

29 MAY 2020

ISSUE 89



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 89 of the NSW Public Sector Newsletter.

In this fortnight's newsletter, the New South Wales Supreme Court will begin easing restrictions to allow for face-to-face hearings as soon as 1 June 2020.

At the federal level, the COVIDSafe App remains in focus, including the passage of legislation which enshrines in law the privacy protections for users of the App and potential changes to the App prompted by Apple and Google's "exposure notification" technology.

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

**COVIDSafe may need privacy changes to use new Apple and Google tool**

The new "exposure notification" technology rolled out by Apple and Google could help solve the technical troubles experienced by the federal government's COVIDSafe App, but may also require changes to the way the App collects personal data. (21 May 2020) <https://www.smh.com.au/technology/covidsafe-may-need-privacy-changes-to-use-new-apple-and-google-tool-20200521-p54v36.html>

**NSW Supreme Court moves towards resuming face-to-face hearings**

The NSW Supreme Court announced its first steps towards reopening to parties and the public, as government restrictions ease around the COVID-19 pandemic. (20 May 2020) [http://www.supremecourt.justice.nsw.gov.au/Pages/coronavirus\\_covid19\\_announcement.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/coronavirus_covid19_announcement.aspx)

**NSW Privacy Commissioner Statement on use of Commonwealth mobile tracing App data for managing the COVID-19 pandemic**

The NSW Privacy Commissioner has issued a statement saying noteworthy elements of the App are that the information will be used for a narrow purpose, which is for contact tracing by health authorities where someone has been diagnosed with COVID-19 and the preclusion on the ability to use the data for a law enforcement purpose. (20 May 2020) <https://www.ipc.nsw.gov.au/statements/nsw-privacy-commissioner-statement-use-commonwealth-mobile-tracing-app-data-managing-covid-19-pandemic-0>

**Law Council President, Pauline Wright, statement on object failure of domestic violence inquiry**

The Law Council commends Senator Rex Patrick on the substance of his dissenting report and for calling out the failings of the committee in meeting its responsibilities, both as a committee of the Parliament and to the people of Australia. (20 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-president-pauline-wright-statement-on-object-failure-of-domestic-violence-inquiry>

**New purchasing rules for COVID-19**

The Department of Finance has unveiled new arrangements for procurement and contracting to support Australian businesses providing goods and services to Government. The Finance Department has released a Policy Note to assist entities considering procurements or addressing contractual matters with affected suppliers. (18 May 2020) <https://www.finance.gov.au/government/procurement/covid-19-procurement-policy-note>

**OAIC: COVID-19**

The OAIC understands Australian Government agencies and organisations covered by the Privacy Act 1988 are facing unprecedented challenges in combating the spread of COVID-19. (16 May 2020) <https://www.oaic.gov.au/updates/news-and-media/covid-19/>

### New rules for staff changes in pandemic

The APSC has issued a new Circular dealing with staffing mobility arrangements in response to COVID-19. The focus of Agencies and employees should be on the continued delivery of critical functions to the Australian public, as well as ensuring workplaces are safe for all employees, the Circular says. (18 May 2020) <https://www.apsc.gov.au/circular-20206-temporary-mobility-arrangements-part-continued-response-covid-19>

### Royal Commission to identify learnings of COVID-19 outbreaks in aged care

The aged care Royal Commission's investigation into the impact of COVID-19 on aged care services will focus on the lessons to be learned rather than on finding fault. (15 May 2020) <https://www.australianageingagenda.com.au/royal-commission/rc-to-identify-learnings-of-covid-19-outbreaks-in-aged-care/>

### APSC sets scene for return to offices

The Australian Public Service Commission (APSC) has issued a Circular calling on Agency heads to implement a transition plan to return employees to their usual workplaces in the wake of the COVID-19 pandemic. (14 May 2020) <https://www.apsc.gov.au/circular-20205-preparing-covid-safe-transition-aps-workplaces>

### OAIC expands oversight role as privacy safeguards for COVIDSafe App made law

Australian Information Commissioner and Privacy Commissioner Angelene Falk has welcomed changes to the Privacy Act 1988 that enshrine strict privacy safeguards for COVIDSafe App data in law. (14 May 2020) <https://www.oaic.gov.au/updates/news-and-media/oaic-expands-oversight-role-as-privacy-safeguards-for-covidsafe-app-made-law/>

### Enterprise agreement changes to be limited to 12 months

The Morrison Government will issue a new Regulation under the Fair Work Act to limit any changes made to enterprise agreements in response to the COVID-19 pandemic to be effective for no more than 12 months. (14 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/enterprise-agreement-changes-be-limited-12-months-14-may-2020>

### Letter to Commissioner re article published in the Australian on 7 May 2020

News Corps' The Australian has issued an apology to the Commissioner regarding the article 'It's an occupational Hazard for whom the buck stops' by David Penberthy. (14 May 2020) <https://www.rubyprincessinquiry.nsw.gov.au/assets/scirp/files/Letter-to-Commissioner-13.05.20.pdf>

### NSW Privacy Commissioner reports on Service NSW Privacy Breach

The Commissioner has been advised by Service NSW of a privacy breach affecting some of its customers. It is a timely reminder to everyone in the community to be vigilant and not open emails from unknown or unverified sources. (14 May 2020) <https://www.ipc.nsw.gov.au/statements/statement-nsw-privacy-commissioner-service-nsw-privacy-breach>

### Law Council pleased to see legislation for Tracing App passed

The Law Council of Australia is pleased to see the passage of the *Privacy Amendment (Public Health Contact Information) Bill 2020* through Parliament. This will put the regulatory framework governing the operation of the COVIDSafe App on a statutory footing, replacing the Determination made under the Biosecurity Act 2015 (Cth). (14 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-pleased-to-see-legislation-for-tracing-app-passed>

### Statement on proposed amendments to the ASIO Act by Law Council President

The Law Council of Australia is very concerned with some aspects of the proposed amendments to the Australian Security and Intelligence Act 1975 (Cth). If adopted, the amendments would redesign the ASIO's compulsory questioning warrant regime and repeal its specific detention powers. (13 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/statement-on-proposed-amendments-to-the-asio-act-by-law-council-president-pauline-wright>

### Improving justice outcomes for class action members

Ensuring Australians get their fair share of legal settlements will be the focus of a parliamentary committee inquiry which will examine all aspect of the class action system, including the enormous profits being made by litigation funders. (13 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/improving-justice-outcomes-class-action-members-13-may-2020>

### Ruby Princess inquiry lifts lid on 'reprehensible shortcomings' and the people who 'forgot' to relay crucial information

Over six days of hearings spread out over several weeks, the key players in the Ruby Princess saga have been questioned over their actions prior before the cruise ship docked in Sydney on March 19. (12 May 2020) <https://www.abc.net.au/news/2020-05-12/ruby-princess-coronavirus-nsw-inquiry-hears-of-shortcomings/12235396>

### Safeguards needed in arrangements with overseas partners in digital era

The Law Council of Australia acknowledges the enormous challenges facing law enforcement agencies when requiring access to crucial data stored in foreign countries. These agreements need a domestic legal framework that contains adequate safeguard. (12 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/safeguards-needed-in-arrangements-with-overseas-partners-in-digital-era>

### ACCC can submit evidence from BlueScope criminal investigation in civil case

The ACCC has been given the green light to use witness statements prepared during its criminal cartel investigation of BlueScope Steel in the civil penalty proceedings launched by the regulator, but a fight with the steel giant over the admissibility of the evidence still looms. (12 May 2020) <http://classic.austlii.edu.au/au/cases/cth/FCA/2020/625.html>

## Law Council President, Pauline Wright, statement on the release of COVIDSafe source code

The Australian Government's release of the COVIDSafe App source code is welcomed by the Law Council of Australia, giving all Australians the chance to satisfy themselves that the App will be used in the way that it is intended. (11 May 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-president-pauline-wright-statement-on-the-release-of-covidsafe-source-code>

## IN PRACTICE AND COURTS

### Current APH Inquiries and Consultations

#### Legal and Constitutional Affairs Legislation Committee

[Migration Amendment \(Prohibiting Items in Immigration Detention Facilities\) Bill 2020 \[Provisions\]](#)

[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.

[Native Title Legislation Amendment Bill 2019 \[Provisions\]](#)

#### Legal and Constitutional Affairs References Committee

[Inquiry into domestic violence with particular regard to violence against women and their children](#)

[Nationhood, national identity and democracy](#)

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

### Attorney-General's List

Efficiency of the Administrative Appeals Tribunal's Case Management

Implementation of Recommendations from the Independent Review of Whole-of-Government Internal Regulation

Implementation of the Revised Protective Security Policy Framework

Implementation of the Whole-of-Government Legal Services Panel

Management of Complaints by the Office of the Commonwealth Ombudsman

### [Aged Care Visitor Access Code](#)

The Aged Care Visitor Access Code, developed in conjunction with consumer peak bodies sets out a nationally consistent, principles-based approach to maintaining residents' visitation and communication. (13 May 2020)

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

Draft legislation, the *Privacy Amendment (Public Health Contact Information) Bill 2020*, will 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.

View the [Privacy Amendment \(Public Health Contact Information\) Bill 2020](#) (13 May 2020)

The Committee will be asked to report back to Parliament by 7 December and its work will complement the work already done in this area by the Australian Law Reform Commission. The Government will shortly release its response to the ALRC inquiry. View [House of Representatives – Notice of Motion](#)

### LCA Submissions

13 May 2020 - Inquiry into Telecommunications Legislation Amendment (International Production Orders) Bill 2020. You can read the Law Council's submission [here](#) and media release [here](#).

### [OAIC Privacy guidance](#)

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.

Revised [detailed advice](#) helps regulated entities assess the privacy risks involved in changed working environments, as many organisations implement or expand remote working arrangements. Organisations and agencies can also download our new [step-by-step tool](#) to help guide them through the Privacy Impact Assessment process. (16 May 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, including immigration and citizenship. Issue No. 15/2020, 18 May 2020.

### [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.

### NSW

#### DCJ Statements

[Important inmate-family links maintained during COVID-19](#)  
Last published on 15 May 2020

[COVID-19 Parliament to consider pandemic reforms](#)  
Last published on 12 May 2020

[COVID-19 Safety paramount as District Court jury trials resume](#)  
Last published on 11 May 2020

#### 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 and updates. (21 May 2020)

## NCAT: Further tenancy law changes for COVID-19 impacted tenants

From 14 May 2020, tenants who are unable to negotiate a rent reduction with their landlord can seek to terminate their lease through NCAT. Download and complete the [tenancy application form](#) clearly identifying you are making an urgent application under section 228C of the Residential Tenancies Act 2010. (15 May 2020)

## [ICAC Special Reports](#)

13 May 2020 - Section 75 reports

The Commission has released a Section 75 report: "NSW Independent Commission Against Corruption - The need for a new independent funding model for the ICAC".

## Consultations

### [Statutory review of the Crimes \(Serious Crime Prevention Orders\) Act 2016](#)

The NSW Department of Communities and Justice is conducting a review of the Crimes (Serious Crime Prevention Orders) Act 2016 to determine whether the policy objectives remain valid and the terms remain appropriate for securing those objectives. Submissions close on 22 May 2020.

## PUBLISHED - ARTICLES, PAPERS, REPORTS

### [Australian Competition and Consumer Commission](#)

The ACCC has released this concepts paper seeking views on each of the issues to be covered in a mandatory code to address bargaining power imbalances between Australian news media businesses and Google and Facebook. (19 May 2020)

### [Issues paper: Constitutional framework for the declaration of a State of National Emergency](#)

Royal Commission into National Natural Disaster Arrangements: 08 May 2020

This issues paper explores legal and constitutional questions surrounding the concept of a declaration of a 'state of national emergency' by the Commonwealth of Australia, and how this might operate and interact with existing state and territory emergency management frameworks.

## CASES

### [Australian Brumby Alliance Inc v Parks Victoria Inc \[2020\] FCA 605](#)

ADMINISTRATIVE LAW - Environment Protection and Biodiversity Conservation Act 1999 (Cth) Act s 15B(5) – action to prevent removal of brumbies from the Bogong High Plains and Eastern Victorian Alps within the Australian Alps National Parks and Reserves - whether removal will have or is likely to have a significant impact on the National Heritage values of the Australian Alps National Parks and Reserves - whether prohibiting the removal is reasonably appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention – whether brumbies are part of the National heritage values of the Australian Alps National Parks and Reserves – whether the Biodiversity Convention protects cultural and social values - proper construction of s 15B(5) and (6)

Competition and Consumer Act 2010 (Cth); Environment Protection and Biodiversity Conservation Act 1999 (Cth)

### [Kirby v Dental Council of NSW \[2020\] NSWCA 91](#)

ADMINISTRATIVE LAW – bias rule – actual or apprehended – apprehended – where apprehended bias alleged on basis of interest incompatible with role – whether primary judge erroneously considered notion of degree of closure of mind ADMINISTRATIVE LAW – whether reviewable error of law – jurisdictional error – whether NCAT constructively failed to exercise jurisdiction

### [Cavallaro v Commissioner of Police \[2020\] NSWCATAD 132](#)

ADMINISTRATIVE REVIEW - government information - reviewable decision - exempt information - personal factors - balancing of public interests ADMINISTRATIVE REVIEW - privacy - personal information - exemption for agency - policing and investigative functions - administrative and educative functions SUMMONS - production of documents - partial production – relevance

### [Ferella v Chief Commissioner of State Revenue \[2020\] NSWCATAD 128](#)

ADMINISTRATIVE LAW – Civil and Administrative Tribunal (NSW) – applications not in compliance with the statutory scheme for reviewing taxation decisions – applications lodged late – no extension of time granted – application for review seeking to re-litigate a matter previously determined on the merits – cause of action estoppel

### [Myers v Registrar, Births, Deaths and Marriages \[2020\] NSWCATAD 131](#)

ADMINISTRATIVE LAW – registration of birth – whether Registrar should correct the applicant's name recorded in the Register

### [Pemberton v Commissioner of Police \[2020\] NSWCATAD 135](#)

FREEDOM OF INFORMATION – government information – workplace investigation – prejudice to supply of confidential information and to an agency's functions – deliberative processes - information obtained in confidence – personal information – personal factors of applicant – allegations of misconduct

### [Taylor v Destination NSW \[2020\] NSWCATAD 137](#)

ADMINISTRATIVE LAW – Freedom of information – Reviews and appeals – GIPA – whether systemic issue - referral to Information Commissioner

## LEGISLATION

### Commonwealth

#### Regulations

### [Remuneration Tribunal Amendment Determination \(No. 3\) 2020](#)

18/05/2020 - This instrument amends the Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2019 and Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019.

[Telecommunications \(Interception and Access\) \(Emergency Service Facilities—Victoria\) Instrument 2020](#)

18/05/2020 - This instrument specifies the names of the forces and services operating premises in Victoria that have been declared to be an emergency service facility. It revokes the Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Instrument 2012.

[Australian Postal Corporation \(Performance Standards\) Amendment \(2020 Measures No. 1\) Regulations 2020](#)

15/05/2020 - These regulations amend the Australian Postal Corporation (Performance Standards) Regulations 2019 to provide urgent and temporary change to performance standards for the delivery of letters to enable Australia Post to effectively manage any COVID-19 impacts on its operations, including by optimising the use of its workforce. The amendment regulations will also give Australia Post an exemption from its retail outlet requirements, should temporary closures be necessary due to workforce impacts by COVID-19.

**Bills**

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

Finally passed both Houses 14 May 2020

The purpose of the Bill is to assist in preventing and controlling the entry, emergence, establishment or spread of the coronavirus known as COVID-19 into Australia or any part of Australia, by amending the Privacy Act 1988(Privacy Act) to provide stronger privacy protections for users of the Commonwealth's COVIDSafe App and data collected through the App (COVID App data) than the protections that would otherwise apply under Australian law.

**Update**

The *Privacy Amendment (Public Health Contact Information) Bill* cleared the senate without amendments on 14 May 2020. The legislation seeks to allay privacy concerns within the community, replacing an interim [determination](#) issued under the Biosecurity Act when [COVIDSafe was launched](#). It introduces strict penalties of up to five years jail for those that collect, use, disclose (include outside of Australia) or decrypt COVIDSafe data for any purpose other than contact tracing.

[Fair Work Amendment \(COVID-19\) Bill 2020](#)

Introduced Senate 12 May 2020

The Bill provides 14 days paid COVID-19 leave to all workers, including part-time, casual and gig economy workers. Paid COVID-19 leave will be added to the National Employment Standards which sets out minimum standards that cannot be displaced.

**NSW**

**Proclamations commencing Acts**

[Education Amendment \(School Safety\) Act 2017 No 58](#) (2020-198) — published LW 14 May 2020

**Regulations and other miscellaneous instruments**

[Children's Guardian \(Transitional\) Amendment Regulation 2020](#) (2020-205) — published LW 15 May 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

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