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ISSUE 86



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 86 of the NSW Public Sector Newsletter.

This issue highlights the developing privacy considerations arising from the COVID-19 measures implemented by Australian Governments, including privacy guidance issued by the Office of the Australian Information Commissioner for public servants working from home and the need for transparency around the Federal Government's new COVID-19 phone app.

The Government's COVID-19 response otherwise dominates, including at a State level, a boost to regional communities, jobs and social housing and trades and construction sectors resulting from the economic stimulus package, and support to tenants and landlords, and at a federal level, the establishment of a Senate Select Committee on COVID-19 to inquire into the Australian Government's response to the COVID-19 pandemic. The committee is to present its final report on or before 30 June 2022.

The High Court's judgment in *The Queen v Pell* is also addressed in this issue, as well as the usual round up of practice notes, cases and legislation.

COVID-19 USEFUL LINKS

[Australian Government latest Coronavirus news, updates and advice](#)

[Businesses and employment updates](#)

[Latest NSW Health Updates](#)

[NSW Government COVID-19 website](#)

[Self isolation and mandatory quarantine](#)

[Travel and transport advice](#)

IN THE MEDIA

NSW Government to boost resilience in regional NSW amid COVID-19

The NSW Government plans to use the COVID-19 stimulus package to expand plantation nurseries, rebuild local showground and upgrade regional hospitals,

courthouses and Aboriginal housing. (16 April 2020) <https://www.nsw.gov.au/news/nsw-government-to-boost-resilience-regional-nsw-amid-covid-19>

COVID-19. Free help for pandemic legal issues

In partnership with Legal Aid NSW and Law Access NSW, the NSW Government has launched free legal help for people with legal issues under the COVID-19 public health laws. (15 April 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/covid-19.-free-help-for-pandemic-legal-issues>

Economic stimulus to boost jobs and social housing

The targeted stimulus program sets to boost the NSW economy by delivering maintenance works and upgrades on public housing properties. (15 April 2020) <https://www.nsw.gov.au/news/economic-stimulus-to-boost-jobs-and-social-housing>

Slashed licence fees a big win for businesses

Premier Gladys Berejiklian announced licence fee waivers for up to 200,000 licence holders across the trades and construction sectors as part of the economic stimulus package. (15 April 2020) <https://www.nsw.gov.au/news/slashed-licence-fees-a-big-win-for-businesses>

NSW Government offers \$440 million land tax break to support tenants and landlords

Greater protection for NSW commercial tenants who have been impacted by COVID-19 by providing a land tax relief package to eligible commercial landlords. (13 April 2020) <https://www.nsw.gov.au/news/land-tax-break-to-support-tenants-and-landlords>

Over 200 organisations outline human rights concerns at outset of COVID crisis

More than 200 not-for-profit and community organisations have backed a major report calling on the Australian Government to strengthen its commitment to human rights in its laws, policies and practices. (09 April 2020) <https://www.hrlc.org.au/news/2020/4/9/upr-human-rights-concerns-covid-crisis>

LCA: Comments on the High Court judgment *Pell v The Queen*, from the Law Council of Australia President, Ms Pauline Wright

The High Court is the ultimate decision-maker within our judicial system in Australia and its job is to impartially scrutinise decisions made in lower courts to determine whether the law has been properly applied. In criminal trials, the prosecution bears the burden of proof and must prove every element of their case to the jury beyond a reasonable doubt. (08 April 2020) <https://www.lawcouncil.asn.au/media/media-releases/comments-on-the-high-court-judgment-pell-v-the-queen>

Parliamentary scrutiny of Federal Government's COVID-19 response vital for democracy

The Human Rights Law Centre welcomed the Senate's vote to establish a cross-party Senate Select Committee to provide democratic oversight and scrutiny of the Morrison Government's response to the COVID-19 public health emergency. (08 April 2020) <https://www.hrlc.org.au/news/2020/4/8/covid-senate-select-committee>

Greater transparency needed around Federal Government's new COVID 19 phone app

Human rights and privacy experts have called on Federal Health Minister Greg Hunt to explain privacy and surveillance issues arising from the Federal Government's recently launched Coronavirus Australia app. (08 April 2020) <https://www.hrlc.org.au/news/2020/4/8/greater-transparency-needed-around-federal-governments-new-covid-19-phone-app>

NSW businesses to benefit as payroll tax measures take effect

The NSW Government's payroll tax assistance will take effect by deferring payroll tax payments for businesses for six months due to COVID-19. (7 April 2020) <https://www.nsw.gov.au/news/nsw-businesses-to-benefit-from-today-as-payroll-tax-measures-take-effect>

Online safety guide for women and young girls

Minister for Women Bronnie Taylor announced a new digital toolkit designed to educate and empower young women and girls to stay safe online is now live. (04 April 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/online-safety-guide-for-women-and-young-girls>

For more information, visit <https://www.esafety.gov.au/women>.

NSW justice system overhaul a 'clear casualty' of COVID-19

The COVID-19 Legislation Amendment (Emergency Measures) Act 2020 sparks fears that domestic violence victims may slip through the cracks. (01 April 2020) <https://www.abc.net.au/news/2020-04-01/nsw-justice-system-overhaul-clear-casualty-of-covid-19/12109854>

IN PRACTICE AND COURTS

[CDPP update regarding COVID-19](#)

The Commonwealth Director of Public Prosecutions Ms Sarah McNaughton SC has this morning released an update to key stakeholders regarding COVID-19 and progression and early resolution of criminal cases. (03 April 2020)

Practice Notes

[Joint Practice Direction - Special measures in response to COVID-19](#)

Family Court of Australia and Federal Circuit Court of Australia, 2 of 2020 (31 March 2020)

[OAIC: COVID-19 Privacy Guidance](#)

The OAIC has released privacy guidance for agencies and private sector employers to help keep workplaces safe and handle personal information appropriately as part of the COVID-19 response. This includes answers to frequently asked questions. We've also issued detailed advice to help regulated entities assess the privacy risks involved in changed working environments. (08 April 2020) [COVID-19](#)

[OAIC: COVID-19 response from Australian privacy regulators](#)

As entities move fast to find solutions to public health and economic problems, Privacy Commissioners and Ombudsmen reiterate the value of conducting short-form Privacy Impact Assessments to help ensure personal information is handled in a way that is necessary, reasonable and proportionate. (27 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. 12/2020, 6 April 2020.

Current Senate Inquiries

Select Committee on [COVID-19](#)

Environment and Communications References Committee

[Press Freedom](#)

On 16 March 2020, the Committee presented a progress report recommending that the Senate grant an extension of time to report until 20 May 2020.

Legal and Constitutional Affairs References Committee

[Nationhood, national identity and democracy](#)

On 23 March 2020 the committee's reporting date was extended to 9 September 2020.

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 \[Provisions\]](#)

Report by 20 November 2020.

NSW

COVID - 19: Information for Attending Court – April 2020

The New South Wales Bar Association's [consolidated guide to COVID-19-related court arrangements](#) has again been updated in terms of recent developments and includes:

[Amendment No 93 to the Uniform Civil Procedure Rules](#), includes changes regarding deeming of judgments as entered in certain circumstances and the assignment of certain matters commenced under the Public Works and Procurement Act 1912 to the Commercial List in the Equity Division of the Supreme Court; and

[Amendment No 433 to the Supreme Court Rules](#), includes changes regarding filing of bail applications and the new email address for applications to the Supreme Court under the Service and Execution of Process Act 1982 (Cth);

[Update to the Profession](#) from the Chief Justice of the Family Court of Australia and Chief Judge of the Federal Circuit Court; and

Local Court of NSW – Reissued and updated [Chief Magistrate's Memorandum \(No.4\) EAGP COVID-19](#) and [Chief Magistrate's Memorandum \(No.9\) - Updated and Consolidated Listing Adjustments](#), which extends existing arrangements in relation to defended hearings and consolidates and clarifies those arrangements previously published in separate memoranda.

[NCAT: Consumer and Commercial Division matters to be notified via email](#)

Parties in NCAT's Consumer Commercial Division may have noticed that email has been set as the preferred address for communication from the Tribunal. Parties can update edit or update an email address previously provided to NCAT using [eServices](#). (30 March 2020)

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.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Recommendations on privacy and data protection in the fight against COVID-19](#)

Estelle Massé; Access Now: 31 March 2020

In this paper, the authors provide privacy and data protection recommendations for governments to fight against COVID-19 in a rights-respecting manner.

[Australian government guide to Regulatory Impact Analysis](#)

Department of the Prime Minister and Cabinet (Australia): 30 March 2020

This guide has been prepared for every member of the Australian Public Service involved in policy making. It provides the context for regulation and encourages policy makers to think about potential impacts early in the policy process.

[Case Management by the Office of the Commonwealth Director of Public Prosecutions](#)

ANAO: 30 March 2020

The audit objective was to examine the efficiency of the Office of the Commonwealth Director of Public Prosecutions' (CDPP's) case management.

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](#)

CASES

[Pell v The Queen \[2020\] HCA 12](#)

Special leave to appeal granted.

Appeal treated as instituted and heard instanter and allowed.

Criminal law – Sexual offences against children – Appeal against conviction by jury on ground that verdict unreasonable or cannot be supported having regard to whole of evidence – Where prosecution case wholly dependent upon acceptance of truthfulness and reliability of complainant's account – Where jury assessed complainant's evidence as credible and reliable – Where witnesses gave unchallenged evidence of specific recollections, practices and routines inconsistent with acceptance of complainant's account ("unchallenged inconsistent evidence") – Where Court of Appeal required to take into account forensic disadvantage experienced by applicant – Whether prosecution negated reasonable possibility that applicant did not commit offences – Whether Court of Appeal required applicant to establish offending impossible to raise reasonable doubt – Whether unchallenged inconsistent evidence required jury, acting rationally, to have entertained doubt as to applicant's guilt.

Criminal practice – Appeal – Video evidence – Where evidence of complainant and other witnesses recorded – Where Court of Appeal viewed recorded witness testimony – Whether proper discharge of appellate court's function necessitated review of recorded witness testimony.

Words and phrases – "beyond reasonable doubt", "compounding improbabilities", "credibility and reliability", "function of the appellate court", "function of the jury", "impossibility", "improbability of events", "invariable practice", "jury's advantage in seeing and hearing the witnesses", "negated the reasonable possibility", "opportunity witnesses", "realistic opportunity for the offending to have occurred", "religious ritual", "routines and practices", "significant forensic disadvantage", "significant possibility that an innocent person has been convicted", "solid obstacles to conviction", "standard and burden of proof", "unchallenged evidence", "uncorroborated", "video-recordings of the witnesses at trial".

Crimes Act 1958 (Vic), ss 45(1), 47(1).

Criminal Procedure Act 2009 (Vic), ss 276(1)(a), 378, 379(b)(i).

Judiciary Act 1903 (Cth), s 37.

Jury Directions Act 2015 (Vic), ss 4A, 39.

[Australian Rail Track Corporation Limited v Dollisson \[2020\] NSWCA 58](#)

STATUTORY INTERPRETATION – whether reference to “compensation” in s 134AB(1) of the Accident Compensation Act 1985 (Vic) is a reference to compensation under that Act or to compensation whether or not awarded under the Act or the Act of some other state or territory – expressio unius reasoning inappropriate where dealing with interpretation of a “patchwork” statute. WORKERS COMPENSATION – whether worker who was injured in Victoria but was not entitled to compensation under Victorian workers compensation legislation was nevertheless required to pass through statutory gateways under Victorian legislation when seeking common law damages.

[Mawas v Commissioner of Corrective Services New South Wales \[2020\] NSWSC 319](#)

ADMINISTRATIVE LAW – judicial review – s 69 of the Supreme Court Act 1970 – no leave required to institute – leave to bring proceedings out of time – inflexible application of policy – pre-release leave – exceptional circumstances – reasons for decision – further amended summons dismissed – costs reserved.

[Choi v Commissioner of Police, NSW Police Force \[2020\] NSWCATAD 95](#)

Administrative law – Freedom of Information – Government Information Public Access – access application – determination without a hearing – role of agency in proceedings and in choosing its witnesses – decision that information not held -whether searches were reasonable – whether disclosure of information could reasonably be expected to prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency’s functions – whether disclosure of information could reasonably be expected to prejudice the effective exercise by an agency of the agency’s functions

[Department of Education v Zonneville \[2020\] NSWCATAD 96](#)

ADMINISTRATIVE LAW – FOI – access applications -application for restraint order under section 110 – exercise of discretion - held conduct of person making applications justified the making of a restraint order-order made.

[EGR v Commissioner of Police, NSW Police Force \[2020\] NSWCATAD 94](#)

ADMINISTRATIVE REVIEW - government information - judicial and prosecutorial functions - excluded information - conclusive presumption - overriding public interest - personal factors - balancing of public interests

[Hotait v Commissioner for Fair Trading, Department of Finance, Services and Innovation \[2020\] NSWCATOD 36](#)

ADMINISTRATIVE LAW - administrative review of decision to refuse the applicant’s application for a contractor licence in the category of general building work under the Home Building Act 1989 (NSW) – applicant a director of an externally-administered company - whether there is no evident risk that future work would not be completed - whether applicant took all reasonable steps to avoid external administration

LEGISLATION

Commonwealth

NSW

Regulations and other miscellaneous instruments

[Administrative Arrangements \(Administration of Acts—Amendment No 2\) Order 2020](#) (2020-136) – published LW 6 April 2020

[Administrative Arrangements \(Administrative Changes—Resilience NSW\) Order 2020](#) (2020-137) – published LW 6 April 2020

[Liquor Amendment \(Waiver of Fees\) Regulation 2020](#) (2020-138) – published LW 8 April 2020

[Public Health Amendment \(COVID-19 Spitting and Coughing\) Regulation 2020](#) (2020-145) – published LW 9 April 2020

[Supreme Court \(Amendment No 433\) Rule 2020](#) (2020-139) – published LW 9 April 2020

[Uniform Civil Procedure \(Amendment No 93\) Rule 2020](#) (2020-140) – published LW 9 April 2020

[Crimes \(Administration of Sentences\) Amendment \(COVID-19\) Regulation 2020](#) (2020-123) – published LW 3 April 2020

[Evidence \(Audio and Audio Visual Links\) Amendment \(Emergency Measures—COVID-19\) Regulation 2020](#) (2020-125) – published LW 3 April 2020

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

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Scope

We are pleased to be able to work collaboratively with NSW Government to offer the following services (at no charge):

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- 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
- advice regarding potential transactions – up to 30 minute

teleconference with a Partner, Special Counsel or relevant Senior Associate.

(Help Desk Services)

Please note that the Help Desk Services are only available in respect of any matter which is currently unallocated i.e. to this firm or any other firm.

Key Contact and Help Desk Process

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- (a) Calling 02 8248 5810; or
- (b) Emailing legalhelpdesk@tglaw.com.au

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

Thomson Geer are appointed to the following NSW Government sub-panels:

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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