



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### Contingency fees opposed by Law Council

Enabling lawyers to hold a direct financial interest in the outcome of their client's case creates a serious risk of compromising a practitioner's fundamental ethical obligations to the court and their clients, the Law Council of Australia has warned. At a recent board meeting of the Law Council, directors resolved to oppose contingency fees as a matter of principle. <https://www.lawcouncil.asn.au/media/media-releases/contingency-fees-opposed-by-law-council>

### AFP disclosure regarding ACT Policing's access to telecommunications data

The Commonwealth Ombudsman, acknowledges the AFP's announcement of compliance issues it has identified affecting ACT Policing's handling of requests for certain types of telecommunications data. The Ombudsman has made suggestions to the AFP to ensure that it comprehensively examines the extent to which specific legislative provisions in force at the relevant times were breached, and their implications. <https://www.ombudsman.gov.au/media-releases/media-release-documents/commonwealth-ombudsman/2020/12-march-2020-afp-disclosure-regarding-act-policings-access-to-telecommunications-data>

### New Resource to Teach School Children about Digital Health Records

Schools are being given the opportunity to teach students about their rights in managing their digital health records, using a new resource designed by the National Children's Commissioner. Under the My Health Record system, children aged 14 years and over can manage their own records. They may do so independently, or they can grant access to parents or guardians. <https://www.humanrights.gov.au/about/news/media-releases/new-resource-teach-school-children-about-digital-health-records>

### Commissioner launches Federal Court action against Facebook

The Australian Information Commissioner has lodged proceedings against Facebook in the Federal Court, alleging the social media platform has committed serious and/or repeated interferences with privacy in contravention of Australian privacy law. <https://www.oaic.gov.au/updates/news-and-media/commissioner-launches-federal-court-action-against-facebook/>

### Report on Foreign Influence released

Secretary of the Attorney-General's Department, Chris Moraitis said that in the first 12 months since the Scheme was introduced in December 2018, no referrals for investigation or prosecutions had been made, but played an important role in supporting the integrity of Australia's Federal election on 18 May 2019. <https://www.ag.gov.au/transparency>. Review the Annual Report on the Operation of the Foreign Influence Transparency Scheme at this [PS News link](#).

### Committee to examine impact of litigation funding on justice outcomes

A parliamentary committee will be asked to examine the extraordinary profits being made by the booming litigation funding industry to determine whether Australians are receiving their fair share of class action settlements. <https://www.attorneygeneral.gov.au/media/media-releases/committee-examine-impact-litigation-funding-justice-outcomes-5-march-2020>

### National inquiry into sexual harassment in workplaces

The Morrison Government welcomes the release of the report by the Australian Human Rights Commission (AHRC), following its National Inquiry into Sexual Harassment in Australian Workplaces (05 March 2020) <https://www.attorneygeneral.gov.au/media/media-releases/national-inquiry-sexual-harassment-workplaces-5-march-2020>

### Sex Discrimination Commissioner launches Respect@Work report of the National Inquiry into Sexual Harassment in Australian Workplaces

Sex Discrimination Commissioner has launched Respect@Work, the Australian Human Rights Commission's report of the National Inquiry into Sexual Harassment in Australian Workplaces 2020. Through a package of 55 recommendations, Respect@Work proposes a new approach for government, employers and the community. <https://www.humanrights.gov.au/about/news/sex-discrimination-commissioner-launches-respectwork-report-national-inquiry-sexual>

## APS complaints handling probed

The Commonwealth Ombudsman has released a report (Lessons in good complaint handling) of his enquiry into complaints handling in the Australian Public Service (APS). The report has highlighted some of the areas for improvement we identified across the three agencies in the 2019. <https://www.apsc.gov.au/managing-complaints>

## Overturing previous child abuse settlements

Have your say on potential reforms to empower NSW courts to set aside unjust settlement agreements between child abuse survivors and responsible institutions – that’s the call from Attorney General Mark Speakman. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/overturing-previous-child-abuse-settlements>

## Emails blamed for data breaches

The Office of the Australian Information Commissioner (OAIC) has announced that almost one in three data breaches in Australia have been linked to compromised login credentials, in her latest report Notifiable Data Breaches (NDB) Report. <https://www.oaic.gov.au/privacy/notifiable-data-breaches/notifiable-data-breaches-statistics/>

## The principles of open justice must be protected, says the Law Council

The Law Council believes that the INSLM review of the operation and provisions of the NSI Act relating to Witness J will ensure that the suppression of disclosure or publication of judgments, convictions, sentences and sentencing remarks is confined to the most exceptional cases. <https://www.lawcouncil.asn.au/media/media-releases/the-principles-of-open-justice-must-be-protected-says-the-law-council>

## Law Council of Australia President, Pauline Wright, statement regarding biosecurity control orders

Powers under the Biosecurity Act 2015 (Cth) are extraordinary and must be approached with the utmost caution and should only be used as a last resort. The exceptional powers under the Act do not have the types of safeguards and independent oversight protections afforded to our law enforcement and security agencies’ exercise of coercive powers. <https://www.lawcouncil.asn.au/media/media-releases/law-council-of-australia-president-pauline-wright--statement-regarding-biosecurity-control-orders>

## IN PRACTICE AND COURTS

### COAG Meeting Communiqué, 13 March 2020

The Council of Australian Governments (COAG) held its 48th general meeting in Sydney. The discussion focussed on Australia’s response to coronavirus (also known as COVID-19) and on recovery from the 2019-20 bushfires. Leaders also made progress on a range of existing COAG priorities, directed at improving the current and future wellbeing of Australians.

## Coronavirus (COVID-19) precautions at Courts and Tribunals

The [Federal Court](#) of Australia, the [Family Court](#) of Australia and the [Federal Circuit Court](#) have this week issued notices directed at minimising the spread of the virus in the community.

## ALRC in the media – 2020

The ALRC monitors the media for references to the Commission and its inquiries. This list for 2020 is not comprehensive.

## Practice Direction - Federal Circuit Court of Australia [Practice Direction 2 of 2020 - Case Management - Family Law \(Priority Property Pools under \\$500,000\) Financial Cases](#)

This practice direction sets out guiding principles for case management arrangements for cases that meet the definition of a Priority Property Pool under \$500,000 Case (PPP500). All steps taken in proceedings before the Court in these cases, including commencing proceedings, should follow these principles. This practice direction takes effect from the date that it is issued and applies to all PPP500 cases filed on or after 1 March 2020.

## AAT Bulletin

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. [Issue No. 9/2020, 9 March 2020.](#)

## Law Council of Australia Submissions

### 02 March 2020— Law Council

[Council of Attorneys-General – Age of Criminal Responsibility Working Group Review](#)

### 02 March 2020— Law Council

[Model Operating Requirements & Model Participation Rules: Consultation Drafts Version 6](#)

### [Legal Services Council newsletter - Issue 1](#)

Issue 1 for 2020 of the Legal Services Council newsletter.

## ANAO Performance Audits in Progress

Due to table: June, 2020; Open for contribution  
[Administration of financial disclosure requirements under the Commonwealth Electoral Act](#)

Due to table: June, 2020; Open for contribution  
[Management of the Australian Government's Register of Lobbyists – follow-up](#)

## Australian Bushfires Disaster Emergency Declaration – Understanding your privacy obligations

The Attorney-General has made the [Privacy \(Australian Bushfires Disaster\) Emergency Declaration \(No. 1\) 2020](#) (the emergency declaration) under Part VIA of the Privacy Act 1988 (Cth) (Privacy Act). The emergency declaration was made in response to bushfires in Australia resulting in death, injury and property damage occurring from August 2019 into 2020. The emergency declaration expires on 20 January 2021.

## OAIC Submissions

06 March 2020 [Voluntary Code of Practice Securing the Internet of Things for Consumers – submission to the Department of Home Affairs](#)

## Legal and Constitutional Affairs References Committee

[Impact of changes to service delivery models on the administration and running of Government programs](#)

[Nationhood, national identity and democracy](#)

## Legal and Constitutional Affairs Legislation Committee

[Federal Circuit and Family Court of Australia Bill 2019 \[Provisions\] and Federal Circuit and Family Court of Australia \(Consequential Amendments and Transitional Provisions\) Bill 2019 \[Provisions\]](#)  
[Crimes Legislation Amendment \(Combatting Corporate Crime\) Bill 2019](#)

## NSW

### [COVID-19 Procedural changes at the Sydney District Court](#)

The Chief Judge of the District Court has issued a note regarding procedural changes in response to concerns about the spread of coronavirus, commencing Wednesday 18 March 2020.

### [Supreme Court - Coronavirus update](#)

The Chief Justice has issued updated information relating to procedural changes in light of the latest Coronavirus recommendations. The changes will take effect from Monday 23 March.

### [BOSCAR: NSW Recorded Crime Statistics quarterly update December 2019](#)

The offences trending upward were domestic violence related assault (up 5.0%), and steal from retail store (up 8.3%). The offence trending down was steal from person (down 7.1%) (04 March 2020).

### [IPC NSW: Contract register requirements and the GIPA Act by the NSW Information Commissioner](#)

The Government Information (Public Access) Act 2009 (GIPA Act) requires that contract information is made publicly available by government agencies through a publicly available contract register. [Media Statement - Contract register requirements and the GIPA Act by the NSW Information Commissioner](#)

## Consultations

### [Setting aside settlement agreements for past child abuse](#)

The NSW Government is seeking submissions on potential reforms to allow NSW courts to set aside historical settlement agreements for child abuse. Submissions close on 15 April 2020.

### [ICAC: Prosecution briefs with the DPP and outcomes](#)

The tables on this page each provide information on prosecution briefs that are currently with the Director of Public Prosecutions (DPP), and the outcomes of DPP advice and prosecutions in relation to ICAC investigations.

### [NSW DCJ: Update to child protection reporting](#)

From 1 March 2020 amendments to the [Children and Young Persons \(Care and Protection\) Act 1998](#) opens in new window (Care Act) will commence to expand mandatory reporting groups and provide greater protections for reporters.

## PUBLISHED – ARTICLES, PAPERS, REPORTS

### [Australian government procurement contract reporting update](#)

Australian National Audit Office: 11 March 2020  
This information report seeks to provide greater transparency on procurement activity in the Australian public sector. The report is presented in a variety of ways, including tables and figures, publicly available data from public sector procurement activity recorded in AusTender.

## CASES

### [Whiteoak v State Parole Authority and the Attorney-General of NSW \[2020\] NSWSC 185](#)

Administrative Law – Judicial Review – Statutory construction – Plaintiff previously convicted of murder

and sentenced to life imprisonment – Sentence subsequently re-determined so as to incorporate a non-parole period – Where non-parole period expired and plaintiff sought release on parole – Plaintiff a citizen of the United Kingdom who had never applied for Australian citizenship – Where plaintiff's visa had been cancelled and plaintiff was liable to immediate deportation to the United Kingdom upon release – Evidence before the Authority to support the conclusion that the plaintiff required assistance to reintegrate into the community and address the risk of reoffending – No means available for any supervision of the plaintiff if he left Australia – Where the State Parole Authority refused the plaintiff's application for release on parole – Whether the Authority erred in taking into account the fact of the plaintiff's inevitable deportation – Whether the Authority erred in concluding that the interests of the safety of the community extended to the community in the United Kingdom to which the plaintiff proposed to relocate upon release and deportation Words and Phrases – "community" – "general community" – "interests of the safety of the community".

### [Lawson v Minister for Environment and Water \[2020\] NSWSC 186](#)

STATUTORY INTERPRETATION – Legislative purpose – whether land vested in South Australia for an estate in fee simple under s 18 River Murray Waters Act 1915 (NSW) on commencement of that Act on 31 January 1917 – whether, as a consequence of the vesting, any and all interests in the land acquired through adverse possession or held as native title rights were extinguished upon commencement of the Act – was the vesting of the land by the Act a "previous exclusive possession act" for the purposes of s 23B of the Native Title Act 1993 (Cth) and s 20 of the Native Title (New South Wales) Act 1994 (NSW) PROCEDURE – separate questions for determination

### [Attorney General for New South Wales v Melco Resorts & Entertainment Limited \[2020\] NSWCA 40](#)

COMMISSIONS OF INQUIRY – inquiry established under Casino Control Act 1992 (NSW) – whether conferral of powers and authorities of a commissioner under the Royal Commissions Act 1923 (NSW) included power to compel testimony or production of documents irrespective of claim of legal professional privilege – meaning of s 143A of Casino Control Act – whether a witness summoned by or appearing before the person presiding at an inquiry entitled to claim legal professional privilege. PRIVILEGE – legal professional privilege – whether s 143A of Casino Control Act operated to abrogate legal professional privilege – whether s 143A of Casino Control Act conferred power to compel production of documents irrespective of legal professional privilege. STATUTORY INTERPRETATION – whether s 17(1) of the Royal Commissions Act conferred a power or authority on a commissioner – whether s 143A of the Casino Control Act picked up s 17(1) of the Royal Commissions Act and abrogated legal professional privilege – principle of legality – legislation to be construed in context of case law existing at time of enactment – meaning of "protection" afforded to a witness in s 11(3) of Royal Commissions Act – permissible use of extrinsic materials.

### [Tanious v NSW Land and Housing Corporation \[2020\] NSWCA 35](#)

APPEALS – leave to appeal under Supreme Court Act 1970 (NSW) s 101(2)(r) - appeal against primary judge's refusal to grant leave to appeal against decision of NSW Civil and

Administrative Tribunal – primary judge refused leave for failure to identify questions of law on appeal as required by Civil and Administrative Tribunal Act 2013 (NSW) s 83(1) – no error in primary judge’s reasons for refusing leave – application for leave to appeal dismissed.

[Webb v Port Stephens Council; Webb v Port Stephens Council; Port Stephens Council v Webb \[2020\] NSWCATAD 81](#)

GIPA Act applications – application for review and referral for contempt based on non-compliance of orders of Tribunal - held both applications dismissed because they lacked substance and were vexatious. GIPA Act application for restraint order under section 110 – held conduct of person making applications justified the making of a restraint order-order made. Costs reserved.

[Merrick v Zhu & Ye \[2020\] NSWCATAP 35](#)

APPEALS---notice of hearing – procedural fairness.

[Rizk v Stowers \[2020\] NSWCATAP 38](#)

Appeal Proceedings; leave to appeal; exercise of discretion to refuse adjournment and refuse leave to rely on evidence not filed in accordance with directions; no demonstrated prejudice; discretion miscarried because of incorrect information given by one party; substantial miscarriage of justice; decision not fair and equitable; remit to Tribunal for reconsideration; costs in the cause.

[ZND v ZNE \[2020\] NSWCATAP 34](#)

APPEAL— appeal against decision not to exercise the discretion conferred by s 36(1) Powers of Attorney Act 2003 (NSW) to conduct a review of the operation and effect of an enduring power of attorney – factors relevant to the exercise of that discretion APPEAL – whether the power conferred by 80(3) of the Civil and Administrative Tribunal Act 2013 (NSW) to deal with an appeal by way of a new hearing should be exercised ADMINISTRATIVE LAW – nature of the Tribunal’s power to inquire under 38(2), 38(6)(a) of the Civil and Administrative Tribunal Act 2013 (NSW) – whether Tribunal was obliged to exercise those powers ADMINISTRATIVE LAW – whether decision not to exercise the discretion conferred by s 36(1) of the Powers of Attorney Act to conduct a review of the operation and effect of an enduring power of attorney was “legally unreasonable” ADMINISTRATIVE LAW – whether the Tribunal failed to consider “relevant and significant material”.

[Mashayekhi v Legal Aid NSW \[2020\] NSWCATAD 78](#)

JURISDICTION – administrative review – legal aid - relevance of issues raised by the Applicant – enabling legislation – basis of Tribunal’s jurisdiction.

[Forbidden Foods Pty Ltd v Rice Marketing Board for the State of NSW \(No 2\) \[2020\] NSWCATAD 73](#)

GOVERNMENT INFORMATION – access application – whether overriding public interest against disclosure – publication of reasons – disclosure to intervenor.

[Betzis v Commissioner of Police \[2020\] NSWCATAD 71](#)

ADMINISTRATIVE LAW – administrative review - Government Information – refusal to deal with application – whether information is available to applicant under subpoena or other order of a court – exercise of discretion to refuse to deal ADMINISTRATIVE LAW – administrative review - Government Information – excluded information – whether information relates to judicial functions of coroner ADMINISTRATIVE LAW – administrative review - Government Information – balancing the public interest.

## LEGISLATION

### Commonwealth

#### Bills

[Telecommunications Legislation Amendment \(International Production Orders\) Bill 2020](#)

Amends the Telecommunications (Interception and Access) Act 1979 to: provide a framework for Australian agencies to obtain independently-authorized international production orders for interception, stored communications and telecommunications data directly to designated communications providers in foreign countries with which Australia has a designated international agreement; make amendments contingent on the commencement of the proposed Federal Circuit and Family Court of Australia Act 2020; and remove the ability for nominated Administrative Appeals Tribunal members to issue certain warrants. Also amends: six Acts to make consequential amendments; and the Surveillance Devices Act 2004 to correct a drafting error.

[National Integrity Commission Bill 2019](#)

The bill: establishes the Australian National Integrity Commission as an independent public sector anti-corruption commission for the Commonwealth; provides for the appointment, functions and powers of the National Integrity Commissioner and commissioners; and makes consequential amendments to the Law Enforcement Integrity Commissioner Act 2006, Ombudsman Act 1976 and Public Interest Disclosure Act 2013. House of Representatives. Removed from the Notice Paper in accordance with (SO 42) 03 March 2020

#### Regulation

[Telecommunications \(Emergency Call Service\) Amendment Determination 2020 \(No. 1\)](#)

06/03/2020 - This instrument amends the Telecommunications (Emergency Call Service) Determination 2019 which imposes requirements on carriers, CSPs and the ECPs in relation to emergency call services.

[Remuneration Tribunal Amendment Determination \(No. 1\) 2020](#)

04/03/2020 - This determination amends the Remuneration Tribunal (Remuneration and Allowances for Holders of Full time Public Office) Determination 2019 and the Remuneration Tribunal (Remuneration and Allowances for Holders of Part time Public Office) Determination 2019.

### NSW

#### Proclamations commencing Acts

[Better Regulation Legislation Amendment Act 2019 No 23 \(2020-85\)](#) – published LW 13 March 2020

Proclamation is to commence an amendment to the Residential Tenancies Act 2010 that excludes the application of that Act to certain short-term rental accommodation arrangements unless the person given the right to occupy the premises under the arrangement

[Fair Trading Amendment \(Short-term Rental](#)

Accommodation) Act 2018 No 41 (2020-86) – published LW 13 March 2020.

**Regulations and other miscellaneous instruments.**

[Fair Trading Amendment \(Code of Conduct for Short-term Rental Accommodation Industry\) Regulation 2020 \(2020-88\)](#) – published LW 13 March 2020

[Rail Safety \(Adoption of National Law\) Amendment \(Drug and Alcohol Testing\) Regulation 2020 \(2020-89\)](#) – published LW 13 March 2020

**KEY CONTACTS**

**PANEL RELATIONSHIP CONTACTS**

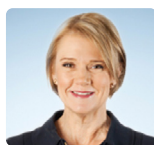
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Instructions may be emailed to [nswgovtlegal@tglaw.com.au](mailto:nswgovtlegal@tglaw.com.au) at anytime.



**[Mark Feetham](#)**

Partner  
+61 2 8248 5847  
+61 414 908 225



**[Loretta Reynolds](#)**

Partner, Markets  
+61 3 8080 3705  
+61 403 069 819

If you would like to receive a Contact Card with full list of contacts please email us.

**NEWSLETTER EDITOR**

**LIBRARY RESOURCE**



**[Sylvia Fernandez](#)**

Partner  
+61 2 8248 3499  
+61 418 340 118



**[Adeline Tran](#)**

Lawyer  
+61 2 9020 5709  
[resourcecentre@tglaw.com.au](mailto:resourcecentre@tglaw.com.au)

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- the opportunity to ‘brainstorm’ or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
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Once relevant details are received from you (whether that be by email or over the phone) it will be directed to the appropriate Thomson Geer Partner, Special Counsel or Senior Associate. The Help Desk number and

**SUB-PANEL APPOINTMENTS**

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- 1(c) Major commercial matters (incl. ICT)
- 2(a) Commercial and contractual matters
- 4(a) Employment and industrial relations law
- 4(f) Discrimination
- 6(b) General litigation and dispute resolution
- 6(c) Debt recovery

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