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# Welcome

to the April 2015 edition of **CK MOMENTUM**, our regular newsletter for business owners and corporate executives.

In this edition, we interview Steve O'Connor, Australian CEO of the world's largest outdoor advertising corporation, JCDecaux, about the challenges and opportunities facing "out of home" advertising and developing a culture of innovation.

We highlight our involvement in Beef Australia 2015 as an Associate Supporting Partner to the event, as well as the current and emerging issues in the agribusiness sector and an update on the China-Australia Free Trade Agreement. We also look at some important issues for business owners, such as tips on the use of social media to screen potential recruits, how to avoid breaching Australia's anti-spam legislation and whether reduced corporate insolvencies is a reason to rejoice.

**CK MOMENTUM** will keep you up to date with the latest legal and commercial developments that may affect you or your business. With offices in Brisbane and Sydney, our expertise covers commercial and corporate transactions, employment and industrial relations, financial services, litigation, risk management, insolvency, property, and resources projects across a wide range of industry sectors.

I hope you find this edition of **CK MOMENTUM** informative.

**John Toigo //**

MANAGING PARTNER





# CAN I USE FACEBOOK TO SCREEN POTENTIAL RECRUITS?

➤ If social media is a necessary workplace “evil”, then what lies beneath is the often practised, but rarely mentioned, custom of “Facebook stalking”. This involves reviewing the social media postings of potential job candidates, political candidates and, in some instances, relationship candidates.

Employment & Industrial Relations Partner Belinda Hapgood considers the employment law dynamics at play when an employer chooses (as part of its recruitment practice) to conduct social media checks and screen (ie hire or reject) candidates based on what might be found there.

## ➤ IS IT DISCRIMINATION?

An employer could come unstuck if the posts reveal something about a job candidate that constitutes a “protected” attribute. For example, the candidate is a member of a particular political party or union, is of a particular religious persuasion, or is planning on becoming (or actually) pregnant.

These characteristics (and many others) are attributes that discrimination legislation prevents employers from using as a basis for a “failure to hire” decision (in the same way that questions about these matters cannot be asked in the interview process). The employer who discovers these matters via a social media search is equally exposed to a discrimination complaint if they use these characteristics to form the basis of a hiring decision – granted, though, that this may be difficult to establish.

Although it is not necessarily unlawful to search social media to understand whether the candidate who presents at interview has a matching online presence, care must be taken to document what is found and the role (if any) that information plays in a recruitment decision.

Suggestions to avoid making unlawful decisions on social media findings include searching only publicly accessible sites (eg don’t “friend” a candidate on Facebook simply to gain access to their profile) and separate the decision maker from the social media reviewer. The reviewer’s task is to “remove” any discriminatory data from the social media review in a report they then provide to the decision maker.

Ultimately, it’s worth remembering that people are rarely what they present either in interview or online and, as with all recruitment decisions, “hire slowly to prevent the need to fire fast”. **CK**



➤ EMAIL

**Belinda Hapgood //**  
PARTNER, EMPLOYMENT &  
INDUSTRIAL RELATIONS



# YOU'RE INVITED TO OUR BREAKFAST SEMINAR:

## THRIVING IN THE ASIAN CENTURY

FOCUSING ON ASIAN INVESTMENTS IN AUSTRALIA, OUR BREAKFAST SEMINAR WILL LOOK AT THE OPPORTUNITIES ARISING FROM THE AUSTRALIA-CHINA FREE TRADE AGREEMENT.

### PRESENTERS:

- JOHN TOIGO – MANAGING PARTNER, CORPORATE & COMMERCIAL  
 Insights gained from advising some of Taiwan's largest corporations over the last 20 years, and the current foreign investment landscape.
- GRAHAM MULLIGAN – MANAGING DIRECTOR, INTERNATIONAL INFRASTRUCTURE VENTURES  
 The practical realities of doing business in the Asian Century.
- JASON QI – DIRECTOR, HEAD OF CLIENT INSIGHTS & SOLUTIONS, CHINA DESK QLD, ANZ  
 Financial transaction options for investors in and out of China, and what the internationalisation of the RMB means to Australian businesses.

### SEMINAR DATES & TIMES:

BRISBANE – Wednesday, 29 April 2015  
 SYDNEY – Thursday, 30 April 2015

FOR FURTHER INFORMATION

[CLICK HERE](#)

## Recent appointments

WE ARE PLEASED TO WELCOME THE FOLLOWING NEW MEMBERS OF OUR LITIGATION & INSOLVENCY AND PROPERTY & PROJECT TEAMS.



### DANIELA ACKLAND

has been appointed as a Senior Associate in our Litigation & Insolvency team. She has a strong background in

commercial litigation acting for both corporate and private clients on contractual disputes, debt recovery and competition and consumer law disputes. She also advises banks and other financial institutions on mortgage enforcement and commercial disputes and advises insolvency practitioners on bankruptcy, administration, liquidation and receivership issues.



### GLENDALAM

has been appointed as a Senior Associate in our Property & Projects team. Prior to joining us, Glenda lead a commercial

and property team focusing on property acquisitions and sales for offshore investors and developers ranging from blue chip property investments to commercial and residential properties, share sales, mergers and acquisitions, and business transactions. She is also experienced in advising financial institutions on financial services recovery and procurement of security documents.



ADAM KHAN joins our Litigation & Insolvency team as an Associate and will focus on insolvency work and general commercial litigation. Adam

originates from the UK where he spent a number of years working in a London law firm specialising in litigation and insolvency. He has extensive experience acting for both corporations and private clients on commercial disputes, insolvency and bankruptcy proceedings and debt recovery, as well as acting for and advising financial institutions and insolvency practitioners.

# BEEF AUSTRALIA 2015

AUSTRALIA'S NATIONAL BEEF EXPO, BEEF AUSTRALIA 2015, WILL BE HELD IN ROCKHAMPTON FROM 4 TO 9 MAY 2015.

THE CK AGRIBUSINESS GROUP IS VERY ENTHUSIASTIC ABOUT ITS PARTICIPATION IN THIS YEAR'S EVENT AND LOOKS FORWARD TO MEETING WITH BEEF PRODUCERS AND OTHERS INVOLVED IN THE INDUSTRY.


[CLICK HERE](#)

FOR FURTHER INFORMATION ABOUT CK AGRIBUSINESS' PARTICIPATION AT BEEF AUSTRALIA 2015



## PPSR – AUTOMATIC NOTIFICATION SERVICE

Keeping up to date with what charges are held over your business can be time consuming and costly. It is impractical for business owners to constantly search the Personal Property Securities Register ("PPSR") to make sure the security interests registered over their assets are properly registered and described, and any discharged registrations have been removed from the PPSR.

To make this easier, you can sign up for the PPSR's automatic notification service and receive an email whenever a new security interest is registered against your business. This allows you to keep track of all new encumbrances and ensure no unwarranted charges are registered without your knowledge, which can cause problems if you wish to refinance or sell your business. 

IF YOU REQUIRE ASSISTANCE IN RELATION TO YOUR SECURITY INTERESTS REGISTERED ON THE PPSR THEN PLEASE CONTACT US.




# WHAT'S NEWS IN THE AGRIBUSINESS SECTOR?

The Australian agribusiness sector continues to be the focus of strong interest from foreign investors, commentators and the Federal Government.

Predictions over the last few years have proved reasonably accurate. Although during that time, the value of the Australian dollar has reduced significantly which has been helpful for both exporters and foreign investors in agricultural business and land.

Consultant Tim Ferrier looks at some of the current and emerging issues in Australia's agribusiness sector.

## ► IS THERE A FOREIGN INVASION?

All of the ingredients are there for a very interesting agribusiness marketplace:

- an attractive exchange rate;
- low interest rates;
- subdued rural land values; and
- the advent of significant free trade agreements with powerful and synergistic foreign economies.

Despite frequent observations in the press to the contrary, these conditions have not yet meant anything like a foreign invasion in the sector. Certainly, there is evidence of significant interest and investment in various sectors – often without any publicity at all.

Greater foreign investment in Australia's rural assets and land may increase significantly in the relative short term. It is unlikely changes in the Foreign Investment Review Board ("FIRB") threshold for rural land (now reduced to \$15M), proposed changes to the FIRB threshold for rural businesses (\$55M) and a new reporting regime for rural investments will make any difference to the incidence of such investment. Foreign investors of the kind likely to invest in such assets are used to scrutiny and compliance.

Of greater interest is the source of the investment. There are the usual suspects from mainland Asia, but it is also quite likely Japan will re-enter this sector after a reasonably long period of stagnation.



► **EMERGING ISSUES**

One of the most significant emerging issues for the domestic sectors is an age old one – capital itself. There is evidence that major lenders to primary producers in Australia have become nervous about extending their exposure in this area. Their concerns relate to the unpredictable (and often erratic) returns for borrowers in most agricultural commodities plus the considerable question mark over effective succession in the operation of secured assets, ie whether younger generations will take over and continue to run the land.

It remains the case that most Australian grazing and farming enterprises are family businesses. The expectation of traditional generational “baton passing” is breaking down. Lenders are taking notice, and borrowing criteria is tightening.

The approaches taken by the Federal, State and Territory Governments remain mainly benign with odd exceptions for environmental issues (eg tree clearing) and in the case of water. This is unlikely to change in the short term.

For Queensland, one of the important legislative changes has been in relation to the laws concerning the State’s extensive leasehold land holdings. The previous State Government modernised requirements making it easier to freehold land and to roll over leases. This is very important for the marketplace, including for foreign investment.

We understand the agribusiness sector and can assist with a wide range of issues such as acquisitions and disposals of rural property, financing, FIRB applications, and ownership structuring. **CK**

## JOIN US AT BEEF AUSTRALIA

We are pleased to be an Associate Supporting Partner at Australia’s national beef exposition, Beef Australia 2015, which is hosted in Rockhampton from 4 to 9 May 2015. This expo is not just about cattle, but also features a packed program of seminars, trade displays and social events.

We invite you and a colleague to attend our expo seminar “Rural Business Law 101 – Legal Health Check and Transaction Tips” on Thursday, 7 May to hear from our lawyers on some key issues for the agribusiness sector:

- **BUYING OR SELLING PROPERTY? IT PAYS TO PREPARE NOW**  
Tim Ferrier – Consultant, Property & Projects
- **BUSINESS HEALTH CHECK – HOW HEALTHY IS YOUR BUSINESS?**  
Katie Gould – Senior Associate, Property & Projects

We also invite clients, colleagues and friends to visit us at our trade stall in the Walter Pearce Pavilion. Call in and see us at site P23 and register to win a fantastic painting by renowned Australian artist Susan McConnel.

### WE LOOK FORWARD TO SEEING YOU AT BEEF AUSTRALIA.

► FOR FULL SEMINAR DETAILS

[CLICK HERE](#)

► TO SECURE SEMINAR TICKETS

[CLICK HERE](#)



► [EMAIL](#)

**Tim Ferrier //**  
CONSULTANT, PROPERTY & PROJECTS



# advertising the FUTURE



► THE “OUT OF HOME” ADVERTISING INDUSTRY SEEMS TO BE DOING WELL COMPARED TO OTHER MEDIA. WHAT ARE THE CURRENT CHALLENGES FOR ADVERTISING GENERALLY AND WHY HAS OUTDOOR ADVERTISING REMAINED STRONG?

Over the years, industry commentators have often referred to outdoor advertising as one day becoming the last true

broadcast medium. Arguably, that day has now arrived. Traditional media are suffering major structural issues – they are losing audience to other forms of new media and the increasing pressure on people’s time, especially in the home.

The demise of print audiences is well documented, and outdoor advertising has been a major beneficiary of this transition. The same can be said for the challenges facing broadcast television. This segment faces declining and fragmenting audiences, and again outdoor advertising is well placed to capitalise on this trend.

On the other hand, the public is generally more mobile and spending more time outdoors. Five years ago, the industry launched its audience measurement system, Measurement of Outdoor Visibility and Exposure (“MOVE”). Advertisers and their agencies can now validate who they are reaching and how many times

they see the ads. Also, we can prove our audience growth, which is in stark contrast to other forms of traditional mediums like print and television.

Coupled with this, the industry has invested in more signage and significantly upgraded existing signage to be more effective. In recent years and currently there is a big drive to upgrade signs for digital delivery of advertisements.

So, not only is our audience growing against other mainstream media, we are increasing our capacity to engage these audiences more effectively via the use of new technology.

► WHERE DO YOU SEE THE OPPORTUNITIES FOR GROWTH FOR JCDECAUX AND OUT OF HOME ADVERTISING IN THE NEXT 5 YEARS?

Growth for our sector will accelerate over the coming years. With an established foundation for growth, we are also well placed to capitalise as the ideal





Recognised globally for its bus-stop advertising systems, billboards, public bicycle rental systems and street furniture, multinational corporation JCDecaux Group is the largest outdoor advertising corporation in the world. Based in France, the Group operates in more than 54 countries, 165 airports, has approximately 10,000 employees and its advertising reaches 175 million people each day.

Corporate & Commercial Partner Peter Karcher chats to JCDecaux Australian CEO, Steve O'Connor, about the challenges and opportunities facing "out of home" advertising and developing a culture of innovation.

complement to growth mediums, namely online. We are all aware of the high penetration of smart devices in people's possession and their increasing reliance on and their need for connectivity to the internet. Outdoor advertising is being increasingly used by advertisers to drive online search when people are out and about as a means to prompt awareness of an online offering or simply more information. When consumers can confidently transact from their mobile smart device outdoor advertising will serve as the prompt or the shop window for some advertisers. This development will be another step for industry growth.

Given that outdoor companies are "real estate" companies, there is increasing opportunity to leverage our unique position for delivery or collection of other services/information. Deployment of Wi-Fi services to assist Telco carriers increase capacity or collect data on


consumer movements for marketing and retail purposes via mobile tracking are all on the horizon.

➤ ["DISRUPTION" IS THE CATCHWORD IN MANY INDUSTRIES AT PRESENT. ARE THERE ANY DISRUPTIVE INFLUENCES THREATENING TRADITIONAL ADVERTISING BUSINESS MODELS?](#)

The disruption affecting other media channels is actually creating opportunities for us. They're challenged by the disruptive effects of new technologies segmenting their audiences. Fortunately, we're in a good position to capitalise on that.

➤ [THE FINANCIAL REVIEW RECENTLY RAN A STORY ON SMALL AND MEDIUM-SIZED ENTERPRISES IN AUSTRALIA NOT HAVING A SUFFICIENT CULTURE OF INNOVATION. HOW DO YOU THINK BUSINESSES CAN CREATE](#)

#### [A CULTURE OF INNOVATION TO STAY AHEAD OF THE CURVE?](#)

Obviously, most business decisions need to be well considered. However, in the fast moving world we live in today there is little time for procrastination. Technology will drive business evolution and opportunity so at some point you need to jump in. Consequently, there is probably the need to have a greater appetite for risk and acceptance of failure. Striking the balance will be the trick. 



[!\[\]\(d3102649f02e825ddb76dc3de0190154\_img.jpg\) EMAIL](#)

**Peter Karcher //**

PARTNER, CORPORATE & COMMERCIAL

UPDATE

## THE CHINA-AUSTRALIA FREE TRADE AGREEMENT



In our previous issue, we broadly addressed the China-Australia Free Trade Agreement (“ChAFTA”). For Australia, the winners are the dairy, mining and services sectors which will benefit from the eventual elimination of current tariffs and other trade barriers. The losers (for the time being) are rice, sugar, wheat, cotton, canola and maize growers who have to wait another 3 years for negotiations on their sectors.

Senior Associate Katie Gould outlines the changes so far and what’s to come.

#### ➤ WHAT HAS CHANGED?

##### AGRICULTURAL & PROCESSED FOOD

Major concessions have been agreed in the agriculture and food sectors with the removal of all import tariffs on Australian dairy, meat, wine, seafood and horticultural products. The removal of import tariffs addresses a substantial barrier to trade faced by Australian exporters, with tariffs as high as 20% (dairy and wine), 25% (beef) and 23% (sheep meat) currently imposed on imports into China.

It is reported that the ChAFTA will provide a quota of Australian wool that may be exported to China on a duty free basis. This is in addition to China’s existing commitments on wool under the General Agreement on Tariffs and Trade.

##### GENERAL FIRB THRESHOLD INCREASED

The Foreign Investment Review Board (“FIRB”) screening threshold in non sensitive sectors will be raised from \$248M to \$1.078B. This increase will bring it into line with other free trade agreements brokered between Australia and Korea, Japan and the United States.

From 1 July 2015, the Australian Taxation Office will collect information on all foreign investment in agricultural land. It will also undertake a stocktake of existing ownership which reflects the increased emphasis on reporting as a result of the new foreign ownership register.

##### PRIVATE INVESTMENTS IN COMMERCIAL REAL ESTATE

Investments in commercial real estate will now fall under the non-sensitive sector threshold of \$1.078B, which is an increase from the current review threshold of \$248M.

##### PRIVATE LOWERING OF AGRIBUSINESS REVIEW THRESHOLD FLAGGED

From 1 March 2015, the review threshold for investment in agricultural land was lowered to \$15M.

This threshold is calculated by reference to the cumulative value of Australian agricultural land owned by the foreign investor, including the value of the proposed acquisition. The new arrangements only apply to contracts entered into from 1 March 2015.

Australia’s foreign investment policy has been updated to include a pre-approval process for the acquisition of an interest in rural land incidental to an activity other than agriculture. However, preapproval will be limited to a certain monetary value and provided for periods of no more than 12 months.

ChAFTA contemplates a new screening threshold of \$53M for foreign investment in agricultural businesses so there is an expectation the Government will introduce a new threshold for agricultural businesses.

##### CHINESE COMPANIES & CHINESE NATIONALS

It is reported Australia will grant certain categories of Chinese citizens with rights to enter and work in Australia for a limited time period, including:

- intra corporate transferees, independent executives and contractual service suppliers, for up to 4 years; and
- business visitors for up to 90 days (or 6 months in the case of service providers).

# EE TRADE

## WHAT HAS NOT CHANGED?

### CHINESE FOREIGN GOVERNMENT RELATED INVESTORS

Australia has not changed its position on the review of investments by Chinese state owned enterprises ("Chinese SOEs") which has been deferred to the 3 year review of the ChAFTA. Investments by Chinese SOEs remain subject to the same review process applicable to all foreign government related investors. Direct investments (generally 10% or more) by such investors continue to require scrutiny by the FIRB.

### SENSITIVE SECTORS

The ChAFTA does not affect the current review thresholds for "sensitive sectors", including media, telecommunications and defence.

## MORE TO COME

Currently, a legal review and translation of the text of the ChAFTA is underway by Australia and China. Once China and Australia have undertaken their respective treaty making processes, the ChAFTA is expected to come into force in mid to late 2015. We will continue to monitor the progress of the ChAFTA and keep you up to date with key developments. **CK**



EMAIL

### Katie Gould //

SENIOR ASSOCIATE, PROPERTY & PROJECTS



IS IT TIME TO REJOICE?

## REDUCED CORPORATE INSOLVENCIES

insolvency



ASIC's December 2014 insolvency statistics show that corporate insolvencies in the second quarter of the 2014/15 financial year were down 20% on the same period last year.

Associate Adam Khan queries whether this is a reason to rejoice or a reason to look ahead with trepidation.

When reviewing the economic outlook for 2015, the Organisation for Economic Co-operation and Development ("OECD") has pointed to growth over the next year in various major economies. However, it has warned that growth was based on low borrowing costs and low inflation. In other words, the growth might be based on access to easy money rather than business profitability.

The report by the OECD provides one explanation for the reduction in the number of insolvencies. If businesses can more readily borrow money and have access to easy money they must be less likely to become insolvent. There are other explanations why the number of insolvencies might be down, not all of which are positive.

Insolvency is an expensive process to initiate and to follow through. If you are a financier or other creditor, are you more likely in these times to spend

money on an uncertain insolvency procedure or are you better off waiting it out to see if there is a turnaround? The reduced number of insolvencies, explained at least in part by a lack of funding from creditors, might suggest a wider lack of confidence in the market.

The reduced number of insolvencies year on year between 2013/14 and 2014/15 might, at first glance, seem like a sign of growth.

However, if the real reason is access to easy money, low interest rates and a lack of confidence in the market, it might not yet be time to rejoice. **CK**



EMAIL

### Adam Khan //

ASSOCIATE, LITIGATION & INSOLVENCY

# HOW TO AVOID SPAM-A-LOT

While unwelcome emails advertising phoney products sent en masse are illegal, you may be surprised to learn that even a well intentioned marketing campaign can fall foul of the Spam Act ("Act"). A message does not necessarily have to be sent out in bulk to be considered spam. A single message may be considered spam if it was unsolicited.

Corporate & Commercial Lawyer Suzette Caldaroni explains what "spam" encompasses and suggests some steps to help ensure your marketing campaign doesn't breach the Act.

## WHAT IS SPAM?

Spam is simply an "unsolicited commercial electronic message", typically an email or SMS message. If even one of the purposes of an electronic message is to advertise or promote, it is a "commercial electronic message" ("CEM"). Content that is accessible using any links or other information contained in the message is also taken into account. Therefore, anything short of a purely factual message is likely to be a CEM.

A CEM is "unsolicited" (and, therefore, spam) if it is sent without consent. Consent needs to be provided by the accountholder to which the CEM is sent. While it is always best to obtain the express consent of the relevant accountholder, consent may be inferred in one of 2 circumstances:

- where there is a pre-existing relationship and the recipient would reasonably expect to receive the message; or
- through the conspicuous publication of an electronic address – eg a person will be taken to have consented to receiving CEMs to their published email address if that message is directly

related to their employment, unless they post a clear notice that they do not wish to receive such emails.

## HOW TO ENSURE YOUR MARKETING CAMPAIGN IS NOT SPAM

- **HAVE AN OPT-IN PROCESS** so an individual must confirm they wish to receive emails or SMS messages before they are subscribed to a mailing list – eg a tick box on a website or form.
- **KEEP RECORDS.** This is particularly important if consent is given verbally. The sender of a CEM is responsible for proving there was valid consent.
- **ENSURE EVERY CEM CONTAINS A FUNCTIONAL "UNSUBSCRIBE" FACILITY, SENDER INFORMATION AND CONTACT DETAILS.** These are mandatory requirements under the Act.
- **ENSURE THERE IS A CLEAR CONNECTION** between what you are promoting and the recipient's role or business before sending a CEM to an address published on the internet.
- **CONDUCT DUE DILIGENCE** before purchasing a mailing list to use for

marketing purposes. It is not illegal to purchase a mailing list if the addresses have not been obtained using address harvesting software. However, it is a breach of the Act if the necessary consent was not obtained from each accountholder on the list. Having contractual protections such as warranties in relation to consent would be prudent, but is unlikely to be sufficient to avoid liability under the Act.

If your business or organisation sends any of these kinds of communications, contact us to ensure you avoid breaching the Act and the applicable penalties. **CK**



➤ EMAIL

**Suzette Caldaroni //**

LAWYER, CORPORATE & COMMERCIAL

**momentum**

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