

momentum

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Welcome

to the first edition of **CK MOMENTUM**, our regular newsletter for business owners, corporate clients and our business associates.

Drive. Growth. Momentum. These are fundamental for any successful business – large or small. Drive and growth in any business builds momentum. We recognise that our role includes helping people like you build and sustain momentum in your business – by helping you manage risk and avoid the pitfalls.

CK MOMENTUM will help keep you up to date with pertinent developments that may affect your business. With offices in Brisbane and Sydney, our expertise covers commercial & corporate transactions, employment & IR, financial services, litigation, risk management and insolvency, property transactions and resources projects, across a range of industries.

I hope you enjoy this newsletter, and I welcome your feedback or suggestions for future editions.

John Toigo //
MANAGING PARTNER





HOME SWEET HOME

manufactured



When we think of property development, we usually think of flat land subdivisions and unit or townhouse community titles schemes. However, Property & Projects Partner, Dick Burr, shares some insights into the recent phenomenon of manufactured home parks.

In recent years, purpose-built parks that have been planned, developed and constructed as dedicated manufactured home parks no longer contain the traditional mobile homes and modest 'shacks on stumps'. Instead, these parks offer high quality accommodation and a wide range of community facilities which provide owners with considerable lifestyle and financial benefits.

Essentially, a manufactured home is a structure (other than a caravan or tent) that is not permanently attached to land and is designed to be moved. Nowadays, modern four bedroom two storey homes are being designed to comply with the legislation and to look like well-built permanent structures.

Manufactured home parks have evolved and Australia's ageing population are discovering a compelling and affordable alternative to retirement villages and community titles schemes. Currently, there are 165 manufactured home parks in Queensland and over 21,000 manufactured homes.

▶ BENEFITS OF THE MANUFACTURED HOMES

MODEL INCLUDE:

- no capital gains
- interests can be sold or passed under a Will

- no stamp duty, land tax, rates or registration fees
- no exit fees, body corporate fees or deferred management fees
- access to state-of-the-art facilities
- community living without the typical body corporate obligations
- a secure and caring environment

The Manufactured Homes (Residential Parks) Act 2003 (Qld) is under review by the Queensland Government to ensure it protects residents, promotes fair trading practices, and encourages the growth and viability of the residential park industry. The consultation period has now closed and responses are being considered. Further public consultation will take place when a discussion paper is released this year. We will keep you up to date with any developments. **OK**



Dick Burr //

PARTNER, PROPERTY
& PROJECTS

▶ EMAIL



Bullet proofing your business

► BREAKFAST SEMINAR

Please join us for breakfast in April, when Partners Belinda Hapgood and Sarah Davies will talk about the steps you can take to avoid disputes with your employees and business partners. Belinda will talk about the importance of managing performance and conduct issues as they arise, taming the troublesome employee, excessive use of sick leave, responding to complaints and the critical nature of employment contracts, written policies and procedures. Sarah will talk about how commercial disputes arise, the steps you should take when negotiating and performing a contract to minimize the risk of a dispute and what to do when a dispute arises.

FOR FURTHER DETAILS ►

[CLICK HERE](#)

Privacy Act amendments commencing in March

The amendments to the Privacy Act became law on 12 March 2014.

The Australian Privacy Principles impose greater obligations on businesses in some circumstances and the credit reporting provisions have been revised. In addition, the Commissioner has enhanced powers including the ability to impose tough penalties for non-compliance.

FOR FURTHER INFORMATION & TO VIEW AN ARTICLE BY CORPORATE & COMMERCIAL PARTNER, PETER KARCHER ►

[CLICK HERE](#)

Construction Work on Mining Leases

► BCIPA DOES APPLY!

In 2013, we reported on the Agripower Australia decision in which the Queensland Supreme Court held, in a controversial decision, that the Building & Construction Industry Payments Act 2004 (BCIPA) did not apply to construction work on land subject to a mining lease. The decision left much uncertainty about the extent to which BCIPA applied in the mining industry. That uncertainty was largely cleared up by the appeal decision delivered in late 2013, which determined that mining leases are 'land' for the purposes of BCIPA and that the degree of annexation to the physical land will be relevant to the issue of whether or not a thing forms part of the land for the purposes of BCIPA.

FOR FURTHER INFORMATION & TO VIEW AN ARTICLE BY LITIGATION & INSOLVENCY LAWYER, JENNA SCOTT ►

[CLICK HERE](#)

NRMA Motoring & Services

In late 2013, CK acted for NRMA Motoring & Services on the sale of its portfolio of wholesale travel businesses. Assets sold by the NRMA included the Adventure World Travel, Value Tours, and Creative Cruising brands, while the retail business, NRMA Travel, was kept.

Peter Karcher, partner in our Corporate & Commercial group, was responsible for CK's work on the transaction, which was made interesting and challenging by the integration of the sale businesses with other businesses and services across the NRMA group, and work required to separate out what was being sold from assets and services the NRMA wanted to retain.

CLARKEKANN CONDUCTS WORK FOR THE NRMA ACROSS OUR LEGAL PRACTICE AREAS, INCLUDING PROPERTY, COMMERCIAL AND LITIGATION MATTERS.

Food security and opportunity for all

➤ AGRICULTURE IN AUSTRALIA IN 2014

The Federal Government has announced a taskforce to prepare a White Paper on competitiveness in the Australian agricultural industry that will seek to outline potential policies and strategies to improve the industry's competitiveness and profitability, boost trade and economic growth, and create greater productivity through innovation. The next step is the release of an 'issues paper' summarising key points and providing questions for written submissions. A 'green paper' will then be developed which is intended to be released in the first half of 2014 outlining the Government's assessment of the critical problems, opportunities for the industry, and outlining some broad policy options.

FOR FURTHER INFORMATION & TO VIEW AN ARTICLE BY CORPORATE & COMMERCIAL LAWYER, BEN WALKER ➤

[CLICK HERE](#)



CK appointments

➤ SARAH DAVIES has joined us as a Partner in the Litigation & Insolvency team. Sarah is an accredited specialist in commercial litigation and has a particular interest in risk management and dispute resolution in the financial services industry, building and construction industry and the resources sector. She is also the chairman of the board of a credit union and has an interest in mutual banking, corporate governance and directors' duties.

➤ RAYMOND ROSER has been promoted to Senior Associate and Ashton East has been promoted to Associate, both in our Litigation & Insolvency team. These promotions reflect the valuable contribution Raymond and Ashton make to managing risk issues for our clients and helping them find solutions to their business challenges.

Iron Bridge Joint Venture

In October 2013, the Formosa Plastics Group of Taiwan and Fortescue Metals Group Limited established the Iron Bridge Joint Venture to develop the FMG Iron Bridge Iron Ore Project, a 5.2 billion tonne magnetite resource in the Pilbara region of Western Australia – the largest single iron ore resource in Australia. Managing Partner (and Corporate & Resources Partner) John Toigo and Senior Associate Brad Vinning, with other team support advised Formosa Plastics Group on its \$US1.15 billion investment in the acquisition and establishment of the JV.

Accounting for 13% of Taiwan's GDP in 2012, the Formosa Plastics Group is Taiwan's largest private company. It is constructing a 22 million tonnes per annum USD \$20 billion integrated steel mill in Vietnam. This greenfield project is the largest of its kind in the steel making industry globally and, once finished, will comprise 6 blast furnaces.

CK WorkWise

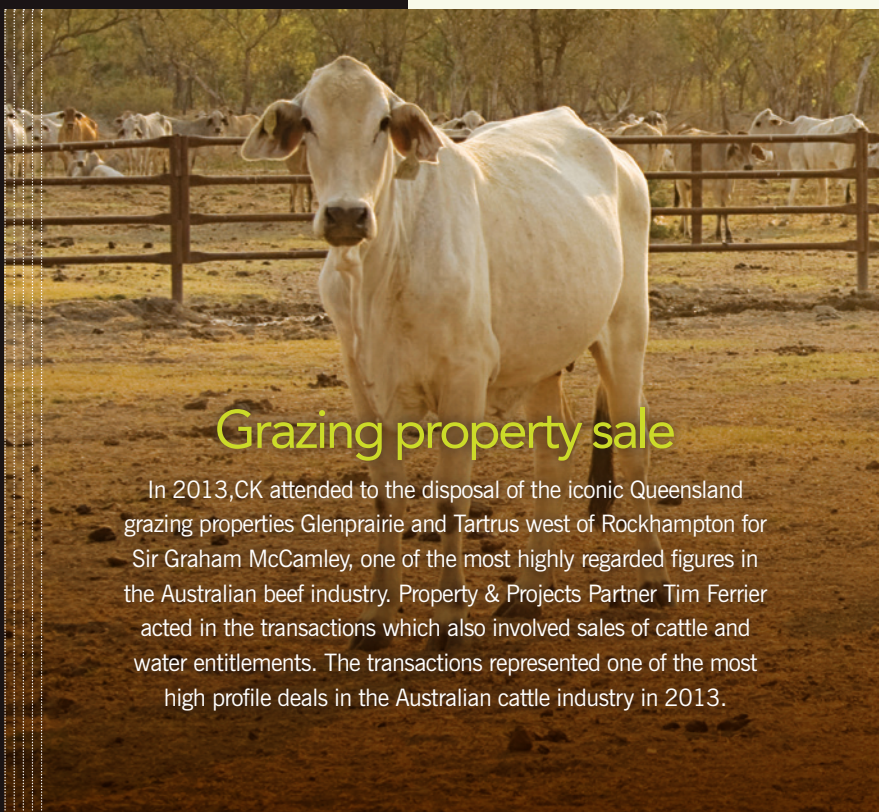
Employment Law constantly changes. Just as you feel you have your feet on solid ground, the legislation changes and you are back to square one. Wouldn't it be nice to have an expert legal advisor available 24/7 to answer those niggling questions as they were raised, without the threat of large bill at the end of the process?

Revising and reviewing matters with your advisors can be a costly and unpredictable process. Let us take the guess work out of your HR needs with our flat monthly fees that will allow you to budget for certainty. We can design a package to suit you which will involve reviewing your employment contracts, ensuring your policies are compliant, conducting inhouse training for your staff, ensuring you are paying your staff correctly under applicable industrial awards and providing access to a 24/7 support line.

IF YOU ARE INTERESTED, PLEASE CONTACT BELINDA HAPGOOD ➤

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Grazing property sale

In 2013, CK attended to the disposal of the iconic Queensland grazing properties Glenprairie and Tartrus west of Rockhampton for Sir Graham McCamley, one of the most highly regarded figures in the Australian beef industry. Property & Projects Partner Tim Ferrier acted in the transactions which also involved sales of cattle and water entitlements. The transactions represented one of the most high profile deals in the Australian cattle industry in 2013.



A WHOLE
NEW ERA

workplace bullying

From 1 January 2014, workers who consider that they have been the victims of workplace bullying can make an application to the Fair Work Commission for orders to "stop bullying".

Employment & Industrial Relations Partner,
Belinda Hapgood, says this is a new avenue for victims of
workplace bullying and one that may have unintended
consequences for employers who fail to take steps to
eradicate cultures that encourage workplace bullying.

➤ [WHAT IS BULLYING AT WORK?](#)

Bullying occurs when:

- a person or a group of people repeatedly behaves unreasonably towards a worker or a group of workers at work; and
- the behaviour creates a risk to health and safety.

Importantly, there is an exemption for behaviour that constitutes reasonable management action carried out in a reasonable manner

➤ [WHAT IS THE PROCESS?](#)

From 1 January 2014, workers who consider that they have been the victims of workplace bullying will be able to make an application to the Fair Work Commission. The Fair Work Commission will investigate the matter, contact the employer for information and may direct the parties to attend a conciliation conference.

The people that may be served with an application by the affected worker could include the employer, the alleged bully and any third party involved.

An employer should make sure that they include details in their response to the Fair Work Commission of any internal process or procedure available to the applicant in relation to a workplace bullying complaint.

Additionally, an employer may have a defence of reasonable management action or may be able to argue that the worker concerned is not covered by the Workplace Bullying laws. Specific legal advice about these issues should be sought prior to completing the response forms.

➤ [MEDIATION](#)

If the Fair Work Commission considers the matter is appropriate, the parties may be invited to attend mediation to help resolve the matter in an informal, confidential and voluntary way.

Importantly, the Commission has indicated that it will not be promoting monetary settlement of the applications.

➤ [HEARINGS AND ENFORCEMENT](#)

If the matter is either not resolved at mediation or is deemed not appropriate for mediation, a formal hearing may be held at which evidence will be led by both parties and the Commission will make ultimate determinations as to whether or not bullying has occurred and whether or not it is appropriate to make an order that the bullying cease.

The orders that can be made might include:

- requiring the individual or group of individuals to stop the specified behaviour;
- regular monitoring of behaviours by an employer or principal;
- compliance with an employer's or principal's bullying policy;
- the provision of information, additional support and training to workers; and
- review of the employer's or principal's bullying policy.

A failure to comply with an order made the Commission may result in a disgruntled party seeking to enforce the order in the Court.

➤ [WHAT TO DO NOW?](#)

Employers should proactively review their existing workplace bullying and harassment policies and procedures to ensure that they are up to date with the requirements of the new legislation. **CK**



Belinda Hapgood //

PARTNER,
EMPLOYMENT &
INDUSTRIAL RELATIONS

➤ EMAIL

A portrait of John Toigo, CK's Managing Partner, smiling. He is wearing a dark suit jacket over a light-colored button-down shirt. The background is plain white.

MAKING GOOD ON PRICE

In this edition, CK's Managing Partner, John Toigo, talks to Anthony Yap about the passion that inspired Good Price Pharmacy and how he shares his vision with the people around him.

Anthony Yap's business career began with the purchase of his first pharmacy in Brisbane's northern suburbs in 2001 at the age of 23. By 2003, he created the "Good Price Pharmacy Warehouse" brand, a big box concept based on a larger product range and an everyday low price strategy.

Today the group operates out of 44 locations, employs over 750 staff and has an annual turnover in excess of \$200 million.

➤ YOU WERE 23 WHEN YOU BOUGHT YOUR FIRST PHARMACY. WHERE DID THAT CONFIDENCE AND VISION COME FROM?

Being a young pharmacist with drive, determination and a passion for pharmacy certainly helped in my professional development and fuelled my desire to become a business owner. The purchase of my first store in 2001 at the age of 23 was obviously a turning point, but it was in 2003 when we identified a bulky goods site in the suburb of Cannon Hill that would prove to be one of the defining moments in my career.

We had a vision of creating a brand that would be recognised across Australia and to do that we knew it had to be something that was new and innovative. The creation of our first "Good Price Pharmacy Warehouse" was a huge financial risk that we decided to take based on our belief that "Big Box" retailing would become the dominant model in our industry. The whole notion of having the biggest range coupled with an everyday low price strategy delivering discounted health, beauty and medicinal products seemed to resonate with consumers and was an instant success. We knew from the very first Good Price Pharmacy Warehouse that this model would help revolutionise the pharmacy industry in Australia.

➤ AMONG OTHER THINGS, YOU'VE BEEN BACK TO BACK WINNER OF BRISBANE'S 2012 AND 2013 YOUNG ENTREPRENEUR OF THE YEAR AWARD AND YOUNG BUSINESS PERSON OF THE YEAR AT THE 2013 LORD MAYOR'S BUSINESS AWARDS. WHEN ACCEPTING YOUR AWARDS, YOU'VE SPOKEN ABOUT THE NEED TO BE PASSIONATE ABOUT WHAT YOU DO. HOW HAS THAT GUIDED YOUR CAREER?

Having a passion for what you do makes the journey that much easier. I love what I do and I have tried to retain that

same passion through every part of my journey, through both the good times and the bad.

➤ YOU'VE PUBLICLY ACKNOWLEDGED YOUR STAFF AS BEING A KEY PART OF THE SUCCESS OF GOOD PRICE PHARMACY. HOW DO YOU MOTIVATE PEOPLE AND BUILD A WINNING CULTURE?


My key learnings have been that you need to know your limitations as you cannot do everything yourself and to find people with skills that complement your own. I have been extremely lucky throughout my career as I have been able to surround myself with great people who share the same vision and passion as I do.

Our core team are like family, we have shared so many milestones together such as 21st birthdays, engagements, wedding and births while at the same time we created a company that over the last decade has played a small role in revolutionising the pharmacy industry as we know it. Our team all share in the success of the company and therefore they all take ownership and pride in everything that they do.

➤ WHO DO YOU ADMIRE IN THE BUSINESS WORLD?

Sam Walton, the founder of Walmart. His story also started with just one small store and through constant improvement and evolution of his retail model, he created the biggest and most successful retailer in the world.

➤ WHAT DO YOU DO TO RELAX?

Hanh (my wife) and I love to wine and dine. Most of our holidays are centred on what restaurants we want to eat at rather than what tourist attraction we will be visiting. I also love to relax with our two boys Zachary and Xavier on the weekend, even though they are an absolute handful. 



WHAT'S NEW?



The building and construction industry is facing mixed messages about the year ahead. Litigation & Insolvency Partner Sarah Davies, looks at some of the big issues facing the industry.

OUTLOOK

In the 2013 financial year, the construction industry had the highest number of insolvencies and liquidations of any industry, accounting for 24% of all business failures. One of the primary causes of business failure was inadequate cash flow.

Master Builders Australia (MBA) has consistently said that restoring business confidence is the key to a turnaround in the construction industry. It is predicting a mixed outlook across the various sectors of the industry over the next 3 years. Whilst residential building is tipped to increase, non-residential building is likely to flat-line and there may be further decreases in the amount of engineering construction work.

MBA's latest national survey shows a big rise in builder confidence in Q4 2013, adding weight to its forecast that residential building is set to improve strongly over the next 3 years

QLD REFORMS

Building industry regulation in Queensland is being overhauled after the 2012 inquiry into the operation and performance of the Queensland Building Services Authority. The Government's response to that inquiry in mid-2013 included the replacement of the QBSA with a new body – the Queensland Building & Construction Commission (QBCC), and significant change to the regulation of the building and construction industry in Queensland with a focus on licensing, certification, dispute avoidance and management.

Some of the important changes are as follows:

- The QBCC commenced on 1 December 2013, with a new professional governing body.
- A mechanism for the review of insurance decisions and home owner complaints will be established, in an attempt to reduce the number of applications for review being made to the Queensland Civil & Administrative Tribunal.
- QBCC will consider the development of a rapid domestic adjudication model to fast track domestic building disputes.
- It is hoped there will be improved governance through contractor licensing, a focus on consumer and contractor education about their rights and obligations, dispute handling, consumer protection against loss through statutory insurance, and prosecutions.

How these reforms play out for industry participants in Queensland remains to be seen. Anecdotal evidence from our clients suggests that the QBCC is taking a stricter and more diligent approach to the investigation and resolution of residential building complaints. Those engaged in residential building disputes should anticipate less leniency will be shown by the QBCC than before. **CK**



Sarah Davies //

PARTNER, LITIGATION
& INSOLVENCY

[▶ EMAIL](#)

IS AUSTRALIA OPEN FOR (AGRI)BUSINESS?



The phenomenon of significant foreign investment in agriculture in Australia may be fairly new, but it's been common practice in the Australian mining industry for more than half a century.

Agribusiness Partner Tim Ferrier, observes that “With the softening of the Australian dollar, the strengthening of the world market and the free trade talks with China and Japan, the indications are for a strong year ahead for inbound investment and M&A in Australia. Agribusiness is one of the five pillars espoused by the Abbott Government. Coupled with the Government’s ‘open for business’ mantra, there has been a major focus on free trade and driving growth through the opening up of the Australian market to foreign investors. Australia is currently in negotiations with several countries, including the US, Canada, Japan and Mexico, as part of the Trans-Pacific Partnership which, if finalised, will eliminate or at least substantially reduce barriers to trade and investment between the participant countries. The aim is to facilitate transparency and fair and effective competition to allow the free flow of direct investment between member countries. Agribusiness stands to be a key beneficiary of any increased access and investment.”

Be that as it may, two recent opposing FIRB decisions – one concerning US Archer Daniels Midland’s failed \$2 billion bid for GrainCorp and the other being FIRB’s decision to relax Yanzhou’s ownership restrictions on Yancoal – has generated a perception of uncertainty in the market.

SO WHAT IS AUSTRALIA’S FOREIGN INVESTMENT POLICY, PARTICULARLY ON AGRIBUSINESS?

Given the influence of the Nationals, FIRB and the Government are increasing their scrutiny of foreign agricultural land and business acquisitions by foreign entities. This is flowing through to changes in FIRB policy, including tougher restrictions that reduce FIRB thresholds

for farmland purchases to \$15 million (from \$244 million) and agribusiness acquisitions to \$53 million.

The Government has indicated a similar approach to all future free trade deals, including China and Japan. Also, foreign government investors must still notify the Australian government and get prior approval before making any direct investment into Australian business or land, regardless of the value of the investment.

“While there is increased scrutiny, the fact is that the overwhelming majority of applications for foreign investment are approved, and I expect that will continue to be the case” adds Tim Ferrier. “For example, in the 2011-12 year, only 0.1% of all FIRB applications were not approved, while in the 2012-13 year all FIRB applications were approved.”

The free trade agreement negotiations with China will be the next big indicator for Australia’s foreign investment direction, especially with our largest trading partner taking on such a dominant role in the recent mining boom. In 2013, we witnessed significant regulatory debate and high profile acquisitions. This year will be a defining year for Australia’s foreign investment strategy generally, and our agriculture sector specifically. **CK**



Sam Bassingthwaite //

LAWYER, CORPORATE & COMMERCIAL

➤ EMAIL



COMPUTER SAYS 'NO'!

What needs to be in your software agreement?

Is your business considering implementing a new software or IT services package? Be it a bespoke agreement to develop software specifically for your business, or a more generic solution, Corporate & Commercial Partner and IT specialist, Peter Karcher, points out 5 critical contract issues to keep in mind when negotiating with the developer or software provider:

1. IP OWNERSHIP / SCOPE OF LICENCE:

Most “off-the-shelf” software products have clearly defined licence terms that limit your usage rights, referable to “internal business purposes only” or a limited number of end-users. Where software is being developed just for you, ownership of the new IP becomes very important. While developers will not want to sell their core software platform, consider whether you should acquire outright ownership of any modifications or modules which are created specifically for you, to ensure your continued ability to use the software, and to prevent the developer licensing it to a competitor.

2. THIRD PARTY SOFTWARE:

Often an IT product will require the use of other software tools or platforms. Apart from ensuring there are no hidden costs, you should ask the developer how they will continue to operate their product if the third party software later becomes unavailable. Your contract should place responsibility for maintaining any necessary third party software on the IT provider.

3. ONGOING SUPPORT:

Usually an IT provider will “support” their software throughout the licence term, sometimes in the form of

a separate “service level agreement”. The provider’s obligations need to be closely scrutinised, including matters such as response times, additional charges, as well as considering what right you have to terminate the overall arrangements if the software or support services are not up to scratch.

4. DATA PROTECTION AND PRIVACY:

Depending on the nature of the services being provided, your IT provider may be responsible for storing your customer, financial and other valuable data. Your contract needs to place obligations on the provider to keep that data secure and to comply with any applicable privacy laws that have recently been beefed up.

5. ESCROW AGREEMENTS:

Too often clients come to us after the fact and ask how they can continue using or developing a software product after the IT provider has gone into liquidation. This usually requires access to the relevant “source code”. The only way to guarantee that is for both parties to enter into an “escrow” agreement with a third party escrow provider, under which the escrow provider will release a copy of the source code in the event of the licensor’s insolvency. **CK**



Peter Karcher //

PARTNER, CORPORATE & COMMERCIAL

▶ EMAIL