, productivity increased by 1.3 per cent over the 12-month period. (Note that the chart shows the overall increase in productivity is chiefly attributable to the Big 8 firms.)



Source: The Melbourne Law School and Thomson Reuters Peer Monitor's State of the Legal Market, Australia 2015

## THRIVING IN THE WORLD OF TOMORROW

It's the report's conclusion that whether firms can outperform their competitors – and surge ahead in 2016 and beyond – will depend on their ability to successfully focus on 'softer' capabilities, including:



## MACRO TRENDS IN THE AUSTRALIAN MARKET



### Shift of work in-house

It's estimated that, over the last decade, the number of commercial lawyers working in-house has grown from 10% of all practising commercial lawyers to 35%, but the pace of change has somewhat slowed. The report says a number of in-house teams are looking to process redesign, legal project management and use of technology to increase the productivity of their teams.



### Lateral partner movements

Right now, there are around 3,000 partners working in the international and national firms based in Australia. The report says that, between 2012 and 2014, the turnover rate was approximately five per cent per annum. In 2015, there have been a number of lateral movements.



### New law firms

Between 2012 and 2014, the local industry saw the emergence of a significant number of startups. That pace has slowed slightly in 2015. The report tells us that anecdotal feedback is that many of the new firms are experiencing double digit growth (albeit off a low base).



### Legal graduates

The report details an ongoing abundance of legal graduates despite the reality that most cannot find work in law, as well as a significant increase in the last decade in the number of institutions offering legal qualifications.



### Diversity

According to a 2015 *Australian Financial Review* survey, female associates today dominate the profession but the number of female partners has barely changed. The report also points to research that suggests a 'bamboo ceiling' prevents lawyers with Asian heritage from promotion to senior levels in the industry.



### Offshoring

The report highlights a diminishing push to utilise low-cost legal process operations (LPOs) in India, The Philippines and South Africa. It attributes that trend to the falling Australian dollar, labour cost arbitrage and competition from captives and onshore LPOs.



### Cloud computing

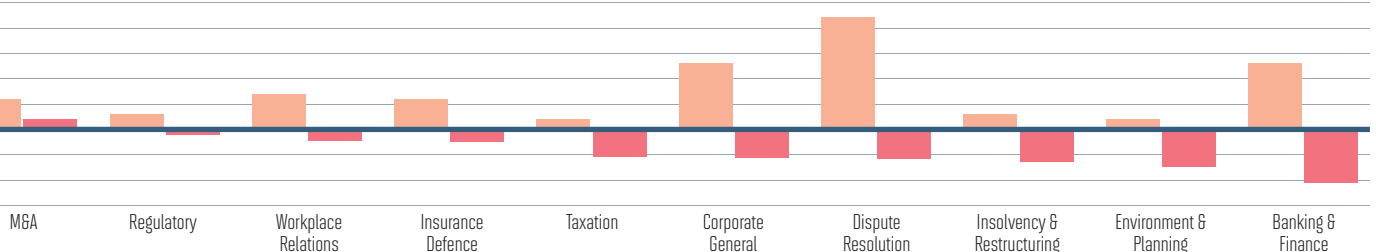
Growth of cloud and mobile computing within many commercial law firms has come to a halt as a result of data security and privacy concerns.



### Social media

The number of local lawyers utilising social media platforms such as LinkedIn and Twitter continues to rise. The bulk of use is for personal branding and networking purposes, and to distribute thought leadership material.

■ Proportion of work ■ Growth (2015 v 2014)





# THE CHALLENGES OF CHANGE

Firms talk to **Hannah Norton** about the challenges they expect the new year to bring

**IN AN** industry where a key ongoing trend is change itself, law firms can expect new challenges to arise with each coming year.

“Since I began my career, I have seen immense changes in the legal sector, and the pace of change continues to accelerate,”

partner for Australia, Nick Nichola.

“The demand for legal services in Australia has been on the decline for some time now and it’s unlikely to change in 2016,” he says.

“Combine this with increasing competition, an uninspiring 2016 national



“This year, the increasingly competitive nature of the legal market will pose a significant challenge to all firms, both domestically and internationally”

**Sue Gilchrist, HERBERT SMITH FREEHILLS**

Sue Gilchrist, Herbert Smith Freehills’ joint regional managing partner for Asia and Australia, tells *Australasian Lawyer*.

“This year, the increasingly competitive nature of the legal market will pose a significant challenge to all firms, both domestically and internationally,” she says.

“A number of recent developments, such as proposed global mergers, new entrants to the market – including non-legal entrants – and the emergence of new disruptive technology, will add further complexity and competitiveness to the legal sector in 2016.”

Increased competitiveness is also a key consideration for K&L Gates’ managing

economic outlook and volatile foreign markets and you can understand what keeps managing partners up at night.”

But he doesn’t just peg the sleeplessness down to worry.

“While conditions are certainly challenging, I genuinely see this is a very exciting time for law firms.

“Current circumstances demand we must do things differently. We need to rip up the rule book and write a fresh new chapter on law firm management. It’s a time to innovate, to aggressively pursue rather than cautiously wait. It’s time for a fresh approach.”

Firms need to be steadfastly focused



on identifying emerging sectors or new opportunities that present themselves in existing sectors, Nichola says.

“Rather than mourn the economy’s transition from the mining sector, we should be excited by future opportunities in sectors such as Fintech and Cybersecurity, and we must help companies and investors realise the full potential of flourishing sectors, such as agribusiness and funds management.

“2016 will also not be a year that rewards firms with a myopic view of where opportunity awaits. The signing of free trade agreements with our largest trading partners and the conclusion of the Trans-Pacific Partnership negotiations dictate that whether you’re a domestic firm or a global firm, you have to get your head around global markets and you need to understand the



“Current circumstances demand we must do things differently. We need to rip up the rule book and write a fresh new chapter on law firm management. It’s a time to innovate, to aggressively pursue rather than cautiously wait. It’s time for a fresh approach”

Nick Nichola, K&L GATES

opportunities that exist for your clients.”

Gilchrist echoes his sentiments.

“Firms need to be agile in identifying and responding to the evolving needs of clients and this year we’ll continue to invest in innovation to increase efficiencies for our

clients and deliver a consistent, high-quality and cost-effective service.

“In order to remain highly competitive, our firm has a strong focus on innovation.”

The firm’s global alternative legal services offering will continue to have a large part to

play in this, she says.

“In 2015 we launched a pop-up project in Perth with alternative legal services staff, offering clients a unique and cost-effective 24-hour document review service.

“This offering built upon the success of our Belfast centre, which provides clients with a range of services at a lower price than we can offer from Australia.”

The Perth pop-up has proven very successful with clients, and since it began the firm has more than tripled the number of legal services staff on the project.

“We will continue to grow the Perth offering to meet client demand.”

In order to remain competitive and also relevant to clients, last year the firm launched an online learning platform for clients in Australia, which enables them to access videos on legal issues, ethics, professional skills, practice management and business skills.

A challenge for all firms will be ensuring they have the right framework and expertise to understand how to best service their client base, particularly those clients pursuing growth opportunities in foreign markets, Nichola says.

“As for additional competition, we will see an increase in legal disruptors focused on low-priced generic services, but 2016 will be no different to 2015 in this regard, and clients will still need expert legal judgement, experience operating across jurisdictions and expertise on how to harmonise efforts to achieve business objectives.”

2016 brings with it a raft of challenges for the legal profession, but, equally, it brings many new opportunities, he says.

“At K&L Gates we are acutely focused on emerging industries and emerging markets and we’re certainly very excited about the year ahead.”

Gilchrist is equally optimistic about the next 12 months.

“I am confident that our people, the importance we place on innovation and our focus on delivering exceptional client service all combine to set us apart – and will contribute to our, and our clients’, success.” **AL**

## TRANSACTIONS

## DEALS ROUND-UP

### \$3.5bn capital raising initiatives for Santos

King & Wood Mallesons (KWM) has acted on three separate initiatives creating a total of \$3.5bn in capital for Santos Limited.

The firm raised \$2.5bn worth of equity through a pro rata accelerated renounceable entitlement offer (with retail rights trading) (PAITREO) of new ordinary shares to existing shareholders. The team was led by Shannon Finch who advised the joint lead managers at Citigroup Global Markets Australia Pty Ltd, Deutsche Bank AG (Sydney Branch), and UBS AG (Australia Branch).

In the second initiative, a team of lawyers in Perth, Singapore and China were led by KWM partner Shaun McRobert. This team advised Hony Capital – an affiliate of a China-based international private equity firm – about a \$500m investment in Santos via a private placement.

The last initiative involved a team across Perth and Melbourne led by KWM partner Rob Edel and special counsel Ian Gordon, who advised Mitsui E&P Australia on its purchase of a 35% stake in Santos' Kipper Gas Field. The total value of this transaction was \$520m.



Transaction	Value (A\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Purchase of the Kooragang Industrial Water Scheme (KIWS) from Hunter Water	Undisclosed	Lander & Rogers	ITOCHU Corporation (Japan)	Deanna Constable	Norton Rose Fulbright, Pottinger
Sale of Profke Residential Aged Care portfolio to Japara Healthcare Limited	\$102.5m	DibbsBarker	Profke Residential Aged Care	Juanita Rayson, Michael Goss	K&L Gates, KPMG
Creation of a pro rata accelerated renounceable entitlement offer (with retail rights trading) (PAITREO) of new ordinary shares to existing shareholders by Santos Limited	\$2.5bn	King & Wood Mallesons	Citigroup Global Markets Australia Pty Limited, Deutsche Bank AG, UBS AG	Shannon Finch	Herbert Smith Freehills, Skadden, Arps, Slate, Meagher & Flom LLP
Investment of an affiliate of China-based international private equity firm, Hony Capital in Santos Limited via a private placement	\$500m	King & Wood Mallesons	Hony Capital	Shaun McRobert	Herbert Smith Freehills
Purchase by Mitsui E&P Australia of a 35% stake in the Kipper gas field from Santos Limited	\$520m	King & Wood Mallesons	Mitsui E&P Australia	Rob Edel, Ian Gordon	Herbert Smith Freehills
Investment by global private equity investment firm Paine & Partners in AgBiTech Pty Ltd	Confidential	King & Wood Mallesons	Paine & Partners	Shannon Finch, Henrik Moritz	Herbert Smith Freehills
Proposed merger of DEXUS Property Group with Investa Office Fund via an informal trust scheme	\$23.4bn	King & Wood Mallesons	DEXUS Property Group	Susan Hilliard	Herbert Smith Freehills
Purchase of the AirportLinkM7 motorway from BrisConnections	\$1.87bn	King & Wood Mallesons	Transurban Queensland	Evie Bruce, Ros Anderson, Claire Rogers, Joseph Muraca, Will Heath, David Wood	Allens



## 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 [samantha.woodhill@keymedia.com.au](mailto:samantha.woodhill@keymedia.com.au)

Transaction	Value (A\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Establishment of funding and financing facility	\$1.75bn	King & Wood Mallesons	QIC	Richard Hayes, Alastair Gourlay	Herbert Smith Freehills
Global acquisition of NCR Corporation's Interactive Printer Solutions (IPS) division	Confidential	Buddle Findlay	Atlas Holdings	David Thomson, Andy Martin	Simpson Grierson
Sale of Ntec shares to Archer Capital	Confidential	Buddle Findlay	National Tertiary Education Consortium Limited (Ntec)	David Thomson, Andy Martin	Minter Ellison, Rudd Watts,
Renegotiation and extension of the client's operating contract at the Port Phillip Prison	\$1.83bn	Allens	Simpson Grierson	Ron Forster Bill Koeck	
IDP Education Limited IPO	\$331.6m	Allens	IDP Education Limited	Robert Pick	Minter Ellison, Arnold Bloch Leibler
Acted as the sole lead manager in the Aventus Property Group IPO	\$700m	Allens	Macquarie Group	Julian Donnan	Herbert Smith Freehills
US private placement of senior secured notes due in 2032 for Melbourne's Southern Cross station	\$70m	Herbert Smith Freehills	Civic Nexus Finance Pty Ltd	Josh Sgro, Gerard Pike	Gilbert + Tobin, Chapman and Cutler
Strategic tie-up between TCL Multimedia and LeTV	\$205m	Herbert Smith Freehills	TCL Multimedia	Tom Chau	
Funding of the Barcaldine Remote Community Solar Farm	Undisclosed	Herbert Smith Freehills	Australian Renewable Energy Agency	Gerard Pike	King & Wood Mallesons, Mills Oakley
Acquisition of TransGrid from the NSW Government	Up to \$15m	Herbert Smith Freehills	NSW Electricity Networks	Simon Haddy, David Ryan, Philip Podzebenko, Joel Rennie, Erin Wakelin	Allens, Gilbert + Tobin



### \$10.258bn acquisition of TransGrid by NSW Electricity Networks

In one of the largest deals of the year, Herbert Smith Freehills advised NSW Electricity Networks about the acquisition of TransGrid from the NSW Government for \$10.258bn.

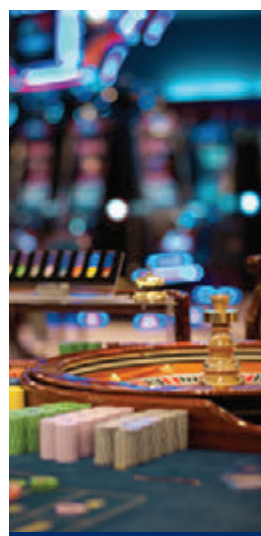
The corporate team was led by partners Simon Haddy, David Ryan and Philip Podzebenko. They were assisted by partner Philippa Stone, special counsel Rob Finlay and executive counsel Peter Davis.

The finance team was led by partners Joel Rennie and Erin Wakelin, and assisted by senior associate Amelia Fleming.

The acquisition was financed with a \$5.5bn limited recourse financing package supplied by a syndicate consisting of 12 domestic and international lenders.

NSW Electricity Networks entered into a competitive auction process run by the NSW Government on 25 November. It was the successful bidder, winning a 99-year lease for TransGrid. All binding documents were signed on 26 November.

# TRANSACTIONS



## \$3bn investment in a major Brisbane tourist hub

This 50% combined investment by Far East Consortium International and Chow Tai Fook Enterprises in the Destination Brisbane Consortium (DBC) led to the contractual close on the development of the Brisbane Queen's Wharf.

The total combined investment for this 50% share equals \$3bn. Echo Entertainment Group Limited (now renamed The Star Entertainment Group Limited) has provided the other 50% share in the syndicate.

If the plans are approved, Queen's Wharf will become an integrated resort and tourism hub consisting of a casino, 1,100 premium hotel rooms, 2,000 apartments and assorted public infrastructure.

HWL Ebsworth advised about probity clearances for Far East Consortium, Chow Tai Fook Enterprises and their associates. They also provided consultation on management conducted by the Office of Liquor and Gaming Regulation (QLG) as well as contractual and ownership relationships for the Consortium.

The team was led by partner Stephen Kerr and was assisted by partner Teresa Torcasio and senior associate Paul Lewis.

Transaction	Value (A\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Acquisition of energy assets from Edra Global Energy Berhad	Confidential	Herbert Smith Freehills	China General Nuclear Power Group	David Clinch	Skrine, Norton Rose Fulbright, Rahmat & Lim, Deol & Gill
Sale of 206 Bourke Street in Melbourne to super fund investor ISPT	Confidential	Maddocks	Hiap Hoe Limited	Nick Holuigue	
The launch of an initial public offering and listing on the ASX	Confidential	DLA Piper	PSC Insurance Group	Catherine Merity, Samantha O'Brien	
Acquisition of hotel portfolio from Eureka Funds Management	\$635m	Minter Ellison	SB&G Hotel Group	Joseph Pace	Henry Davis York
A fully underwritten equity raising by way of an accelerated non-renounceable entitlement offer of new shares to existing shareholders	\$2.4bn	Minter Ellison	ALS Limited	Gary Goldman, Daniel Scotti	Sidley Austin, Allens, Skadden, Arps, Slate, Meagher & Flom
China Dairy Corporation Limited IPO and ASX listing	\$20m	HWL Ebsworth	China Dairy Corporation Limited	Grant Hummel	
A 50% combined investment in the Destination Brisbane Consortium (DBC)	\$3bn	HWL Ebsworth	Far East Consortium International Ltd, Chow Tai Fook Enterprises Ltd	Stephen Kerr	DLA Piper, Corrs Chambers Westgarth
GUD Holdings acquisition of Brown & Watson International	\$200m	Bell Gully	GUD Holdings Limited	Brynn Gilbertson	Herbert Smith Freehills
Acquisition of Unity Mining Limited by Diversified Minerals	\$33.2m	Baker & McKenzie	Unity Mining Limited	Richard Lustig	Sparke Helmore
Financing of the 240MW Ararat wind farm in Victoria	\$276m	Norton Rose Fulbright	Sumitomo Mitsui Banking Corporation, Clean Energy Finance Corporation, Export Development Canada	Jo Crew, Simon Currie	Herbert Smith Freehills

# CHOICE OF LAW NOT GUARANTEED IN CROSS-BORDER EMPLOYMENT RELATIONSHIPS

Employment relationships commonly cross the Tasman and other international borders. When they do, legal issues can arise regarding which country's law applies and which country has jurisdiction to hear a claim. Issues arise particularly in situations where a contractual provision breaks the laws of one country, but not another. While courts in New Zealand have been influenced largely by the parties' express choice of law, a number of other factors can influence which country's law apply.

A recent decision of the New Zealand Employment Court, *Brown v New Zealand Basing Limited of Hong Kong*<sup>1</sup> demonstrates how other factors can override parties' contractual choice of law and in particular how public policy factors may play a role where human rights or other important protections are involved.

In this case, Mr Brown and Mr Sycamore were Senior Captains for Cathay Pacific Airways. They were employed by New Zealand Basing Limited (NZBL), a wholly owned subsidiary of Cathay Pacific. Their employment agreements contained a compulsory retirement age of 55 and expressly stated that the laws of Hong Kong applied. Mr Brown and Mr Sycamore were nearing the age of 55 and issued proceedings in New Zealand against NZBL, claiming that being forced to retire at 55 was discriminatory and unlawful.

A key issue was whether the laws of Hong Kong or New Zealand applied. The compulsory retirement age was lawful under Hong Kong law, but would not be lawful or enforceable under New Zealand law.

## WHICH COUNTRY'S LAW APPLIES?

While the parties had expressly agreed to Hong Kong law, that was not the end of the matter. In New Zealand, as in other countries, the courts look to the surrounding circumstances to determine the true intention of the parties and the 'reality' of their employment, in accordance with established conflict of law principles. Taking into account the surrounding circumstances, and guided by the 'base test' applied by the UK House of Lords in *Crofts v Veta Limited*<sup>2</sup> (which considered the same

issue in relation to five Cathay Pacific pilots based in London), the Court determined that New Zealand law applied. The following circumstances were relevant:

- Mr Brown and Mr Sycamore had home bases in Auckland, New Zealand
- 'Tours of duty' began and ended in Auckland
- They were paid in New Zealand dollars and provided with New Zealand medical insurance
- Their employment was subject to New Zealand income tax, ACC payments and health and safety requirements
- If they wanted to take up a home base in another country, their employment with NZBL would terminate
- They were paid a salary designed to reflect a lower living cost than in Hong Kong
- NZBL should have been registered under the Companies Act 1993 as an overseas company carrying out business in New Zealand.

The Court also determined that, even if its factual analysis was wrong and the parties' express choice of law applied, the choice was contrary to public policy and invalid. This was based on an established conflict of law principle (noting that English, Canadian and Australian positions are the same) that courts may refuse to apply foreign law if it would be contrary to New Zealand's interests, or contrary to justice or morality.

The Court focused on human rights legislation (including the right to work and not be discriminated against on the basis of age) being 'fundamental law that bears on the very essence of human identity'. Because Hong Kong law does not protect employees against age-discrimination, the Court said applying that law would have been a very serious infringement of the pilots' human rights and a violation of the essential principles of justice. This, paired with the approach Cathay Pacific had taken in other countries to ensure compliance with local employment laws (including a higher retirement age), led the Court to find that applying Hong Kong law would be unjust.

## WHAT TO TAKE FROM THIS DECISION

The decision demonstrates how human rights and other statutory protections will be relevant to determining which country's law applies to an employment relationship. Even if the surrounding circumstances and the reality of the relationship had been in favour of Hong Kong law, it is likely that public policy would have prevailed.

The decision has been appealed to the Court of Appeal and the outcome of the appeal will be welcomed by practitioners and organisations conducting business in New Zealand and abroad, particularly by those in current disputes involving conflict of laws issues (there is a claim currently in the Employment Relations Authority for instance involving Chinese workers who temporarily relocated to New Zealand to complete warranty repairs on KiwiRail trains).

Cross-border employers and employees ought to be mindful when drafting 'choice of law clauses' that their choice is not guaranteed. They will need to determine not only the law they want to apply but whether the surrounding circumstances support that choice. Further, it is clear in New Zealand, and in some other jurisdictions, that a choice of law provision is likely to be scrutinised more closely where human rights and other important protections are involved. Broader considerations of justice, morality and public policy may sometimes outweigh the important public policy considerations that support freedom of contract.

<sup>1</sup>[2014] NZEmpC 229.

<sup>2</sup>[2006] UKHL 3, [2006] ICR 250.

*This article was written by Hamish Kynaston (partner) and Jen Howes (solicitor) - both based in the Wellington office of Buddle Findlay. Hamish and Jen specialise in all aspects of employment and health and safety law.*



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# TRANSACTIONS

## \$6bn acquisition of warehouse securitisations of GE assets

A consortium consisting of KKR, Varde Partners and Deutsche Bank has purchased more than \$6bn worth of warehouse securitisations of GE assets including credit cards and sales finance, both secured and unsecured personal loans, and auto loans.

The Ashurst team advising on the acquisition was led by partner Paul Jenkins. Further assistance was provided by partners Jennifer Schlosser, Jamie Ng and Ian Kellock.

The consortium acted as trust manager, originator, servicer and subordinated financier.

A number of Australian and offshore banks and miscellaneous investors acted as senior and mezzanine warehouse financiers. Given the large number of financiers involved, complex escrow arrangements were employed.

The assets acquired encompass over three million customers in Australia and New Zealand.



Transaction	Value (A\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Acted as trustee for offer of capital notes by Macquarie Group Limited	\$400m	Norton Rose Fulbright	Australian Executor Trustees	Tessa Hoser	King & Wood Mallesons
Acquisition of three bulky goods centres	\$170m	Hall & Wilcox	Aventus Property Group	Natalie Bannister	
Takeover offer for Universal Coal Plc	\$126.4m	Squire Patton Boggs	Coal of Africa Limited	Simon Rear	Mills Oakley, Mayer Brown
Acquisition of the Iona Gas Storage facility from Energy Australia	\$1.78bn	Hive Legal	QIC	Mitzi Gilligan	King and Wood Mallesons, Herbert Smith Freehills
Acquisition of warehouse securitisations of GE assets by a consortium	More than \$6bn	Ashurst	Australian and offshore banks, other investors, a consortium comprising of KKR, Varde Partners and Deutsche Bank	Paul Jenkins	Herbert Smith Freehills, Henry Davis York
Establishment of a medium-term note program and debut issue	\$200m	Ashurst	Australian National University	Jamie Ng	King & Wood Mallesons
Archer Capital acquisition of Australian, New Zealand business of Dun & Bradstreet	\$200m	Bell Gully	Archer Capital Pty Limited	Haydn Wong	Minter Ellison, Johnson Winter & Slattery
Capital injection in ZipMoney involving a debt component and equity investment	\$100m	Ashurst	Victory Park Capital	Jennifer Schlosser, Sarah Dulhunty	King & Wood Mallesons, Minter Ellison
Acquisition of 80% of MLC Limited's outstanding shares	\$2.4bn	Ashurst	Nippon Life Insurance Company	Natsuko Ogawa	Herbert Smith Freehills, Nishimura & Asahi
Acquisition of commercial buildings in the Sydney CBD at 338 Pitt Street and 126 Liverpool Street	Debt of greater than \$150m	Nexus Law Group	Purchaser joint venture	Justin Sprogis	Gadens, Allens
Take over of half of Cardno Limited's ASX-200 shares	\$235m	Gilbert + Tobin	Crescent Capital	Tim Gordon, John Williamson-Noble	McCullough Robertson
Launch of an IPO on the ASX	\$946m	Allen & Overy	Link Administration Holdings	Tony Sparks	DLA Piper, Allens

# Welcome Tom and David



John Powell, who heads Russell McVeagh's National Finance Practice and David Hoare, Chair of the Corporate Advisory group, both welcome the promotion of Tom Hunt and David Raudkivi to the partnership.

Tom will continue to specialise in debt capital markets, corporate finance and financial services regulation. David will continue to focus on equity capital markets, mergers and acquisitions, private equity and other corporate transactions.

## RUSSELL McVEAGH

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## MARKET MOVEMENTS

## APPOINTMENTS

Presented by

Mahlab



### ■ NEW NATIONAL MANAGING PARTNER FOR SPARKE HELMORE

Phillip Salem will take over as national managing partner from Jesse Webb, who steps down at the end of February to return to practice.

Salem, currently a board member, leads the firm's national government commercial team.

"As the incoming national managing partner, I plan to build on the firm's successes by maintaining a focus on growth and the pursuit of our strategy," he says.

Chairman Mark Hickey congratulated the achievements of outgoing national managing partner Webb, and says the firm will benefit from his experience and reputation when he returns to practice.

"I congratulate Phillip on his appointment and want to express my thanks to Jesse for his significant contribution and personal commitment to the firm as our national managing partner," Hickey says.

## LATERAL PARTNER APPOINTMENTS

NAME	PRACTICE AREA	LEAVING	GOING TO
Shannon Adams	Banking and financial services	Hunt & Hunt	Piper Alderman
Joanne Wakely	Personal injury law, commercial litigation, general insurance law	WHL Legal	Wotton + Kearney
Chantal Tipene	Government and administrative law	NSW Police Force	Sparke Helmore Lawyers
David Lee	Insurance law	Lee & Lyons	Clyde & Co
Lucinda Lyons	Insurance law	Lee & Lyons	Clyde & Co
David Amentas	Insurance law	Lee & Lyons	Clyde & Co
Michelle Dunne	Insurance law	Lee & Lyons	Clyde & Co
Christopher Smith	Insurance law	Lee & Lyons	Clyde & Co
Marcus O'Brien	Insurance law, commercial litigation	Norton Rose Fulbright	Clyde & Co
Shaun Temby	Commercial disputes law	Norton Rose Fulbright	Maddocks
Andrew Rankin	Corporate and commercial law	Norton Rose Fulbright	DibbsBarker
Ashley Tsacalos	Government law, dispute resolution, administrative law	Norton Rose Fulbright	Clayton Utz
Dale Chapman	Corporate & commercial, water law, markets & trading	Norton Rose Fulbright	Addisons
Scott Alden	Construction and infrastructure	DLA Piper	Holding Redlich
Marcus Clark	International mergers and acquisitions	Allens	Johnson Winter & Slattery
Philip Vickery	Corporate	Holding Redlich	K&L Gates
Brian Healey	Real estate	Holding Redlich	K&L Gates
Paul Hardman	Labour, employment and workplace safety	Holding Redlich	K&L Gates
Diane Skapinker	Real estate	Gilbert + Tobin	K&L Gates
Naomi Pearce	Intellectual property	Pearce IP Strategy	K&L Gates
Lauren Magraith	Corporate	Herbert Smith Freehills	Baker & McKenzie



Kathy Dalton	Industrial, employment, discrimination/equal opportunity law	K&L Gates	DLA Piper
Arthur Chong	Real estate	Norton Rose Fulbright	DLA Piper
Julius Skinner	Local government, town planning & development, and environmental law	Jackson McDonald	Borrello Graham
Zac Kerr	Building, construction & infrastructure, energy & resources, projects & infrastructure law	Herbert Smith Freehills	Mills Oakley
John Turnbull	Private advisory	M+K Lawyers	Mills Oakley
David Passarella	Planning & environment	Gadens	Mills Oakley
David Marschke	Private advisory, taxation law	KPMG	Mills Oakley
Mark Crean	M&A	Herbert Smith Freehills	Jones Day
Andrew Evans	Commercial litigation, insolvency, partnership disputes, corporation law, governance, property law disputes	HWL Ebsworth	Creevey Russell
Andrew Stops	Commercial litigation, insolvency	Piper Alderman	TressCox Lawyers
Andrea Wookey	Banking, finance, corporate, commercial law	TressCox Lawyers	Kemp Strang
Michael Harrison	Resources and infrastructure	Minter Ellison	Ashurst
Richard Guit	Resources and infrastructure	Minter Ellison	Ashurst
David Giacomantonio	Insurance law	Moray & Agnew	Lander & Rogers
Martin Kudnig	Infrastructure, resources & energy law	Ashurst	Johnson Winter & Slattery
Polat Siva	Complex disputes, restructuring & insolvency	Clayton Utz	HWL Ebsworth
Malinda Kuo	Commercial & tax	DMAW Lawyers	Lynch Meyer Lawyers
Rosemary Gibson	Marine and transport	Cooper Grace Ward	Thynne + Macartney
James Minchinton	Energy and resources	Corrs Chambers Westgarth	Sparke Helmore Lawyers
Michael Loterzo	Construction law	Leighton Contractors	Rigby Cooke Lawyers
Kemsley Brennan	Insurance and corporate risk	Colin Biggers & Paisley	Minter Ellison



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SENIOR ASSOCIATE APPOINTMENTS	
FIRM	LAWYERS PROMOTED OR LATERALLY APPOINTED
Wotton + Kearney	Jason Chew, Lauren Fieldus, John Fogg, Dean Pinto, Anita Smith
Hall & Wilcox	Natalie Chapman
Sparke Helmore Lawyers	Ian Bennett, Ashley Burgess, Anita Diakou, Julie Kneebone, Shelley Leembruggen, Jehan Mata, Emanuel Oros, Cheree Sawley, Jonathan Tyne, Janelle Watts, Susan Withycombe-Taperell
Piper Alderman	Adam Rinaldi, Kimberley Levi, Pei Yau, Elaine Cheung
Minter Ellison	Gus Skavronskas, Emma Colantonio, Jonathan Maher, Liron Israeli, Phi Vo, Chloe Conway, Cassandra Heilbronn, Angus Macaskill, Laura Glenn, Carley Scanlan, Ben Blackaby, Rob Marshall, Vicky Anastasiadis, Jessica Nesbit, Jessica Newman
Cowell Clarke	Jonathon McRostie
Gilbert + Tobin	Emily Tsokos, David Naoum, Patrick Tydde
Mullins Lawyers	Chris Herrald, Krystal Bellamy, David Callaghan
Kemp Strang	Liz Austin
Bell Gully	Natasha Garvan, Lisa McLennan, Kate Venning, Gemma Wills, Kristin Wilson
Russell McVeagh	Anna Crosbie, Ian Beaumont
Bell Gully	Brendan Cash, Liz Lim

PARTNER PROMOTIONS	
FIRM	LAWYERS PROMOTED
Piper Alderman	Sina Kassra, Florian Ammer, Donna Bengé, Rod Jones
Kott Gunning	Anne Wood
Mullins Lawyers	Alan Strain
Buddle Findlay	Miriam Andrews, Nick Bragg, Amy Ryburn
Russell McVeagh	Tom Hunt, David Raudkivi
HBA Legal	Rosan Santangelo
McCullough Robertson	Jennifer Turner
Thynne + Macartney	Karen Gaston

OTHER		
NAME	FIRM/COMPANY	TITLE
Greg Smith	Nexus Law Group	Principal
Maeve Doyle	Nexus Law Group	Consulting principal
Christine Bartlett	Clayton Utz	External director
Phillip Salem	Sparke Helmore Lawyers	National managing partner
Julia Winzar	Cowell Clarke	Associate
Katie Aust	Cowell Clarke	Associate
Alan Colman	Corrs Chambers Westgarth	Consultant
Vicki Clarkson	Shine Lawyers	General counsel
Moana Weir	Slater and Gordon	General counsel
Luke Hastings	Herbert Smith Freehills	Regional head of practice
Stephen Mihaljevic	Nexus Law Group	Consulting principal
Miriam Rihani	Lexvoco	Senior legal counsel
Nikki Grant	Piper Alderman	Paralegal

## ■ HWL EBSWORTH EXPANDS WORKPLACE RELATIONS & SAFETY TEAM

Sarah Harrison has joined the Perth-based workplace relations and safety team as partner.

Moving from King & Wood Mallesons, Harrison specialises in crisis management, health and safety law, and regulatory investigations. She was included in Best Lawyers in the OHS field in 2014 and 2015, and also in regulatory law in 2015.

Harrison has extensive experience in risk and crisis management within the energy and resources field, as well as in OHS. This includes supporting clients through investigations, civil claims and inquests.

“Health and safety law and regulatory compliance matters are critical issues for many of our clients, and we are thrilled to have secured one of Australia’s most highly regarded specialists in these areas,” managing partner Juan Martinez says.

“A number of our clients have worked with Sarah for many years at her previous firm, and we have been delighted that those clients have been so supportive of her move.”

# MARKET MOVEMENTS

## SPECIAL COUNSEL APPOINTMENTS

FIRM	LAWYERS PROMOTED OR LATERALLY APPOINTED
Wotton + Kearney	Gemma Dehn, Richard Johnson
Minter Ellison	Kathryn Finlayson, Amy Southwell, Simon Oh, Deanna McMaster, Megan Fairweather, Julian Pinder, Ratha Nabanidham, Bee Ang, Matthew Missaghi, Christopher Keane
William Roberts	Bruce Cussen
Holman Fenwick Willan	David Ulbrick
Mullins Lawyers	Susan Isaac
Piper Alderman	Julian Grover, Joshua Annese
Carroll & O'Dea	John Edstein
Corrs Chambers Westgarth	Michelle Dean
Bell Gully	Brendan Cash, Liz Lim



### ■ NEW ZEALAND LAW FIRM PROMOTES THREE NEW PARTNERS

Commercial and public law firm Buddle Findlay has announced the appointment of three new partners to its team: Miriam Andrews, Nick Bragg and Amy Ryburn.

Andrews is based in Auckland in the banking and financial services team.

She has both legal and commercial experience in a range of areas, including portfolio sales & acquisitions, syndicated loans, property finance, agri-funding and acquisition finance.

Bragg is an Auckland-based specialist in corporate and commercial law. He has experience in M&A, capital markets & securities transactions, commercial contracts, and corporate governance.

Ryburn is based in Wellington and is an expert in TMT (technology, media & telecommunications), commercial contracting and procurement.

She has worked with a range of clients, including listed firms, state-owned enterprises, government departments and start-ups. Her specific area of interest is large-scale ICT project work, spanning from the initial procurement stages through to contract drafting and negotiation.



### ■ SPECIALIST BANKING & FINANCIAL SERVICES TEAM JOINS PIPER ALDERMAN

Australian law firm Piper Alderman has announced the lateral appointment of a specialist banking and financial services team, with all four members coming across from Hunt & Hunt.

Shannon Adams has been appointed as partner, Joshua Annese as special counsel, Elaine Cheung as senior associate, and Nikki Grant as paralegal.

The team specialises in financial services regulation and compliance, commercial arrangements involving financial services providers, lending transactions and securities enforcement.

They have acted for a number of leading financial institutions, including banks, credit unions and building societies across the country.

Mr Adams has an extensive history as well, acting for Authorised Deposit-taking Institutions and other financial service providers since the 1980s. He is currently recognised as one of the country's leading experts in mutual financial institutions and consumer credit regulation.

### ■ BAKER & MCKENZIE ADDS PARTNER TO CORPORATE FINANCE TEAM

Lauren Magraith has been appointed as Partner within the Baker & McKenzie's Sydney-based corporate finance practice.

Magraith has experience with corporate finance transactions, both within Australia and globally. Her focus is on equity and equity-linked capital markets transactions.

Previously, she has worked as executive counsel at Herbert Smith Freehills and as executive director in J.P. Morgan's equity capital markets team.

"Lauren is an exceptional capital markets lawyer, who is highly regarded in the Australian market by leading bankers and in-house counsel," national managing partner Chris Freeland says.

Magraith has worked on some of the largest transactions in the country, including the A\$5.7 billion IPO of Medibank Private, Westpac's A\$3.5 billion entitlement offer, the A\$945 million block trade in Healthscope Limited and CBA's A\$3 billion offer of PERLS VII securities.

"Lauren joins a growing corporate group across the eastern seaboard of Australia and her ability to service clients in equity capital markets is very well proven," corporate group leader David Holland says.

# Health conscious

**Mei Ramsay** knows from personal experience how important health services can be to Australians in times of crisis and need. That's why she's striving for better health as Medibank's general counsel, one legal instruction at a time

**WHEN MEI** Ramsay joined Medibank in 2011, it wasn't just about finding a new job. Having already forged a leading in-house career in years when the legal function was young and evolving, Ramsay was looking for something more.

"I think you get to a point in your career where the learning and the progress that you're making, in terms of your technical skills, has taken its trajectory, and you are looking at broader and maybe less tangible aspects of the job."

Ramsay wanted an influential legal role in an industry that was more relevant to her, that she could relate to personally. And she found that at Medibank.

"I'd had some recent experiences with my family where they'd been heavy users of health industry services, and it really brought home to me how important that sector is to all of us, particularly in times of crisis and need," she says.

It was good timing. Ramsay joined Medibank just when the organisation was looking to become more commercial, in the hope of an eventual listing. The result

has been a unique and engaging five-year career at the health insurer, culminating in the legal team she had grown essentially leading Medibank's \$5.7bn IPO over an 18-month period, in the largest privatisation since Telstra.

## A business partner

Ramsay began her career in private practice. Though her law firm career would last 10 years, she clearly remembers an interview with the law firm at which she did her articles as a sign she was destined for something different.

"The partner who was interviewing me asked what area I wanted to move in to, and I said I really enjoyed doing a bit of everything." When the partner then suggested that private practice lawyers needed to find an area and specialise Ramsay found herself thinking that that "didn't sound like much fun".

"When I moved into in-house practice it was an emerging career path – you had to be a generalist and turn your hand to anything and everything that came across your desk,"





“I was lucky enough to find that, fairly early on in my career, in-house was really the better career for me”

# MEI RAMSAY

Ramsay says. “I was lucky enough to find that, fairly early on in my career, in-house was really the better career for me.”

Following an initial role at Southcorp, Ramsay’s career progressed in the days of smaller in-house teams by moving every three to four years. The result was a diverse career at multiple blue chip Australian companies and a multinational, in different industries, business environments and legal operating models.

This background has served her well at Medibank. One key achievement has been restructuring and developing a high-

performing in-house legal team.

“When I joined, the legal team was relatively small, and it was a completely flat structure,” Ramsay says. “It was really what I would call an all-purpose team, with fairly informal arrangements in terms of the division of work.”

Medibank now has a medium-sized legal team of over 10 lawyers, structured in a business partnering model. Three senior lawyers have been given responsibility for managing their own small teams, which are assigned to specific divisions. The legal team also includes specialty groups

that the business can call on for advice on specific key regulatory areas, such as private health insurance.

“By creating a more formalised structure, I’ve given people ownership over their area. I’ve created several layers in the team so that there is career progression opportunities – potential to manage people and the like – and it also means for me, as a general counsel, I have a leadership team of fantastically talented and highly engaged lawyers, which just makes my life a lot easier as well.”

Aside from eliminating the risk of

## A PERFECT MATCH



Finding the perfect private practice law firm can be a challenge. That’s because for Medibank, the profile of what’s perfect changes with each piece of work.

“It can vary from a sole practitioner right through to one of the major law firms and every combination you can think of inbetween, especially given the legal services market has fragmented and changed a lot in recent years,” Ramsay says.

That means Medibank is quite discerning when it comes to choosing its external counsel. It’s not always about getting the best lawyer at the best firm in town.

“Sometimes it’s about that, but not always. It’s actually about getting the best matched lawyer or firm or other form of service provider for the actual business need that we have at the time.”

Medibank does have a formal legal panel, following a process the group

went through three years ago to cut the number of firms it was using. But that doesn’t stop the company from hiring outside this clutch of panel firms.

“They are not exclusive arrangements in the sense that, if we have a need that can’t be met by the panel, then we will go elsewhere,” Ramsay says.

A significant amount of time is spent maintaining strong relationships with firms, to ensure Medibank understands their value proposition and capabilities.

“The ability to mix and match and to be able to do it very nimbly is important, but you can only get to that point if you have built a relationship and really got to know a whole range of lawyers and legal service providers.”

Risk and cost influence the eventual instruction decision. “The higher the risk, or the more specialised the advice is, then potentially the lower the cost will factor into the decision, but cost is still a factor in today’s world – you can’t ignore that.”

team confusion and demotivation, the business partnering model has benefited Medibank in other ways. “Firstly, you get a group of lawyers who fully understand the business strategies – the drivers, the levers and the challenges – and are so deeply embedded in that particular part of the business that they really become a part of the team. Secondly, people in the business know who they are. Sometimes, if you have

An example of this challenge was during Medibank’s IPO. “That’s not something that happens every day to an organisation, and certainly not one as large as ours. On top of that, it was obviously a Commonwealth privatisation – and they just don’t happen that often. The last one – Telstra – was some time ago.”

Despite the challenge of finding lawyers with the right expertise, Ramsay was able to

With its potential to ease spiraling health insurance costs, and improve the quality of hospital care, Ramsay says it’s a moment to be proud of. “For those in my team that worked on it, they can look back and see they have actually made an impact on the accessibility and quality of healthcare services,” she says.

The team has also been deeply engaged in the various health reviews being conducted by the government, including a review of private health insurance, the Medicare Benefits Schedule Review and the Mental Health Review. “They are all happening at the same time, which for us is a joy but also a challenge,” she says.

#### **A higher purpose**

The future is likely to see more innovation in-house at Medibank. Ramsay says the organisation as a whole is looking at how it can leverage technology better. “Technology is something all lawyers need to embrace and I think the more we can get that to work for us and support us the better off we will be.”

This will likely involve intelligent use of resources. “There may be highly repetitive work we can automate, or different ways we can do volume work with less human intervention. For higher-end strategic work, there may be ways of capturing and sharing information that makes it more efficient.”

But behind all this, the purpose will always be clear – better health for Medibank’s members, for its employees and, as a result, the public at large.

“We as an organisation are very strong in that commitment and it does add that extra dimension to your work,” Ramsay says. “You get a lot of intellectual satisfaction out of negotiating a really good contract, or preparing a very intricate piece of advice, but, ultimately, if you know you are also doing it for a higher purpose, I think it makes a big difference to your day.” **AL**

**“You get a lot of intellectual satisfaction out of negotiating a really good contract, or preparing a very intricate piece of advice, but, ultimately, if you know you are also doing it for a higher purpose, I think it makes a big difference to your day”**

a team without clear accountabilities, the business starts seeing the legal team as a faceless group of people and don’t know who to talk to, and that immediately puts up barriers.”

#### **The big deal**

Balancing the needs of the legal team with those of the business will remain a challenge as the scope and nature of Medibank’s in-house workload changes.

“One of my jobs is to constantly review the resourcing levels, and the experience and expertise of the team, to make sure it matches the business needs and what’s happening in both our industry and the broader environment,” Ramsay says. “Once you for a nanosecond get it right, of course it all changes the following day. But, while you are juggling that, you also have to be very mindful of the career development needs and desires of your lawyers, admin staff and paralegals.”

pick up lawyers with solid M&A experience, who could adapt the nuances that exist in the private health insurance regulatory environment. “We managed to hold on to quite a few of those resources after the listing and keep those highly talented people engaged, so I’ve been very lucky there,” she says.

More recent work has included advising on high-profile contract negotiations with hospital operators Healthscope and Calvary Health Care, among others, which has seen Medibank thrust into the public spotlight over its quality and affordability agenda on hospital-acquired complications and re-admissions.

“The legal team played a very key role in developing the framework for the hospital contracts and working through those with the internal team, but with the various hospitals’ legal and commercial teams and finding an approach that was acceptable to both parties,” Ramsay says.



## BRISBANE

# BRISBANE CITY REPORT

Queensland lawyers reflect on the gains of 2015 and share their predictions for the year ahead.

**Sasha Borissenko** reports





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**IT'S BEEN** six years and the stench of the Global Financial Crisis (GFC) lives on in Brisbane, and while clients feel the pinch, the legal industry is relentlessly finding innovative ways to better the status quo.

### **Grim economic backdrop**

Although 2015 was a relatively prosperous year for Cooper Grace Ward Lawyers, who saw a five per cent growth in fees, the lagging economic backdrop has meant managing partner Chris Ward is apprehensive to suggest Brisbane law firms are in the clear.

The new norm is “up and down” and the industry should gear themselves by implementing innovative ways to tackle the worst, he says.

“In this volatile market, our biggest threat is a loss of public confidence. Where confidence erodes, clients are forced to leave their cheque books in their pockets.



## BRISBANE



**“Ultimately, in an ice hockey context it’s not about skating to where the puck is, it’s about skating to where the puck is heading”**

**Chris Ward, Cooper Grace Ward**

“Who could expect BHP [Billiton Ltd] to be trading \$14 or \$15 a share when once they were trading at \$40 a share, for example.”

Since Christmas Eve it has been the worst start to the year in the history of business for global financial markets, he says, and keeping up to date with the financial pages doesn’t provide particularly positive reading.

And with the federal election drawing closer, firms will undoubtedly see things slow down across the board, he says.

“While I’m not losing any sleep over the situation, economic uncertainty always plays on your mind with any business. We have to ascertain whether things are sustainable and where we can improve, and how might we do this.”

On a legislative level, firms and the

country should be prepared for tax debates around superannuation, GST and negative gearing, which will generate some uncertainty.

“Ultimately, in an ice hockey context it’s not about skating to where the puck is, it’s about skating to where the puck is heading.

“It’s an empowering philosophy. The situation is not as doomy and gloomy as I’m suggesting, but it’s my job to gauge what’s happening and despite the negative sentiment around the world, it’s my job to see what that might mean for us.”

And despite the fraught economic climate, the born and bred Brisbanite believes Cooper Grace Ward Lawyers is well placed to tackle these challenges.

“We’ve got the right team, the right client

base and the right environment, what’s not to love?”

“You get to know a lot of people in the city, and there’s a lot of support among lawyers. Aside from the lovely subtropical climate, the friendly environment can be a very useful and assuring tool.”

### **Tighter budgets**

Meanwhile, Carter Newell senior partner Paul Hopkins says the uncertain market conditions, combined with the cost of litigation, translate to a reluctance to litigate matters other than those of commercial significance.

Hopkins predicts clients will increasingly have tighter budgetary constraints, and will be looking for proactive and cost effective advice and options. Fewer clients will be prepared to commit to lengthy and expensive litigation, and will instead be looking for more practical and commercial outcomes, such as the growth of arbitration as a dispute forum.

Alternatively, clients are attempting to make better use of in-house legal teams – both as a way of controlling legal expense





and also to more clearly identify when specialised external advice is required.

Effectively there is a high level of competition between many quality firms in the Queensland market. Those firms that continue to focus on excellence in client service, as well as delivering at an effective price point, will be well placed to make 2016 a strong year, he says.

“Service excellence and true expertise will, however, always be in fashion.”

Outside of Carter Newell, Hopkins is of the opinion Brisbane law firms have been experiencing more movement among

officers claims. In fact, Carter Newell is representing high profile directors and their insurers where action has been taken against them and their companies following the failure of the company.

And the work is likely to continue into the new year, he says, where claimants in financial distress will be looking to improve their position by seeking damages against their professional advisors, lenders, employers and company directors.

Like Paul Hopkins’ sentiments, HopgoodGanim Lawyers managing partner Bruce Humphrys says wages have been



**“Carter Newell has an enviable record of stability and high retention rates, not only amongst the lawyers, but particularly across the partnership”**

**Paul Hopkins, Carter Newell**

senior practitioners, which is “indicative of instability within some firms”.

“Clients are likely to see this as a negative, and focus on firms that can offer consistency and stability in addition to quality service.

“Carter Newell has an enviable record of stability and high retention rates, not only amongst the lawyers, but particularly across the partnership.”

### Prosperity post-GFC

Despite the changing landscape of legal services, Carter Newell appears to have benefited from the GFC via its specialisation within the insurance market.

Accountants continue to face a high exposure in respect of taxation and due diligence advice, and while it has been more than six years since the onset of the GFC, the firm is still seeing claims against financial advisors, valuers and mortgage brokers, Hopkins says.

The continuing high incidence of poor investment returns and insolvencies is keeping a sharp focus on directors and

pretty steady over the last three years, which is indicative of the sleepiness of the economy.

“It’s no surprise work hasn’t been as plentiful since the GFC. But when times get tough, we prioritise by reinvesting in the firm.”

### Energy and resources sector

While it is common knowledge that Queensland has suffered with a significant downturn in energy and resources work, this hasn’t necessarily affected the legal industry, he says.

As funds are available for both exploration and development of resources, Humphrys predicts resources exploration and development capital will remain constrained while the current outlook on commodity prices continues.

In 2015 HopgoodGanim Lawyers saw solid work flow in coal and hardrock minerals exploration, principally in Queensland, with South Australia and Western Australia showing little activity. Production work has been steady, but slow, which Humphrys again links back to

## BRISBANE BY NUMBERS



Greater Brisbane's economy is worth

**\$146bn**

(as of June 2014)



Brisbane metropolitan area population as of June 2014 is

**2,205,722**



Brisbane metropolitan area population projection for June 2036 is

**3,315,184**



Greater Brisbane employment in September 2015 (12-month average) is

**1,162,000**



Forecast employment in 2031 is

**1,532,200**



Greater Brisbane unemployment rate as of September 2015 was

**5.9%**



Greater Brisbane estimated number of businesses as of June 2014 is

**184,346**

Source: Brisbane City Council

## BRISBANE



**“There are a lot of balls in the air. Although the market is uncertain in China and despite low commodity prices, the saving grace is the low Australian dollar, which means Australia is an attractive choice in terms of foreign investment”**

Bruce Humphrys, HopgoodGanim

## ENERGY & RESOURCES DECLINE



Brisbane has certainly suffered with a significant downturn in mining services and construction, says Carter Newell's Paul Hopkins.

“The impact has been felt in each of the heavy construction, infrastructure and associated residential sectors as new projects have been mothballed or cancelled.”

In particular, the downturn in commodity prices has had a significant impact on clients in the energy & resources space, where many new projects have been placed on hold, and cost cutting has extended to legal spend, he says.

Project development work has been largely displaced by transactional and joint venture work, as project participants look to introduce funds.

“On the other side of the coin, as spending is controlled more closely, disputes are now more likely to turn litigious.”

For example, the nature of Carter Newell's energy & resources practice has presented further opportunities for the commercial litigation practice area to advise and act in relation to joint venture disputes, disputes relating to asset acquisitions/disposals, landholder access issues, and environmental issues.

Ultimately, opportunities will present for legal practices best able to proactively manage costs and commercial options for clients, and to demonstrate real value for the client's business, he says.

commodity prices.

Predictions for the next year are difficult given the volatile market, but Brisbane will see the reckoning of a new era, he says.

Along with his domestic clientele, in 2015 the firm saw many Chinese, European, and north American clients and Humphrys expects local players to co-venture with principally Chinese, US and Canadian investors into the new year.

“There are a lot of balls in the air. Although the market is uncertain in China and despite low commodity prices, the saving grace is the low Australian dollar, which means Australia is an attractive choice in terms of foreign investment.

“Queensland is unique as it is rich in gas and coal resources, while also attracting investment in commercial property, tourism and resorts, for example. Combine our natural resources with the low Australian dollar and Queensland is a very attractive proposition,” Humphrys says.

### Property and development work

While the firm continues to act for local developers, HopgoodGanim Lawyers saw a lot of new entrants from southern states and also developers from China and Singapore.

2015 brought a strong flow of off-the-plan development work with a number of developers ready to launch projects in the first half of 2016. There's been continuing interest from Chinese buyers in off-the-plan apartments in the wider Brisbane area, for example.

As far as preserving the local marketplace, Humphrys welcomes overseas investment in Australia.

“In my opinion there's a lot to gain from overseas investment in property as ultimately these investors use local architects, engineers, bankers and a local workforce to run the property, for example. While people might be worried about an overabundance of foreign investment, we're a heavily regulated country and the positive effects are compelling.”

Overall, the outlook for 2016 and beyond is steady and positive, he says. **AL**



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## SONYA LEYDECKER AND MARK RIGOTTI

# UNCHARTED WATERS

**Samantha Woodhill** sat down with Herbert Smith Freehills' joint-CEOs Sonya Leydecker and Mark Rigotti to discuss the trials and tribulations of operating one of Australia's leading global law firms, and doing so together

**ACROSS THE** table sit dual CEOs, apparently rather blasé about the unorthodox nature of their commanding structure.

It initially seemed as though the two-CEO-strategy was a strategy simply to cover many bases. One man, one woman; one introvert, one extrovert; he's here, she's there.

South Korea and South Africa.

"This firm is transforming itself," says Rigotti. "It is transforming itself into one of the world's great legal services businesses and it's just fantastic to be involved in that and leading the firm at this point in its history."

**"It is transforming itself into one of the world's great legal services businesses and it's just fantastic to be involved in that and leading the firm at this point in its history"**

**Mark Rigotti, HERBERT SMITH FREEHILLS**

But steering the Herbert Smith Freehills mega-empire is not that simple.

Sonya Leydecker and Mark Rigotti say they're onto a good thing with 2015 marking the firm's third post-merger anniversary as it continues to dominate the global legal market. What's more, last year they opened up their 24th office, which has enabled them to explore previously uncharted waters in

## All about the people

Both appointed CEO following Herbert Smith's merger with UK-based Freehills in 2012, Rigotti and Leydecker had to strategise as to how to work together amid the flux. And so it was. They divided the regions and agreed to share responsibility.

"We didn't want to be isolated and in an ivory tower somewhere," says Leydecker.

The priority is always to be in constant contact with each other and clients to ensure they have a clear view of challenges of each market, and being a large and geographically diverse organisation, Rigotti and Leydecker say having two CEOs simply allows them to cover more.

But being based in different time-zones and with over 4,000 employees and 460 partners, communication is key.

"One of the challenges is how you communicate out to the team and that's exacerbated by geography, by travel," says Rigotti.

"We actually spend quite a lot of time emailing or speaking between ourselves before we make a decision or a direction.

"We're very aware of people watching which way we lean or which way we point them in and we have to be consistent around that.

"A challenge is getting the balance right in keeping things moving and being responsive and making sure we've got things sorted out along that line."

"We've brought together two really successful firms to make a great global firm





“We’re in different markets, at different stages of development; some of them are going up, some are going down”

Sonya Leydecker, HERBERT SMITH FREEHILLS

# SONYA LEYDECKER AND MARK RIGOTTI

**“We’ve brought together two really successful firms to make a great global firm and so being able to access the experience and the expertise across those two parts has been important and two CEOs allows us to do it”**

Mark Rigotti, HERBERT SMITH FREEHILLS

and so being able to access the experience and the expertise across those two parts has been important and two CEOs allows us to do it,” Rigotti says.

## Post-merger

The 2012 merger has brought two important changes to the firm: additional global client expertise; and more diverse opportunities for staff.

“A good example is some of the sanctions expertise we’ve got in various parts of the world that some of the Australian clients need access to as they go and globalise their own businesses,” says Rigotti.

Similarly, some of the infrastructure expertise that’s been established in Australia is now being exported into different sectors in different parts of the world and up into Asia, he says.

Leydecker says that the initial aim of the merger was to take the best from two existing firms and to make something ‘great and different’ and they believe they’ve done just that.

“We took the best offerings we had for clients, the best of our processes in relation to developing our people and also made sure we took advantage of the modern efficient business services systems that we had in place in both firms at the time.”

The result, says Rigotti, couldn’t have been better.

“We have the best of both worlds.

“We have a leading national firm that’s able to bring great experience to bear client issues. [We’ve] also got access to some of the most extensive global experience as well, so we bring a nice blend (I think) to clients and their problems.”

As for the firm’s lawyers, they’ve been exposed to a much broader range of

transactions and cases that they might not have been otherwise.

“It’s allowed them to move, to be mobile, to go and work in different places, have different life experiences, different work experiences,” Rigotti says.

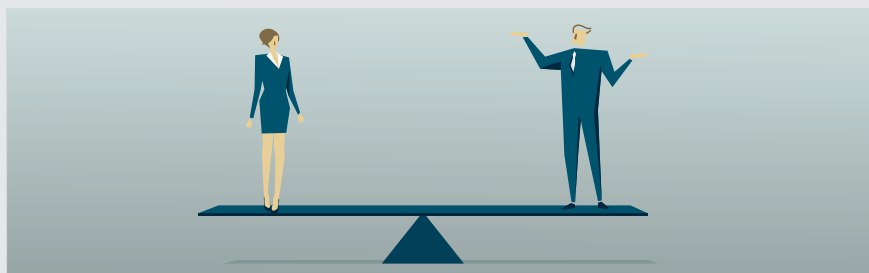
## A global strategy

Operating globally can mean that different market factors are affecting different offices, which are potentially difficult waters to navigate. And while Leydecker and Rigotti admit that thinking globally is not without its challenges, they see it as a unique edge.

“That’s really our sweet-spot, that’s where we can take the best advantage,” Leydecker says.

“The strength of the firm means that we can operate across all of those [global]

## MARK RIGOTTI AND SONYA LEYDECKER ON DIVERSITY



Women make up more than 50% of the firm so harnessing the careers of the firm’s women is not only a virtuous move, it makes good business sense.

“I came into this job thinking, ‘this is going to be really easy, I’m a woman, I should be able to sort this gender issue out’, particularly gender, and I found it’s much, much more complicated than you would think,” says Leydecker.

Now, she firmly believes that making people aware of potential unconscious bias is fundamental to fostering a diverse workplace.

“I don’t think there is conscious bias around at all anymore,” she says.

“But it’s getting everybody to focus on these issues and just be mindful every time they’re making a decision whether or not it’s a decision that isn’t in any way consciously biased.”

In Rigotti’s opinion, diversity progress has been all-too-slow and the firm will work to find ways to accelerate that progress.



markets and we're not over-exposed to any of them but we can take advantage of the cross-border traffic that goes on – the interconnectedness of trade and of what clients are doing.

"We're in different markets, at different stages of development; some of them are going up, some are going down."

Despite the different experiences of different parts of the business, Leydecker says bringing people together so that the firm operates as one has been part of their expansion success.

"There's no point in having a network unless you have people who are really working

in Perth, an operation partnered with the existing document review centre in Belfast. The office's success saw it quickly at capacity, the firm looking to expand the document review service.

Furthermore, new offices opened up in Saudi Arabia, Germany and South Africa.

So, what's next on the firm's expansion list? Well, China is, among other places.

"We are constantly thinking about what to do next and there are obvious things to think about, China being one of them," says Leydecker.

"But really, it's a good idea not to forget about areas of importance to the network."

**"The strength of the firm means that we can operate across all of those [global] markets and we're not over-exposed to any of them but we can take advantage of the cross-border traffic that goes on – the interconnectedness of trade and of what clients are doing"**

Sonya Leydecker, HERBERT SMITH FREEHILLS

together for the benefit of clients and for the development of our people," she says.

"That collaboration is incredibly important and it's challenging and it's expensive – you have to move people around the world and all the rest of it but it's really powerful when it works."

While she says it's not about creating a 'cookie-cutter' experience across offices, it's important to provide the same service quality in any of the firm's offices worldwide.

#### Heading forward

Last year, the firm launched a 'pop-up' office

Latin America will be a focus, with the firm establishing a centre of excellence in New York this year to do just that.

"One of our partners from Melbourne in the projects practice is going to move over to New York.

"Latin America is really important to us because there is a lot of inbound investment obviously from Australia into Latin America, but also outbound investment into places where we already have offices, so it's a bit of an experiment but I'll be very interested to see how it goes." **AL**



#### ON CHALLENGES IN THE LEGAL MARKET

The familiar challenges – clients wanting more for less, alternative legal services providers in the market and artificial legal intelligence – could all be solved if the legal industry could truly provide a one-stop shop, says Rigotti.

"I reckon it's a bit like your grocery shopping," he says.

"You can disaggregate the list on Saturday, can't you? You can go to the butcher and the greengrocer and the deli and get it all, or you can go to the supermarket and get the lot.

"It might be a bit cheaper but the quality isn't as good.

"The opportunity is to be someone who can provide the quality of the independent suppliers but under one roof, for a price that the client likes.

"David Jones would slaughter the market if they could provide what they provide at a slightly cheaper price.

"In the client's eyes, that's what they need – more for less."

## POSTGRADUATE EDUCATION

# EDUCATION REVOLUTION

Postgraduate study is being overhauled for a new online world. *Australasian Lawyer* spoke with five providers to find out how they are using technology to improve courses for students, and what the future of education might look like

**THE FUTURE** of postgraduate study will be very different to the past.

With a focus on maximising flexibility for busy students and taking advantage of the latest technology and software, institutions are rapidly adapting their approach to accommodate a new era where

courses can be completely delivered online.

So what does the future look like? While some providers will hold fast to the benefits face-to-face learning can bring, others are moving towards embracing a virtual model, where students will have more control of how and what they study.



**“The fully online model bears no resemblance to traditional modes of distance learning”**

Caron Beaton-Wells, UNIVERSITY OF MELBOURNE

## University of Melbourne

The huge, unanticipated success of its MOOCs (Massive Open Online Courses) has led the University of Melbourne to explore the potential for online postgrad courses.

This year, it will pilot its first fully online Global Competition and Consumer Law Masters, due to begin in October. It will also build on its online experience by using the available technology to enhance the delivery of existing programs.



# POSTGRADUATE EDUCATION

## WHAT'S NEW?



### Human rights law

The University of Melbourne has added additional subjects as part of a new Master of Human Rights Law. These include: Reimagining Human Rights Law, taught by Professor Philip Alston and Professor Gráinne De Búrca; Women, War and Peacebuilding, taught by Professor Hilary Charlesworth; Human Rights and Terrorism, taught by Professor Martin Scheinin; and Human Rights and Economic Globalisation, taught by Professor Margot Salomon.



### Dispute resolution

An increased demand for negotiation, mediation and arbitration 'soft skills' has led to an expanded subject set in the dispute resolution area. Negotiation Skills will be taught by Dr Florrie Darwin, and Business Negotiations and Deal-Making: Skills and Strategies by Professor Jasper Kim. In addition, Mediation in Commerce will be taught by Alan Limbury and Dr Rosemary Howell, and The Practice of Arbitration will be taught by Professor Ian Bailey SC.

The online master's will run like a normal program, but can only be studied part time over two years. However, it is expected to have the same – if not better – calibre of international experts, thanks to its delivery online, and a wider student peer group.

"The fully online model bears no resemblance to traditional modes of distance learning," associate dean Caron Beaton-Wells says. "Using state of the art technology, courses are being designed with technological tools and resources,

are actively investigating ways we can use technology in the lead up to and following that intensive teaching period." It could mean delivering elements online, such as introductory material, preparatory tasks, as well as staggered assessments.

Beaton-Wells believes postgraduate education will increasingly move online. "I think it has to head that way. Students at the master's level are looking for more flexibility and leading institutions that offer that are both meeting and creating that demand.



**"Students at the master's level are looking for more flexibility and leading institutions that offer that are both meeting and creating that demand"**

Caron Beaton-Wells, UNIVERSITY OF MELBOURNE

which mean the student experience is interactive and discussion-based just as it is on campus. We are using learning interactives, discussion boards, webinars and synchronous classrooms, as well as a wealth of rich multi-media tools to present asynchronous content that is highly stimulating and engaging for students."

The University of Melbourne's other master's courses are delivered over six months, which include a block of five consecutive days of intensive, on-campus classes. The structure allows students to better fit study in with work, interstate students to travel to Melbourne, and for the school to source the best possible teaching talent.

"But this means the time for interaction and engagement with peers is largely limited to that five days or so," Beaton-Wells says. That could soon change. "We

However, it will be a long-term project. "It requires a wholesale transformation of thinking and learning in higher education. It's not just about finding the students, but the academics who have taught in a certain way for decades now have to understand the pedagogy of online learning, and master the technology."

### UNSW

UNSW has been steadily upgrading the technology it uses to deliver postgraduate courses, and its online platform is now an integral part of its student offering.

"The learning platform we use – Moodle – is a very sophisticated tool for delivering material to students, and we've adopted it for all of our courses across UNSW, including law school postgraduate courses," professor Brendan Edgeworth says.

All core materials like lecture notes and



PowerPoint slides are available via Moodle, as are supplementary materials, such as journal articles or online resources.

Teachers are also creatively using Moodle to set up interactive student chat forums on course topics, which supplement its traditional face-to-face delivery format.

Edgeworth says having its entire course content available online helps students meet some of the frequently encountered challenges of postgraduate study.

“The biggest problem faced by our students is fitting coursework around all the other things they are doing with their lives. Most people have families and full-time jobs, and have to squeeze their master’s around lots of other



**“The technology we use is really on top of the traditional mode of teaching – it is an addition to it, not a replacement”**

Brendan Edgeworth, UNSW

competing demands.”

If students do miss a class, have little time to prepare, or just have difficulty capturing or understanding materials discussed during a class, they can mitigate this by making use of the materials housed in its online environment.

However, UNSW is firmly committed to maintaining its face-to-face learning focus.

“We still require that all students attend at least 80% of classes, and all of our courses require 24 hours of face-to-face teaching. The technology we use is really on top of the traditional mode of teaching – it is an addition to it, not a replacement.”

The university has set up a working party to examine its future approach. Edgeworth says options include offering a

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# POSTGRADUATE EDUCATION



**“That was our first test run, and now we are going to roll that out for the whole breadth of our programs starting this semester”**

John McGill, THE COLLEGE OF LAW

portion of a course – 50%, for example – via an online model, and combining that with another 50% face-to-face.

However, Edgeworth says UNSW believes students still get the most benefit

from meeting and learning in a face-to-face environment, rather than online.

“If the technology in an online learning environment or chat room replaces the traditional two-hour seminar, I think

you do lose something. That’s why we use technology to supplement face-to-face learning, rather than replace it.

“Students find it’s the richest way to learn – sitting in the classroom having done

## THE UNIVERSITY OF SYDNEY: LAW AND THE INTERNET

The University of Sydney is running a new communication/technology unit looking at the way communications networks and the internet is regulated. Looking at the justifications for regulation and the pressure being placed on legacy regimes, its topics include internet-based voice and video, unbundling, network neutrality, platform neutrality, spectrum policy, e-commerce and online privacy, among others. Australasian Lawyer spoke with **US Professor Christopher S Yoo** about why this is important, and how he’s using technology in the classroom.

**AL: How important is the study of communication and technology regulation?**

**CY:** Information and communication technologies now play a critical role in the world economy and have emerged as a primary driver of economic growth. At the same time, the increasing complexity of the underlying technologies means lawyers need greater sophistication to understand the legal problems they confront.

**AL: Is there much cross-over or relevance to other areas of corporate law?**

**CY:** Intellectual property and proprietary data are no longer specialty issues that corporate leaders can delegate to staff. They have become key business drivers or, if mishandled, major sources of economic liability. As the recent corporate data breaches attest, every corporate lawyer must now keep a close eye on these issues.

**AL: What are the most important issues you will cover with students this year?**

**CY:** One key topic is the future of internet governance.

Although everyone agrees the existing regime needs to change, no one can agree on how. Another key topic is how to increase internet connectivity. Of the seven billion people in the world, only three billion have access to the Internet. As Australia’s experience with the NBN shows, increasing connectivity poses difficult questions for which there are no easy answers.

**AL: How important is US law in this area to lawyers practising in Australia?**

**CY:** Internet law has become an increasingly global issue. Australian companies with major presences on the web must understand the rules in other countries regarding such varied issues as copyright, e-commerce, defamation and privacy.

**AL: Are there any ways you will utilise technology in the delivery of this course?**

**CY:** I often use class blogs and other collaboration tools to open up and leverage individual discussions, so that the entire class can benefit.





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<b>THE HIGHER EDUCATION</b> <b>#1</b> <b>GLOBAL EMPLOYABILITY</b> <b>RANKING</b>	Graduates from ANU have been named the most employable of any university in Australia for the third year running**.
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\* QS World University Rankings—2015/16

\*\* Global Employability University Rankings—2015



# POSTGRADUATE EDUCATION



**“The range of modalities means they can access information sitting in a park, during lunch at work, or on the train home”**

John McGill, THE COLLEGE OF LAW

some preparation of materials in advance, and then talking about those materials and discussing them critically. We all find that is the very best way to learn.”

## The College of Law

Students completing their capstone subject at The College of Law last semester got the first taste of the full capabilities of its brand new learning management system.

From fully-fledged interactive workshops and oral exams via webinar technology, to online student feedback, gap analysis quizzes, and moderated online discussions, The College of Law was exploring the cutting edge of what is now possible today.

“We had one version of the subject that was completely online, using the full range of our technology,” director of practitioner education John McGill says.

The College’s capstone subject is modelled on the standards required for specialist accreditations. The culmination of a student’s learning through the master’s program, and the success of its online delivery means it will now be used as a model.

“That was our first test run, and now we are going to roll that out for the whole breadth of our programs starting this semester,” McGill says.

Flexibility is one of the key advantages of this online revolution. “Our students in particular are practising professionals who are out working in the field, and they need flexibility to manage their work and life schedules.”

The College aims to mix unobtrusive synchronous events involving one-on-one interaction with other asynchronous learning, such as discussion boards or mini-lecture podcasts, so students can integrate learning flexibly into their schedule.

“They can also access our subjects sitting at a computer, or by using a laptop, tablet or smartphone. The range of modalities available means they can access information sitting in a park, during lunch at work, or on the train home.”

The future will see students increasingly take charge of their own learning. Now that the ‘Googleisation’ of information means students are less dependent on experts, McGill says technology will be used to empower students to do their own self-analysis and more automation will guide them to the information and resources they need, without giving them all of the answers. “When a case comes in the real world you don’t have a lecturer in front of you to tell you the answer,” McGill says.

McGill says experts will always be needed, and one of the ways The College of Law wants to use them better is for feedback. Personalised audio or video is starting to give students a richer reaction to their work than written comments on paper.

“The College of Law is at the technology edge. Right now we are using everything that could possibly be used, optimised for different modalities and learning styles. It will be interesting to see where we evolve past this point.” **AL**

## HOW DO AUSTRALIAN AND NEW ZEALAND LAW SCHOOLS RATE INTERNATIONALLY?

<b>8</b>	University of Melbourne
<b>13</b>	University of Sydney
<b>15</b>	University of New South Wales
<b>16</b>	Australian National University
<b>22</b>	Monash University
<b>33</b>	University of Auckland
<b>45</b>	Victoria University of Wellington
<b>49</b>	University of Queensland
<b>51-100</b>	Griffith University, University of Adelaide, University of Canterbury, University of Otago, University of Western Australia
<b>101-150</b>	Macquarie University, Queensland University of Technology, University of Waikato, University of Technology Sydney
<b>151-200</b>	Deakin University, La Trobe University, University of Newcastle, University of South Australia, University of Tasmania

**N/A:** Auckland University of Technology, Australian Catholic University, Bond University, Central Queensland University, Charles Darwin University, Curtin University, Edith Cowan University, Flinders University, James Cook University, Murdoch University, RMIT University, Southern Cross University, University of Canberra, University of New England, University of Notre Dame, University of Southern Queensland, University of the Sunshine Coast, University of Wollongong, Victoria University (Melbourne), Western Sydney University

Source: QS World University Rankings by Subject 2015 - Law

# GOING ONLINE: LEGAL EDUCATION IN A DIGITAL AGE

In May 2016, the ANU College of Law will introduce its Juris Doctor Online – the first Group of Eight law school to offer a fully online JD. Chair of the ANU Juris Doctor Online Group, Dr Skye Saunders, spoke to Australasian Lawyer about how online learning is changing the shape of legal education



## No longer a question of if but when

We're now at the point where online learning is becoming a fundamental consideration in designing and developing high quality legal education.

If we look at what's being done by the world's leading universities, and the changes happening in almost every other sector, the question of embracing online learning is not one of 'if' but 'when and how'.

Incorporating online learning into legal education isn't about neglecting what we've done in the past or what we're doing now, but to explore how we can do it even better, and respond to the changing needs of students, employers and others in the legal community.

The introduction of a fully online Juris Doctor is an exciting time for the ANU College of Law, Australian legal education, and most importantly, students themselves.

## Accessibility and flexibility, without compromising quality

What our research shows is that prospective students who seek to study with the world's best law schools also expect a level of choice and flexibility in how they do so.

Those expectations go beyond just being able to study from afar – students studying online expect to get the same benefits from the experience as they would if they were on-campus.

In developing the ANU Juris Doctor Online, we've spent a considerable amount of time talking to students, employers and legal community to identify their needs. What

we've created is a postgraduate law degree that reflects the rigour and research intensity of a top 20 law school, and demonstrates accessibility doesn't need to come at the cost of quality or experience.

## Online learning isn't distance education

Often, there's a perception that online learning is not much different to distance education, with students getting a brick of readings at the start of semester, undertaking exams six months later, with little, if any, interaction in between.

The reality is very different.

At ANU, we've invested significant resources over many years to allow students to access the JD – regardless of their location – and create an online learning environment that enables them to get the very most from their study.

## Better ways of teaching – and learning

Offering the Juris Doctor online has allowed us to not only increase access and improve flexibility for students, but consider how new technology might enhance the education experience.

This includes ensuring our Juris Doctor Online students have just as much engagement and interaction – with teachers and each other – as their on-campus counterparts.

For example, we're the first law school in Australia to use problem-based learning – a unique approach that sees students being presented with real-life issues, and working together to use their existing professional skills and experiences to solve them.

## Knowledge and skills from day one

The ANU Juris Doctor has always attracted students from a diverse range of backgrounds, creating a rich, stimulating learning environment, with problem-based learning helping further enable this.

In some of our early workshops, we've seen students with backgrounds in science, mathematics and engineering – who often have skills in research and analysis – quickly form partnerships with students from backgrounds in media, management and policy, who hold skills in distilling and articulating complex information.

The end result is a truly collaborative approach by students to exploring and solving the legal problems presented to them – the very same attributes needed for success in legal practice and other professional environments.

## Not the end of the on-campus experience

Just as the flexibility of online learning suits many professionals today, so too does on-campus learning continue to suit many who value a more traditional university experience.

That's why the ANU College of Law remains committed to the on-campus Juris Doctor.

What online learning does offer is an additional degree of choice for students, including making it easier for students to study with the law school that best matches their ambitions, and offering a solution for those students who need to balance education with full-time employment, family or other commitments.

# NICHOLAS STEWART

## DIVERSITY AND LAWYERING

Corporate lawyer Nicholas Stewart ditched the corporate lifestyle in favour of focussing on lawyering within the gay\* community. **Samantha Woodhill** reports

**THREE YEARS** after he began the Minter Ellison graduate program, Nicholas Stewart left the corporate law world behind to pursue a different type of practice – one at gay-friendly law firm Dowson Turco Lawyers.

Stewart joined the partnership in 2012 to head the firm's criminal practice and he hasn't looked back, he says.

"I saw myself becoming a broader lawyer with a focus on the gay community," Stewart says. "I realised that big firms only allow you to prosper so much and, because there are so many fish in the sea, it's hard to be a star."

Back in 2008, Sydney sole practitioners Stacey Turco and Mary Dowson began to notice clients looking for a service by gay lawyers. Since the single office on King Street was set up, it's gone from strength to strength, now with 11 lawyers across successful property, family, estates and criminal law practices.

"We are actually gay lawyers and

understand gay relationships and anything in the field of law relating to gay crime or estates," Stewart says.

The 2009 amendments to the Family Law Act meant that de facto couples could make applications under the Act as if they were a married couple. In Stewart's opinion, these changes made under a heterosexual framework can present problems to the gay community.

For one Dowson Turco client, the changes in the Act resulted in a former partner pursuing millions of dollars in assets, falsely claiming that the pair was in a de facto relationship.

"He'd been to three other law firms before us, straight law firms and they'd all said, 'Well, if it looks like a duck and walks like a duck, it is a duck,'" Stewart says.

"But he came to us and we put into evidence a lot of stuff about what it means to be a gay male in this day and age.

"We termed it 'friends with benefits'

### FROM TOP-TIER TO SMALL BOUTIQUE

"Minters set me up big time for being a polished lawyer," says Stewart of his early days at Minter Ellison.

He says that, as well as legal teaching, he owes his strategic thinking and writing correspondence to his Minters training.

"They're known as a really hard-working firm and I think that work ethic set me up to create this powerhouse that we have now.

"I don't regret for a second going to Minters. I think it was an awesome experience. I met some really great friends there [and] some amazing partners. I think that firm generally does really good work, but I had other aspirations."



\*For the purposes of this feature, 'gay' is used as an umbrella term for those who identify as LGBTIQ and 'straight' is used to describe those who identify as heterosexual





because we understand that sometimes people get themselves into situations,” says Stewart.

“But just because you’re charged with a criminal offence it doesn’t mean you are a criminal.

“That sits with our progressive politics

Stewart was able to explain his conduct – how it was tied into his upbringing, pressure from his parents, and, ultimately, his sexuality.

“I think sometimes gay people need a gay lawyer in the criminal sense if their offending can be linked to their sexuality,



## “We think the gay community has a particular need for lawyers who understand their families and their relationships”

Nicholas Stewart, DOWSON TURCO LAWYERS

that people shouldn’t just be branded with a criminal record simply because they’ve been caught with some drugs. We take the approach that that is life.

“I think clients feel comfortable coming to us with that.”

In one of his recent cases, Stewart had a client who was caught having sexual intercourse in a public park.

“I really had to [highlight] that client’s sexuality to get a favourable sentence,” he says. “I explained that he grew up in South Australia, which is typically a very conservative state. His parents were extremely Christian and he grew up in a cult and wasn’t able to express himself sexually for many years.”

With the help of a psychologist,

and that’s not always going to be the case but often it is,” Stewart says.

“Gay clientele just feel more comfortable with a gay lawyer, even if their offending isn’t related to their sexuality.”

The firm was recently presented with a 2015 Honour Award for being one of NSW’s most LGBTIQ-engaged law practices through pro bono work and community partnerships.

“Being part of celebrating the unique culture of the Sydney gay and lesbian community is always a highlight,” Stewart says.

Ultimately, he says, celebrating the success of the firm doing really good work is worthwhile. “When you do good work people love that and they talk about it.” **AL**

and we said this was a friends with benefits situation. They never held themselves out to be a couple.

“We put all that into evidence and we won that case.

“I love incrementally influencing how magistrates or courts might consider certain offences or certain offending. The firm really enjoys how family court judges might interpret our relationships,” he adds.

“We think the gay community has a particular need for lawyers who understand their families and their relationships.”

While Dowson Turco market themselves as a gay firm, Stewart thinks it’s the firm’s progressive values that set Dowson Turco Lawyers apart from the competition.

“We always say we’re gay lawyers but we service everyone,” Stewart says. “It’s just that I think we’re really human. We love what we do.”

The firm’s client base is around 60% gay, 40% straight, he says.

“In criminal law, I think we’re best placed

### SYDNEY GAY COMMUNITY



For Stewart, being a partner at Dowson Turco Lawyers means being a passionate legal advocate for Sydney’s LGBTIQ community.

For him, Sydney’s lockout laws didn’t fully consider the ramifications for the gay scene.

“It’s just destroyed the scene and I think we, as a community, have been unnecessarily punished for that because we’re a peaceful community. We want to have fun [and] we get on with our peers,” Stewart says.

“The gay scene is never really a place for extreme violence – we’ve never had one punch.”

# EMPLOYMENT LAW



# GENERALLY PROTECTED

Employment law's counter-cyclical nature means it is a safe harbour for firms in a time of economic challenge, while political change and the generous Fair Work Act ensure lawyers remain busy for some time to come, writes **Ben Abbott**

**COOPER GRACE** Ward's Brisbane-based partner Annie Smeaton would normally have had a quieter time during December and January over Christmas and New Year.

But – unfortunately for her – not this year. “It’s traditionally been fairly quiet during that time, but we really haven’t stopped,” Smeaton says. “It’s been very, very busy.”

With Brisbane at the heart of the mining boom’s nadir, Smeaton says labour market changes are resulting in both front-end restructuring and back-end disputes.

“Obviously, the mining industry and those who are dependent on the mining industry – like contractors – have been impacted, and are restructuring their businesses, from changing roles to making roles redundant. What goes with that is that you are seeing people moving from those industries into other industries,” she says.

But it’s not just mining. Smeaton says other sectors are also being forced to adjust. And the tough labour market means people will “fight a bit more for their job”. “We act for a lot of employers, and we seem to be seeing more disputes,” she says.

## The best and worst of times

Harmers Workplace Lawyers executive counsel Greg Robertson says employment law tends to be counter-cyclical. Given the economic outlook, that’s just as well.

“There are signs it’s going to be a difficult year economically and I think in those circumstances companies tend to do a few things they wouldn’t normally do.”

Companies are likely to look critically at their workforce this year, and respond to conditions with actions like tightening up existing contracts, changing policies to



# EMPLOYMENT LAW

increase employee performance, as well as restructuring and redundancy.

“This type of market tends to generate different types of work for employment lawyers than if the economy was booming,” Robertson says.

Ashurst partner Vince Rogers is also expecting a very busy year, as economic difficulties around the world ‘cascade’ across the border and affect Australian employers.

“The economic environment means clients in different sectors are facing challenges,” he says. “They are having to look at what can be done differently, whether that is a voluntary process or [whether it’s] being forced upon them by what’s happening globally.”

## Politics unknown

The ascension of Prime Minister Malcolm Turnbull and an upcoming election this year means that 2016 has started with uncertainty as to the legislative agenda.

Rogers views it as a positive sign that the government was able to get the Fair Work Amendment Act 2015 through the Senate in November last year.

“The question is to what extent there will be more changes implemented in early 2016 prior to the election, and what platform the government will choose to take, as it puts its case for a second term,” Rogers says.

Turnbull has ammunition to work with. First, there’s the lengthy Productivity Commission report. Employers are particularly interested in reintroducing statutory contracts outside of the modern awards, as well as changes to penalty rates.

“The Commission is looking at a whole range of things at the moment, and they will eventually flow through to changes in the awards,” says Greg Robertson.

Then, there’s the Royal Commission into Trade Union Governance and Corruption fallout. As it may affect law firms’ instructions, lawyers must wait to see if a new independent

## GLOBAL CITIZENS



Employment law has traditionally been a very local practice, but lawyers say globalisation means they are increasingly instructed on cross-border work.

“There [have] been times when I’ve had more international clients than ones based in Australia, although it does fluctuate,” says Harmers’ Greg Robertson.

Harmers is the local representative of L&E Global, an international alliance of law firms with operations in 80 different jurisdictions around the world. The firm updates local Australian clients on employment law developments in countries where they operate overseas, and advises inbound investors on Australian obligations.

Robertson says the number of international employment matters the firm advised on, in tandem with international firms, went up 50% last year.

“The first year [after joining the alliance] was pretty slow, then it stabilised for the next two years. In 2014 and 2015, we saw a significant increase in those instructions.

“I think that will continue, because clients who have operations in more than one country like to know they have a network that can service them.”

This obviously suits global firms, the other major beneficiaries. The day before Australasian Lawyer spoke with Ashurst partner Vince Rogers, for example, he was giving a presentation to clients in the Middle East on local employment law obligations. He frequently works with clients in the US, Asia and elsewhere.

If there’s one thing globalisation teaches, it’s that Australian employees have it good. Foreign companies are often surprised by the strength of employee protections.

“Especially the adverse action provisions,” Rogers says. “We must remember that, for example, in a US environment employers can fire at will. To understand how the process works here in comparison can be a bit foreign to US clients.”

Safety is another area that offers up some frustration. Rogers says clients may have people accredited to various global standards not recognised in Australia, and that suggesting they need reaccreditation “requires a bit of explanation”.

regulatory body will be created.

Meanwhile, law firms are advising clients on last year's Fair Work changes. Two important areas include a new Greenfield enterprise agreement creation process, as well as a move to reverse the implications of a decision in *JJ Richards & Sons Pty Ltd v Fair Work Australia*, which made industrial action easier to commence.

#### Actions adverse

The general protection provisions of 2009's Fair Work Act are named by all lawyers as a generator of an increasing amount of work – and employer headaches.

“General protection is where a lot of



“There are signs it's going to be a difficult year economically and I think in those circumstances companies tend to do a few things they wouldn't normally do”

Greg Robertson, HARMERS WORKPLACE LAWYERS

claims we are seeing come from,” Annie Smeaton says. “Individuals now are much more switched on to their individual rights.”

Likewise, Robertson says adverse action claims seem to be growing.

Lawyers say individuals are taking advantage of general protections if other avenues of recourse fail, for example,

in the context of unfair dismissal and discrimination.

Robertson says they have become a favourite tool for people who may be unable to avail themselves of unfair dismissal protections.

“Employers are becoming more sophisticated though, and we are now being



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## EMPLOYMENT LAW



**“General protection is where a lot of claims we are seeing come from. Individuals now are much more switched on to their individual rights”**

Annie Smeaton, COOPER GRACE WARD

asked for advice before anything happens, which is a good sign,” he says.

Rogers says an area Ashurst’s clients are monitoring closely is the implications of Section 550 of the 2009 Act, which allows the party bringing a claim to also name individuals that were involved in a contravention, not just their employers.

“It’s a developing trend clients are starting to look out for. At the end of the day, they have limited control as to who an applicant may name as a party,” he says.

#### A banner year?

There will be other employment law trends to watch in 2016. Harmers’ Robertson names an uptick in restraint of trade disputes as a likely source of more work.

“There have been controversial calls made for the Fair Work Act to be amended to prohibit restraints of trade – some US states, for example, have that position. The courts in NSW have, in contrast, been quite friendly to employers in most cases.”

Robertson says economic conditions may

heighten the focus on restraints of trade and cause more disputes, as employers look to use them more often.

“Another interesting development is that employers are using restraint of trade to protect their IP and prevent confidential information from disappearing out the door, rather than just as an anti-competition type of measure.”

Lawyers say employers are likely to seek more advice on the shape of their enterprise agreements, to ensure minor problems don’t result in them falling afoul of the Fair Work Commission. The Fair Work Ombudsman is also likely to be increasingly active in the market as employers cut corners in tight conditions.

It adds up to a busy year ahead. Harmers, for one, will keep an eye out for new recruits. “It’s busy, and we could always do with more people,” Robertson says. **AL**

### THREE DECISIONS TO WATCH



Aurizon won a battle with unions when the full bench of the Fair Work Commission gave the company the right to terminate 12 expired enterprise agreements before new ones were negotiated. Ashurst acted for Aurizon, and partner Vince Rogers says the decision now makes it easier for employers to bring similar applications in future. “In recent years there have been a number of protracted disputes where it wasn’t really an option to bring an application to terminate an old enterprise agreement. Now that has changed in an important decision for employers that will have long-term effects.”



Triangular contracting arrangements in light of sham contracting provisions were clarified in the decision of Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd, which involved workers signing commercial contracts for service with an interposed corporate entity, rather than actual direct employment contracts. “That was an important case impacting how employees and businesses engage in and arrange contracts,” Cooper Grace Ward’s Annie Smeaton says.



The CFMEU sought special leave to appeal to the High Court after a Full Federal Court ruling found Endeavour Coal had not taken unlawful adverse action when it reallocated an employee to weekday shifts from weekend shifts in response to a pattern of sick leave absences. The Federal Court decision took a conservative approach to the general protection provisions, in what Smeaton calls a “sensible” interpretation.



# Leaders in Law

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## HAMISH WALTON

# A GLOBAL FLAVOUR

Former Melbourne-boy and King & Wood Mallesons partner Hamish Walton tells **Samantha Woodhill** what it's like to work in the truly global legal market of Dubai


**HAMISH WALTON** arrived in Dubai with a young family in tow back in 2008, just as the economy had started to slow. Despite promises that its financial boom would continue, the legal work was nonetheless drying up.

"There were a lot of headhunters ringing up Australian lawyers and saying, 'Why don't you come to the Middle East?' I was one of those people," says Walton.

But financial strife affected the legal industry in different ways.

"The litigation teams and finance teams,





particularly those [working in] restructuring finance debt [and] government debt, were very busy, but it was a tough time for a corporate lawyer and there were lots [of] challenges,” Walton says.

Since 2012, the city has mostly recovered, and Walton has found his stride working on major deals in the areas of M&A, private equity and joint venture work.

He focuses on mid-to-large ticket work across the GCC (Gulf Corporation Council), which spreads across all the major Middle Eastern countries, including United Arab

Emirates, Bahrain and Qatar.

### **Middle Eastern legal market**

Despite being the centre of the Middle East’s wealth of oil and gas, Dubai itself doesn’t have a lot of either. Instead, the country relies on tourism, education, healthcare and food & beverage industries to drive the economy.

Even so, Saudi Arabia is becoming increasingly important

to Dubai’s legal market. And as oil prices plummet, government revenue has been slashed around the region. Walton predicts this will have a ripple effect across other industries, such as construction and the like.

For King & Wood Mallesons in the Middle East, the team has been steadily growing a disputes practice, which is tipped to be fairly busy over the next 12-month period.

The market, Walton says, is ruthlessly competitive, with lawyers typically spending a fair amount of time in the region before seeing their practices really take off.



# HAMISH WALTON



“It is a seriously super market,” says Walton.

“All of the big London names are here and you’ve got some very good regional firms as well. It’s even more competitive than the Australian market.”



**“All of the big London names are here and you’ve got some very good regional firms as well. It’s even more competitive than the Australian market”**

Hamish Walton, KWM

And he says the market is continuing to grow, with more and more entrants coming to the foreground.

Investing into understanding the local law and how things happen is the key for a lawyer wanting to successfully infiltrate the Dubai market, he says.

“It’s very relationship-driven,” Walton says.

“The rule of thumb around here is to get to know the local law and to build relationships with people. You need to have been here for at least three years.”

His tip for Aussie lawyers considering making the move? Think carefully.

“To enter this market can be really challenging and you need to have a clear plan about how you enter it, whether you’re following some key clients or whether you have a niche that hasn’t been taken advantage of,” he says.

“So you need to think very carefully before entering the market.

“People like to live in Dubai because it’s a hub and it’s a nice place to live, but often work in oil and gas dealings are in Saudi Arabia for example, so they would fly-in-fly-out,” Walton says.

## The centre of a global market

As a market with a truly global flavour, Walton says one of the things he loves about working in Dubai is the diverse range of cultures he deals with on a daily basis. The region is fast becoming a transaction hub for India and Turkey, as well as the East Coast of Africa.

“Recently I worked on a deal with an Indian company buying out a Kuwaiti business operating in Saudi Arabia.

“I was negotiating with an American on the other side, with myself as an Australian working at what was then an English law firm. It certainly makes for an interesting business environment.”

Constantly working in different jurisdictions in the region is such that an understanding of the various judicial systems is paramount, Walton says. One big difference in doing deals in Dubai compared to Australia is the important role of the notary.

“The final stages of most transactions require notary approval and they can be very fickle,” he says.

“It is very different to the Australian notary and they hold far more power. You have to understand how that works because otherwise you’ll have difficulty structuring and closing deals.

“You’ve got a range of different legal systems and the laws are quite different. Whereas in Australia, pretty much everything is done under Australian law or the relevant laws of the state.”

## Life in Dubai

It’s the emphasis on family life that’s keeping Walton in the Middle East – that, and its proximity to Europe.

“My children’s memory of this region when we finally leave will be about beaches, blue skies and barbecues three times a week. They’ll have great memories of Dubai when they’re older.”

The expat lifestyle is also an attraction, where being abroad means there are more opportunities to meet new people, he says.

With the number of travel opportunities second-to-none, Walton says Dubai is simply an exciting place to be.

“One of the top attractions of living in a travel hub like Dubai is the number of places on your doorstep.

“With my family I have travelled to some amazing destinations, such as India, Sri Lanka and much of Europe. We recently went driving across the mountains in Oman, which are only a couple of hours drive from Dubai.” **AL**

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## PERFORMANCE

# UNDERSTANDING PERSONALITY AND ITS ROLE IN PERFORMANCE

When it comes to performance – a topic that is constantly on the agenda of most modern businesses – there are a number of different approaches, explains behavioural strategist **Warren Kennaugh**



**THE FIRST** approach is to focus on the talent – we are told that if we are serious about improving performance, we need to find and keep talented individuals who will somehow elevate everyone else around them. As a strategy, however, this is not very effective. Enron is an example of a company that took the talent solution to heart, and look what happened to them. Plus, this approach is expensive, time consuming and divisive. It puts a huge amount of pressure on the individual who is supposed to single handedly turn things around and at the same time alienates the rest of the workforce who are clearly viewed as second class citizens.

The alternative approach is to focus on team performance on the understanding that if everyone lifts their game just a little then, collectively, performance improvements will materialise. Teams may even be sent on teambuilding or training programs to help facilitate this outcome.

## **Polarities not problems**

What we first need to appreciate is that individual performance and team performance are not separate problems to



be solved but, according to consultant Barry Johnson, they are polarities to be managed. Polarities are ongoing, chronic issues that are unavoidable and unsolvable. And often, attempting to address them with traditional problem-solving skills only makes things worse. Team versus individual performance is a classic example of a polarity.

When faced with performance problems, most business leaders will plump for one type of intervention over the other – hire more talent or invest in teambuilding. The reality, however, is that elevated performance is dependent on individual contribution and collective effort, not one or the other. Too much focus on individual performance may drive greater individual initiative, creativity as well as fewer and shorter meetings but it may also simultaneously activate the down side of individual focus – operating in silos, increased internal competition and no shared goals or synergy. Too much focus on team performance may create more cohesive units, but at the same time decrease innovation, increase conformity and slow down decision-making. By seeing team and individual performance as two separate problems, we engage in the ‘polarity two step’ – we recruit expensive, talented individuals to solve the individual performance issue, only to inadvertently impair team performance by doing so. And when we ‘solve’ team performance by facilitating greater cooperation and cohesion, we can inadvertently stifle the high performers in the team.

This endless swing from individual to collective focus and back again is time consuming and costly. And perhaps most importantly, it continues to ignore the importance of personality on performance.

### Personality and performance

When we look at individuals, we see a seemingly infinite array of complex and unpredictable thoughts, emotions and behaviours. This apparent randomness is often so daunting and confusing that personality is considered fodder for the ‘too hard basket’. So it’s little wonder that everyone sticks with performance improvement theories that are based around individual or collective behaviour.

However, behaviour is massively influenced by personality. Sure, if you want to get people to do different things or get them to do those things better, you can occasionally alter that behaviour through rewards, incentives or threats but it’s usually unsustainable. When no one is looking or the bonus cheque has been banked, they will revert to type and go back to doing what comes naturally to them based on their own unique personality.

When we uncover specific personality markers, namely ‘inside’, ‘bright side’ and ‘dark side’, we give ourselves the power to orchestrate fit. Fit is the key to elevated consistent performance. The more our

## “Elevated performance is dependent on individual contribution and collective effort, not one or the other”

natural strengths, characteristics, skill set and values fit with what is required in the role and fit with the culture and organisation itself, the higher the performance will be.

‘Inside’ personality characteristics help to identify what naturally motivates and inspires us. Clearly, if what we are required to do in our role is something we are already motivated by or value, then incentives or threats are unnecessary. ‘Bright side’ personality characteristics describe us on our best days. These are our natural strengths and dispositions that can indicate behavioural strengths. And our ‘dark side’ characteristics are the behaviours that show up when we are under pressure or stressed and they can easily derail our career unless you know about them and take steps to mitigate their impact.

What I’ve found across over 3,000 profiles of elite performers and by working in this area for over 23 years, is that everyone has four or five behaviours that evolve as a result of their unique personality. These patterns of behaviours are the way we have learned to ‘get along’, ‘get ahead’ and ‘make meaning’ in the world and we will then use those same four or five behaviours consistently. The only difference between a high performer and everyone else is that a high performer knows

what their bespoke behaviours are, or simply deploys them innately at the right time and in the right place most of the time. Whereas an average or inconsistent performer is not aware of exactly what those behaviours are so they are either deployed inconsistently or deployed in a role or environment that doesn’t need or value those particular behaviours.

As a result, performance is often down to chance or which way the wind is blowing. This is why sport is so littered with superstitions. In the absence of any real insight into what makes the player good or bad, they fall back on their lucky socks and quirky pre-match routines.

What we so often fail to appreciate is that behaviour is behaviour and it rarely changes. Whether that behaviour manifests as a value-adding asset or a career limiting liability largely depends on how and where it’s used and therefore whether we achieve fit or not.

High performance is not so much about what you do, it’s about how you do what you do, why you do what you do and where you do what you do. In fact, the only important consideration regarding what you do is what you do to screw things up.

We don’t need performance coaches to foster talent in every separate area of our life. What we need is a genuine awareness and understanding of our ‘inside’, ‘bright side’ and ‘dark side’ so we can match the best of who we already are to a role and environment that already values that contribution. When we do that, the result is consistent, repeatable high performance. **AL**

Warren Kennaugh is a behavioural strategist who works with elite corporate leaders, gifted professional athletes and world leading teams. He is a speaker, researcher and consultant who is the author of *Fit: When Talent and Intelligence Just Won't Cut It* (Wiley). Visit [www.warrenkennaugh.com](http://www.warrenkennaugh.com) or contact him at [wk@warrenkennaugh.com](mailto:wk@warrenkennaugh.com)



## MONOTASKING

# WHY MONOTASKING IS THE NEW BLACK

Forget multitasking. We need to narrow our focus to become more efficient and stay mentally fit, according to brain expert **Dr Jenny Brockis**

**SURVIVING IN** the crazy, busy modern workplace has resulted in our adoption of some new strategies designed to save us time. The problem is that no one appears to have done the necessary checks to see that these actually work. The one strategy most widely adopted has turned out to be the worst performance-enhancing strategy ever, because it requires us to use our brain in a way that it wasn't designed for.

Yes, multitasking is the biggest new brain myth on the block. It's time to replace it with a far more efficient method of getting more done – monotasking.

Multitasking is trying to focus on more than one thing at a time. Sure, you can drink a coffee while walking along and talking to a colleague, crossing the road and taking a selfie, but you're not paying focused attention to any one of those things, including your colleague.

One of the reasons multitasking has become so pervasive is that everyone's doing it, and ticking off items on our to-do lists makes us feel good – which adds to the delusion. We know using our mobile phones while driving is dangerous, yet more than 70% of us admit to doing it. We ignore the risks because multitasking has become the 'norm' – it's considered a basic work requirement. We even post job adverts stating multitasking skills are desired.

Multitasking fragments our attention. A quick email response here, a two-minute conversation there – we skim information and only grab the headlines. The outcome?

The cognitive cost includes poorer memory, mental fatigue, and reduced efficiency, effectiveness and innovation. We make more mistakes and we miss opportunities.

Overall, multitasking puts us at increased risk of burnout, damaged relationships and

poorer performance. It's hardly the time and energy-saving solution we thought it might be.

### What's going on in the brain when we multitask?

One of our brain's primary functions is to keep us safe. We scan our environment every one-fifth of a second on the lookout for a change. The brain loves patterns and what is familiar because the implication is that this is a safe place. Our selective focus has developed so we pay attention to what is most important to us at any given moment, while being alert to other things happening on the periphery.

When we direct our focused attention we use part of our prefrontal cortex, the highly specialised part of our frontal lobes used for our higher-order executive thoughts, such as planning, organising and regulating emotion. This area has what can only be considered a couple of design flaws – it's small, highly energy demanding and can only handle a small amount of information at one time. That's why the number of thoughts we can hold 'front of mind' at any given time is around seven. As the ideas get more complex, the space available reduces. When it comes to focused attention, there is only room for one.

Multitasking is the one brain function that the more we practise, the worse we get! It has been shown that chronic media multitaskers fragment their attention so much that they perform worse, even when trying to monotask.

It has been estimated that multitasking causes us to make up to 50% more mistakes and take 50% longer to complete our work,

### WHY MULTITASKING FAILS



When we attempt to multitask, our obliging brain tries to help by giving one task to each hemisphere. The trouble is, the brain can still only pay attention to one task at a time, so the brain switches tasks very, very fast, giving us the illusion that we are paying attention to two things simultaneously. This can be made more obvious when we look at optical illusions.

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1. When printing in general office mode. 2. HP OfficeJet Pro X Series: Cost Per Page (CPP) claim is based on comparing the majority of colour laser MFPs <\$1000 AUD RRP sold shipped between April 2014 & March 2015 as reported by IDC. CPP comparisons relate to HP 970XL/971XL series cartridges and are based on manufacturers published AUD RRP and ISO yields for highest capacity cartridges. For more information see [www.hp.com/go/learnaboutsupplies](http://www.hp.com/go/learnaboutsupplies). 3. Offer open to registered Australian businesses that purchase an Eligible HP Product from 1 June to 24 December 2015. Only one Trade-In Product can be traded in per Eligible HP Product purchased to claim a Trade-In Rebate. Limit of 10 claims per Participant. Claims must be made by 8 January 2016. Trade-In Product must be available for collection within 7 days of claim being made. For full terms and conditions visit [hp.com.au/TradeAndSave](http://hp.com.au/TradeAndSave). 4. 30 day product loans are at HP's complete discretion and, if made, are subject to Terms and Conditions. Product loans available to Applicants with a registered ABN. For more information visit [www.hp.com.au/officejet](http://www.hp.com.au/officejet) or call 1800 770 456. \*The world's most preferred printers: #1 of Inkjet and Laser Shipment Units, Quarter = 2009Q1-2014Q3, Source IDC WW Quarterly HCP Tracker, Final Historical 3Q14. © Copyright 2015 HP Development Company, L.P. The information contained herein is subject to change without notice.



# MONOTASKING



equivalent to roughly a 25% drop in individual productivity over the course of the day. That innocuous two-minute interruption – ‘Have you got a moment?’ – can translate into 24 minutes before you get back to where you were before your train of thought was broken. No wonder some days we can feel like we’ve got nothing done, yet are so exhausted.

Multitasking in an organisation reduces performance further, for example when we are kept waiting for a piece of work by a multitasking colleague or need a decision to be made to move forward on a new project so that we end up starting something else.

We cannot multitask even if we are young, if we are female, if we are Clark Kent, or if we like wearing our underpants over our trousers. Multitasking is multifailing unless you happen to be one of the two per cent on the planet who are supertaskers and whose performance gets better the more they multitask. By the way, if you haven’t undergone the cognitive tests to prove it, your belief in your ability to multitask is delusional and research has shown that those who believe they are really good at multitasking perform the worst overall (just saying!). The way to get rid of multitasking is to stop doing it. But just like giving up any habit, such as smoking, it’s not

always easy, especially if we are under pressure and the temptation for the brain is to default to the survival route it thinks works best.

## 1 Introducing monotasking into the workplace

While we can all try to limit our multitasking tendencies individually, there is also a need to reduce organisational multitasking, which has to come from the top. Making monotasking the preferred way of operating gives everyone permission to follow suit.

## 2 Prioritise your priorities

Take 10 minutes at the end of the working day to determine your top three most important and urgent tasks for the next day and list them in order of priority. Shove everything else into a holding pen – those items can wait. Next day, start on your top priority first and don’t move to the second item until the first is completed.

## 3 Communicate your priorities

In the office, make sure everyone is on the same page and knows which priorities have been agreed on so that there is no temptation to start on something else – this will boost completion rates.

## 4 Practise monotasking

Choose one activity, close the office door, switch the mobile to silent, avoid all interruptions, and work on just that one activity for a specified amount of time – say 20 minutes.

Monotasking leads to more work being completed more quickly, to a higher standard, and consumes less energy. Completing our work well feels rewarding, resulting in the brain secreting more dopamine, making us feel good and motivating us to repeat that rewarding activity.

Emotions are contagious, so when we are feeling good, others will too, and the working atmosphere becomes more positive and vibrant. Being in a more positive mood opens our mind to more innovative and creative thinking, making it easier to solve more problems and make good decisions. Working with our brain in the way it was intended is not just a better way of working, it leads towards creating a high-performance workplace. That’s why monotasking is the new black. **AL**

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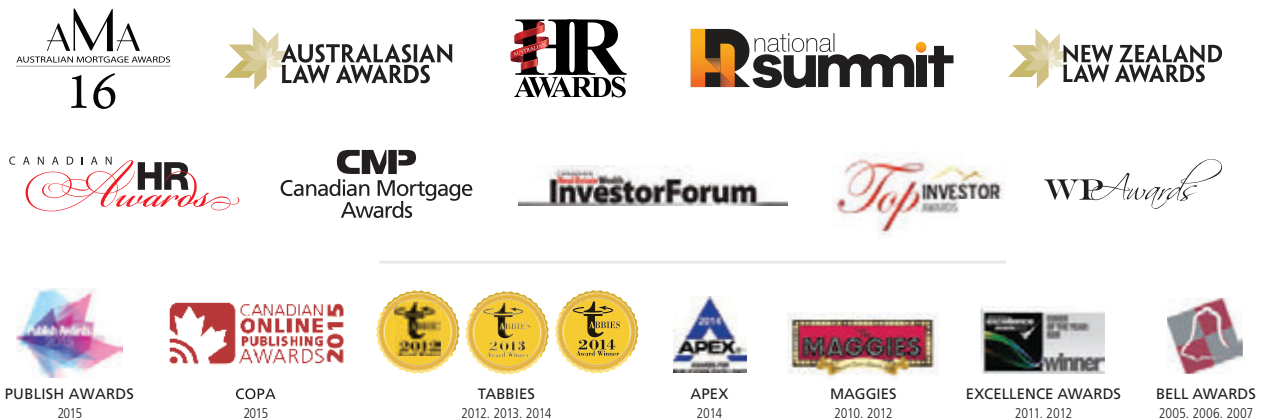
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