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SESSION 6

# Not my money to give away

Presenter: David W Marks QC, CTA, Inns of Court

# Uncertainty, finite resources

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- Complex environment for management
- Practical decisions, to maximise net take, taking account of public sector values
- Workaday decisions, such as:
  - rulings, practical workarounds, amnesties, compliance assistance, public education, website design ...
- Sophisticated and nuanced decision-making



# Decision making in litigation

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- Powers and responsibilities become visible in litigation
  - Power to settle
  - Power to reassess/amend
  - Power to refund
  - Costs exposure
- Unique position of the Crown to be taken into account
- Today – telling the story by examples from the cases



# The Project DO IT case - 2018

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- *Bosanac* – Steward J [2018] FCA 946
  - Amnesty - Compromise of recovery power
  - Revenue free to specify eligibility conditions
  - Revenue free to withdraw from it any time
- Taxpayer didn't meet conditions
- Taxpayer couldn't complain others who didn't meet conditions might have been allowed amnesty



# Fleet Street Casuals

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- The statutory powers
- The investigation
- The deal
- The challenge
- The result



# NZ developments

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- We have borrowed much from NZ –  
TFM, universal suffrage, pavlova, Russell Crowe ...
- Why not borrow their ss 6 & 6A TAA?
- Those sections are inspired by *Fleet Street Casuals* case's language
- Their pre-1995 case law is similar to ours – same issues



# What I'm not advocating

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- Not advocating a generalised idea of “fairness” - eg
  - *AQQ v Comptroller of Income Tax* (Singapore)
  - *Chandulals Pharmacy v CEO Fiji Revenue & Customs* (Fiji)
- But there is room for a principled idea of “fairness”
  - See *Vlahos, & Woods*, in NSW ADT



# Centrality of statute

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- As in *Fleet Street Casuals*, start with the statute
- TAAs broadly similar nationwide – some regional differences
- Then the assessing and collection frameworks - often using permissive language (query significance of “may”)
- Then objection/appeal frameworks, & confidentiality
- Then broader public sector laws, frameworks, stds, policies





# Some stories from Australian cases

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- David Jones 1990 - 1991
- Macquarie - 2013
- Grofam – early 1990s
- Pantral – early 2000s
- Bilborough - 2007



# Modern setting of litigation

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- Offers to settle
- Costs consequences
  - Offer under Court/Tribunal rules
  - Offer under the principle in *Calderbank's* case
- Revenue authorities:
  - susceptible to adverse costs orders: *Clark, Landrow*
  - but not always: *Linville Holdings [2018] QSC 62*



# Forcing or stopping admin actions

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- Inherently difficult to stop adverse admin action against you, based on *Fleet Street Casuals* case
- Need to show a very strong interest: *Pickering*; *Biga*; *Fluff* case
- Even harder to stop more favourable treatment of another: *Fleet Street Casuals*
  - You will lack sufficient interest to sue
  - Taxpayer confidentiality prevents effective enforcement through courts



# True scope of power

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- Really “powers”?
- Seen in operation everyday
- Wide power to efficiently and fairly garner the revenue
- Recognises resources, uncertainty, public sector values:
  - Work-arounds, rulings, safe harbours, amnesties, issuing warnings not penalties
  - Settling disputes before & after litigation commences



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# Suggestion

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- Look at the NZ TAA



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