

15 MAY 2020

ISSUE 88



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 88 of the NSW Public Sector Newsletter.

The COVIDSafe App is highlighted in this issue, including the release of the draft legislation codifying existing privacy protections in relation to individual's data collected by the App, as well as commentary on the draft by the Law Council.

This issue also discusses broader COVID-19 related privacy issues, including guidance published by the Office of the Australian Information Commissioner (OAIC) and statements released by the OAIC and the Australian and New Zealand Information Access Commissioners regarding privacy and data protection.

In other news, the Law Society has developed guidance for the new arrangements of the witnessing of legal documents electronically during COVID-19.

This issue of the Newsletter also provides the usual round-up of practice notes, cases and legislation.

COVID-19 USEFUL LINKS

[Australian Government latest COVID-19 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

COVID-19: safety paramount as district court jury trials resume

Strict measures to ensure juror safety underpin the decision by the Chief Judge of the District Court to resume jury trials at selected locations from Monday 15 June 2020. (11 May 2020) <https://www.nsw.gov.au/news/covid-19-safety-paramount-as-district-court-jury-trials-resume>

NSW to ease COVID-19 restrictions from Friday 15 May

The NSW Government will continue to closely monitor COVID-19 rates but will be easing restrictions to allow for more businesses to open up, more people to stay in work and more personal freedoms. (10 May 2020) <https://www.nsw.gov.au/news/nsw-to-ease-covid-19-restrictions-from-friday-15-may>

Consumer Data Right Compliance and Enforcement Policy released

The ACCC and the OAIC jointly released the Compliance and Enforcement Policy for the Consumer Data Right. The Policy outlines the approach that the ACCC and the OAIC have adopted to encourage compliance with, and address breaches of, the Consumer Data Right regulatory framework. (08 May 2020) <https://www.accc.gov.au/media-release/consumer-data-right-compliance-and-enforcement-policy-released>

LCA: Funding boost will help front line legal services

The \$20 million earmarked for domestic violence, \$29.8 million towards tenancy disputes, insurance, credit and debt related problems, work related claims and the remaining \$13.5 million on IT upgrades is a welcome injection of funding that will help meet a rise in demand for legal services. (08 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/funding-boost-will-help-front-line-legal-services>

New agreement to deliver better outcomes for phone and internet consumers and providers

Telephone and internet users across Australia are expected to benefit from a new approach to collaboration and information-sharing by the Australian Communications and Media Authority (ACMA) and the Telecommunications Industry Ombudsman (TIO). (06 May 2020) <https://www.acma.gov.au/articles/2020-05/new-agreement-deliver-better-outcomes-phone-and-internet-consumers-and-providers>

COVID-19: The duty to document does not cease in a crisis, it becomes more essential

Australian and New Zealand Information Access Commissioners join with their international counterparts in their clear call for documentation, preservation and access to information during COVID-19. (06 May 2020) <https://www.ipc.nsw.gov.au/statements/covid-19-duty-document-does-not-cease-crisis-it-becomes-more-essential>

COVID-19: \$9m stimulus a win for justice and jobs in regional NSW

A fast-tracked program of courts and corrections facility upgrades is about to pump \$9 million through regional economies hit hard by COVID-19 restrictions. (06 May 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/9m-stimulus-a-win-for-justice-and-jobs-in-regional-NSW>

New privacy survey highlights the need to improve awareness of privacy rights in NSW

The NSW Privacy Commissioner, Samantha Gavel published the results of the latest two-yearly survey of NSW community attitudes towards privacy. (06 May 2020) <https://www.ipc.nsw.gov.au/media-releases/new-privacy-survey-highlights-need-improve-awareness-privacy-rights-nsw>

OAIC confronts pandemic privacy

The OAIC has revealed that Government Agencies and other organisations are struggling with their obligations under the Privacy Act 1988 while combating the spread of COVID-19. (05 May 2020) <https://www.oaic.gov.au/updates/news-and-media/covid-19/>

Law Council President's statement on the COVIDSafe exposure draft

The public release of the government's exposure draft Bill underpinning the COVIDSafe App is welcomed by the Law Council. The Bill proposes to replace the Determination made under the *Biosecurity Act 2015 (Cth)* with primary legislation, by inserting a new provision in the *Privacy Act 1988 (Cth)*. (05 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-presidents-statement-on-the-covidsafe-exposure-draft>

Legislation for COVIDSafe App Privacy Protections

Attorney-General, Christian Porter, has released draft legislation which will codify the existing protections for individuals' data collected by the COVIDSafe App that have been established in the Health Minister's Biosecurity Act Determination. (04 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/legislation-covdsafe-app-privacy-protections-4-may-2020>

New APS strategy to boost digital skills

The Australian Public Service Commissioner, Peter Woolcott, has released an Australian Public Service (APS) Digital Professional Stream Strategy to enhance the digital expertise of the APS workforce. (04 May 2020) <https://www.apsc.gov.au/aps-digital-professional-stream>

IN PRACTICE AND COURTS**[ACICA Guide - Managing the Impact of COVID-19: Use of Arbitration to Mitigate Risk](#)**

The Guide is intended to raise awareness and promote the use of arbitration in appropriate circumstances to resolve disputes and manage risk during COVID-19. It contains links to relevant ACICA resources. (29 April 2020)

[Attorney-General: COVIDSafe draft legislation](#)

We have developed draft legislation, the *Privacy Amendment (Public Health Contact Information) Bill 2020*, to support the [COVIDSafe App](#) (released on 26 April 2020) and provide strong ongoing privacy protections. The Australian Government intends to introduce this draft legislation in Parliament in the week of 11 May 2020.

[ICIC signs joint international statement on the duty to document decisions and transactions now and for the future](#)

The following statement has been released by International Conference of Information Commissioners and aligned organisations to recognise and promote sound information management practices as part of Information Awareness Month. (04 May 2020)

[Federal Circuit Court of Australia remodelled website homepage](#)

The Federal Circuit Court of Australia launched a remodelled website homepage on 30 April 2020. The content of the website has not changed, but court users and practitioners will notice a new layout, including direct links to the Court's three main areas of filing: family law, migration law and general federal law.

Courts Practice Directions**[Joint Practice Direction 3 of 2020 - The COVID-19 List](#)**
Federal Circuit Court of Australia, 3 of 2020

This Joint Practice Direction establishes a fast-tracked, national list in each Court ("the COVID-19 List") to allow the Courts to swiftly deal with urgent COVID-19 applications on a national basis

[Joint Practice Direction 3 of 2020 - The COVID-19 List](#)
Family Court of Australia, 3 of 2020**Australia update**

The Family Court of Australia and the Federal Circuit Court of Australia have [announced](#) they are establishing a court list dedicated to deal exclusively with urgent parenting-related disputes that have arisen due to the COVID-19 pandemic. The list will commence on 29 April 2020.

Alternative Dispute Resolution

The Courts have issued a [guide to electronic Alternative Dispute Resolution](#). This guide is for ADR events conducted in the Family Court of Australia and the Federal Circuit Court of Australia. (28 April 2020)

[OIAC: Consumer Data Right Compliance and Enforcement Policy released](#)

The ACCC and the Office of the Australian Information Commissioner jointly released the Compliance and Enforcement Policy for the Consumer Data Right. View a copy of the [Compliance and Enforcement Policy](#). (05 May 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. New [detailed advice](#) will help regulated entities assess the privacy risks involved in changed working environments, and a new [step-by-step tool](#) to help guide them through the Privacy Impact Assessment process. (05 May 2020)

[AAT: COVID-19: New special measures practice directions – 28 April 2020](#)

The AAT President has issued five special measures practice directions that set out how the AAT will operate while COVID-19 impacts its services. The special measures practice directions may take precedence over other directions that deal with the same matter. These directions are in effect from 29 April 2020 for the following divisions: [General, Freedom of Information and Veterans' Appeals](#).

[AAT Bulletin](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions, including immigration and citizenship. Issue No. 14/2020, 4 May 2020.

NSW

[COVID-19: Information for attending Court](#)

The New South Wales Bar Association's consolidated guide to COVID-19-related court arrangements has again been updated in terms of recent developments. (07 May 2020)

[Electronic Transactions Amendment Regulation 2020](#)

The new *Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020* is now in effect and allows for the witnessing of legal documents to be conducted electronically during the COVID-19 pandemic. The Law Society has developed guidance to the profession for the application of the new arrangements. (04 May 2020)

NSW IPC

[NSW Privacy Commissioner Statement on use of Commonwealth mobile tracing App data for managing the COVID-19 pandemic](#). (27 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 over the past five years.

[Prosecution outcomes web table](#). (30 April 2020)
[Briefs with the DPP web table](#). (29 April 2020)

PUBLISHED - ARTICLES, PAPERS, REPORTS

[First interim report of the Joint Select Committee on implementation of the National Redress Scheme April 2020](#)

The establishment of the National Redress Scheme in 2018 has made a symbolic and practical contribution to the pursuit of justice for survivors of institutional child sexual abuse. However, as this interim report demonstrates, much more needs to be done to improve.

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

[CXXXVIII v Honourable Justice Richard Conway White \[2020\] FCAFC 75](#)

JUDICIAL REVIEW – application for judicial review of a decision of the first respondent to issue an arrest warrant under s 31 of the Australian Crime Commission Act 2002 (Cth) (the Act) – where applicant claims that the arrest warrant is invalid – whether the first respondent had reasonable grounds to believe the applicant was likely to commit an offence against s 30(1)(b) of the Act – where applicant claims the second, third and fourth respondents failed to comply with their duty on an ex parte application to disclose all material facts – where applicant claims that the first respondent took into account evidence which was not on oath in deciding to issue the warrant such that the warrant was issued in breach of s 31(1) of the Act – interpretation of s 30(1)

CONSTITUTIONAL LAW – where applicant claims s 31 of the Act is invalid because it purports to confer a duty, power and/or function on judges of the Federal Court of Australia, acting as persona designata, which is incompatible with their commissions as judges of the Court and/or with the proper performance of their judicial functions as judges of the Court

Australian Crime Commission Act 2002 (Cth), ss 31, 30, 24A, 7C, 28, 7, 20, 21, 22

Judiciary Act 1903 (Cth), s 78B

[Johnson Property Group Pty Limited v Lake Macquarie City Council \(No 2\) \[2020\] NSWLEC 42](#)

PROCEDURE – separate determination of question – question of law – right to appeal against rejection of development application – no right to appeal – appeal dismissed
STATUTORY INTERPRETATION – ss 8.2, 8.6, 8.7 Environmental Planning and Assessment Act 1979 – whether “decision” and “determination” of consent authority are distinct terms – decision is distinct from determination – rejection of development application is a decision – approval and refusal are determinations – decision to reject is not a decision subject to appeal that the Division so provides – s 8.7 right to appeal limited to determinations

[EIF v Legal Aid New South Wales \[2020\] NSWCATAD 113](#)

ADMINISTRATIVE LAW – government information – overriding public interest against disclosure – legal professional privilege

[DYD v Commissioner of Police \[2020\] NSWCATAD 119](#)

GOVERNMENT INFORMATION (PUBLIC ACCESS) – audit of an IT system (COPS) and whether making of a new record - children's privacy - considering personal factors of Applicant - balancing of public interest considerations for and against disclosure - persuasiveness of prior Tribunal decisions

[James v State of NSW \(Department of Justice \(Corrective Services NSW\)\) \[2020\] NSWCATAD 117](#)

HUMAN RIGHTS – discrimination – whether power to amend complaint under s 103 of Anti-Discrimination Act 1977 (NSW) should be exercised

[Lipscombe v Blue Mountains City Council \[2020\] NSWCATAD 121](#)

ADMINISTRATIVE LAW – Government Information (Public Access) Act -- legal professional privilege – whether privilege waived

[Little v Department of Communities and Justice \[2020\] NSWCATAD 112](#)

ADMINISTRATIVE LAW – government information – access application – reasonable searches – conclusive presumption – personal information – whether public interest considerations against disclosure outweigh public interest considerations in favour of disclosure

[Masters v Reserve Hotels Pty Ltd atf the NBF Trust \[2020\] NSWCATAD 115](#)

ANTI-DISCRIMINATION – direct discrimination on the grounds of race in contravention of s.19(a) of the Anti-Discrimination Act 1977 (NSW) – refusal to provide access into and hence service at the hotel premises on the basis that the Applicants were not "Asian" – refusal to provide access by security guard – whether the acts of the security guard were as agent for the Respondents, being the security company and the owners of the licensed premises – whether the Respondents have made out the defences under s.53(1) and (2) of the Anti-Discrimination Act 1977 (NSW)

[McCryystal v Commissioner of Police \[2020\] NSWCATAD 122](#)

ADMINISTRATIVE LAW – Freedom of Information - Government Information (Public Access) Act -- GIPA – weight of evidence – public interest considerations against disclosure – balance of personal factors of applicant in favour of release

[Medlyn v Commissioner of Police \[2020\] NSWCATAD 125](#)

ADMINISTRATIVE REVIEW – access to government information – access application – whether the discretion to refuse to deal with application under s 60(1)(d) of the Government (Public Access) Act 2009 should be exercised – whether public interest considerations against disclosure, on balance, outweigh the public interest considerations in favour of disclosure

[Nicholson v Office of Local Government \[2020\] NSWCATAD 126](#)

ADMINISTRATIVE LAW – procedure – time limits – appeal lodged out of time – no application for extension of time - principles to be applied – whether reasonable excuse for the delay in making the application

[DTN v Commissioner of Police \[2020\] NSWCATAP 73](#)

ADMINISTRATIVE REVIEW – privacy – health information – damages for contravention of Health Privacy Principle – causation – review of discretionary judgment – parameters of "ancillary orders" under s 55(2)(g) of the Privacy and Personal Information Protection Act 1998 (NSW) APPEAL – practice and procedure – error of law – review of discretionary orders WORDS AND PHRASES – meaning of words "ancillary orders" under s 55(2)(g) of the Privacy and Personal Information Protection Act 1998 (NSW)

[Aboukalam v Commissioner for Fair Trading \[2020\] NSWCATOD 46](#)

ADMINISTRATIVE REVIEW – occupational licensing – renewal of contractor licence refused - interim order – power to grant temporary licence – whether temporary licence should be granted

[Barrett v Commissioner for Fair Trading \[2020\] NSWCATOD 45](#)

ADMINISTRATIVE LAW- refusal to renew contractor licence under Home Building Act 1989 (NSW) – whether applicant is fit and proper person to hold contractor licence

LEGISLATION[\[Exposure Draft \] Privacy Amendment \(Public Health Contact Information\) Bill 2020](#)

Will reinforce the protections set out in the Determination made by the Minister for Health under the Biosecurity Act 2015 on 25 April 2020, placing the protections into primary legislation through amendments to the Privacy Act 1988.

Note: Under the determination, it is a criminal offence to collect, use or disclose COVIDSafe App data for a purpose that is not related to contact tracing. A maximum penalty of 5 years imprisonment or \$63,000 applies to breaches of the determination.

[Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#)

05/05/2020 - This instrument modifies the Corporations Act 2001 to enable Annual General Meetings to be run electronically, and to enable electronic signatures to be used, to address the impacts of the Coronavirus.

NSW**Regulations and other miscellaneous instruments**

[Public Holidays Amendment \(COVID-19 Revocations\) Order 2020](#) (2020-187) – published LW 30 April 2020

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with the appropriate expertise and achieving maximum efficiency.

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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

You can access the Help Desk by:

- (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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