

15 JUNE 2020

ISSUE 90



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 90 of the NSW Public Sector Newsletter.

In this fortnight's newsletter, the restrictions on public gatherings made in light of the COVID-19 pandemic received legal attention when organisers sought a declaration from the New South Wales Supreme Court that the Commissioner had not opposed a planned public assembly. Late on Friday, 5 June 2020, his Honour Justice Fagan declined to make such a declaration. However, this [decision was overturned](#) on Saturday, 9 June by the Supreme Court of NSW, Court of Appeal, who determined that the primary judge erred in his decision that the organiser had not provided notice under s23 (1) of the Summary Offences Act 1988 (NSW).

The NSW ICAC has published its findings in respect of Operation Gerda, its investigation into the overpayment of public funds by the University of Sydney for security services. The NSW ICAC has also published a report into managing corruption risk during the COVID-19 pandemic.

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

[ICAC Investigation Report: Investigation into the overpayment of public funds by the University of Sydney for security services \(Operation Gerda\)](#)

Financial benefits by submitting timesheets in which they made false representations as to the identities of guards who provided, or purported to provide, ad hoc security services to the University, knowing that the funds to pay those claims would ultimately come from the University.

[ICAC finds University of Sydney security operations manager and contractors engaged in serious corrupt conduct](#)

The NSW ICAC has found that employees of companies who supplied security services to the University of Sydney engaged in serious corrupt conduct through dishonestly obtaining many hundreds of thousands of dollars in funds via submitting false timesheets.

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](#)

[Supreme Court COVID-19 Protocol - Court Operations](#)

[Travel and transport advice](#)

[ICAC: Managing corrupt conduct during the COVID-19 outbreak](#)

The ICAC has prepared advice for public officials about managing corruption risks that could arise during the COVID-19 pandemic.

IN THE MEDIA

'Act proven' to replace 'not guilty' in forensic mental health reforms

The NSW Government has listened to victims and their families and is introducing reforms to change the 'special verdict' for the defence of mental illness. "NSW will be the first state or territory in the country to empower its courts to hand down a finding of 'act proven but not criminally responsible'." (03 June 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/act-proven-to-replace-not-guilty-in-forensic-mental-health-reforms>

Landmark child abuse reforms pass Parliament

A significant barrier preventing child sex offenders from being held to account will be removed under nation leading reforms passed by the NSW Parliament. (03 June 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/landmark-child-abuse-reforms-pass-parliament>

Protecting young people from sexual exploitation

New laws protecting vulnerable young people from being exploited by adults who hold positions of authority over them are set to be introduced to NSW Parliament. (03 June 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/protecting-young-people-from-sexual-exploitation>

Statement on High Court ruling of unlawful use of force in Don Dale, by Law Council President

The High Court's decision that the deliberate and intentional deployment of tear gas on four teenagers by prison officers in Darwin's Don Dale Youth Detention Centre was unlawful, is a timely reminder that the use of force on Aboriginal and Torres Strait Islander peoples will not be tolerated in Australia. (03 June 2020) <https://www.lawcouncil.asn.au/media/media-releases/statement-on-high-court-ruling-of-unlawful-use-of-force-in-don-dale>

Australian Government a world leader in eradicating modern slavery

The Australian Government has released a scoping paper on the Commonwealth Modern Slavery Statement. The Commonwealth Modern Slavery Statement will report on modern slavery risks in the Government's procurement and investment activities and explain the steps taken to identify and respond to these risks. (01 June 2020) <https://minister.homeaffairs.gov.au/jasonwood/Pages/australian-government-world-leader-eradicating-modern-slavery.aspx>

Law Council concerned for Hong Kong

The concern is that what constitutes 'acts of secession' the 'subversion of state power' and 'political organisations' may be interpreted very widely and capture activities that are protected by the International Covenant on Civil and Political Rights (ICCPR). (01 June 2020) <https://www.lawcouncil.asn.au/media/media-releases/law-council-concerned-for-hong-kong>

New parliamentary inquiry into family, domestic and sexual violence to include impact of COVID-19

News that the Federal Government is to set up a new parliamentary inquiry into family, domestic and sexual violence, and include the impact of the COVID-19 stay-at-home orders amongst [its terms of reference](#), is greatly welcomed. Particularly given the failure of the most recent senate inquiry into domestic violence. (01 June 2020) <https://www.lawsociety.com.au/news-and-publications/publications/monday-briefs-online/june-2020/presidents-message-1-june>

Perrottet offers \$1000 to public servants in lieu of pay rise

NSW Treasurer Dominic Perrottet has offered public servants a one-off \$1000 stimulus payment and a promise of no forced redundancies as a sweetener to the government's decision to freeze wages. (01 June 2020) <https://www.smh.com.au/politics/nsw/perrottet-offers-1000-to-public-servants-in-lieu-of-pay-rise-20200531-p54y5h.html>

High Court decides 'Palace letters' written during the Whitlam dismissal can be accessed by historian Jenny Hocking

Written correspondence between the Australian Governor-General and Her Majesty the Queen relating to the dismissal of the Australian Government in 1975, have been judged by the High Court to be Commonwealth records under the Archives Act 1983. (29 May 2020) <https://www.abc.net.au/news/2020-05-29/high-court-rules-palace-letters-released-historian-jenny-hocking/12299164>

Scott Morrison says National Cabinet here to stay, will replace COAG meetings in wake of COVID-19

The Council of Australian Governments (COAG) will be scrapped and replaced with National Cabinet meetings with a specific focus on creating jobs, Prime Minister Scott Morrison has announced. (29 May 2020) <https://www.abc.net.au/news/2020-05-29/coag-scrapped-national-cabinet-here-to-say-coronavirus-update/12300636>

Malka Leifer: Court decision

The Australian Government welcomes the decision in Israel that Malka Leifer is fit to stand trial and be extradited to Australia. (26 May 2020) <https://www.attorneygeneral.gov.au/media/media-releases/malka-leifer-court-decision-26-may-2020>

IN PRACTICE AND COURTS

OAIC: COVID-19

The OAIC have developed advice and guidance on privacy and freedom of information in the context of the COVID-19 outbreak for individuals, Australian Government agencies and organisations covered by the Privacy Act 1988. (01 June 2020)

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.

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. 16/2020, 1 June 2020.

[Inquiry into the exemption of delegated legislation from parliamentary oversight](#)

The Senate Standing Committee for the Scrutiny of Delegated Legislation raised significant concerns about the increasing exemption of delegated legislation from parliamentary oversight in the 2019 report. Such concerns are also relevant to the exemption of delegated legislation made in response to the COVID-19 pandemic from parliamentary oversight. The closing date for submissions is 25 June 2020.

[Intelligence and Security Legislation Amendment \(Implementing Independent Intelligence Review\) Bill 2020](#)

The Parliamentary Joint Committee on Intelligence and Security is calling for submissions on the Intelligence and Security Legislation Amendment (Implementing Independent Intelligence Review) Bill 2020. On 23 March 2020 the Senate extended the committee's reporting date to 14 October 2020. The closing date for submissions is 25 June 2020.

NSW

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

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. Last updated 2 June 2020.

[NSW IPC: NSW Information Commissioner publishes new guidance in recognition of National Reconciliation Week 2020](#)

The NSW Information Commissioner published a guidance to assist people who were subject to out of home care arrangements to access important records about them and their care arrangements. The checklist is directed to removing barriers to access to information and promoting successful outcomes in accessing this important information. (03 June 2020)

[Court of Appeal's Decisions of Interest bulletin](#)

The Decisions of Interest bulletin is a regular publication produced by the Court of Appeal, summarising appellate decisions from Australia and internationally. See also [NSWCA Decisions before the High Court as at 29 May 2020](#).

[Resumption of defended hearings in the Local Court of NSW – information for solicitors](#)

The Law Society is working with the NSW Local Court to assist the profession to return to work in defended matters as soon as possible. It is in the interests of the Court and solicitors for this to occur. Solicitors should familiarise themselves with the Chief Magistrate's Memoranda 9, 10 and 11 in this regard.

[NSW Land Registry Services \(NSW LRS\) fees for 2020/2021](#)

The NSW LRS fees for products and services involving land titles, plans, property information and the Water Access Licence Register will change for the 2020/2021 financial year. See [NSW LRS Announcement](#) and the [2020/2021 NSW LRS Fee Update](#). Note that the 2019/2020 fees will be applied to land title dealings and plans lodged before 1 July 2020 but not finalised until after 1 July 2020.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Vindication of Professional Reputation Arising from Defamatory Online Publications](#)

Beijing Law Review, Ian Freckelton QC.

This article identifies the growing phenomenon of professionals suing their clients/patients for online defamation of their professional status and reputation. It reviews the phenomenon of ratings websites and scrutinises the growing popularity of such forms of feedback, identifying benefits but also detriments of such sites.

[2019 compliance with Australian and children's content compliance \(TV content standards\)](#)

ACMA Report: 05 June 2020

[BI-535 Investigation report](#)

ACMA Report: 04 June 2020

[Implementation of the Commonwealth Scientific and Industrial Research Organisation \(CSIRO\) Property Investment Strategy](#)

ANAO Performance audit (Auditor-General Report No.39 of 2019–20): 04 June 2020

The objective of this audit was to assess whether the Commonwealth Scientific and Industrial Research Organisation (CSIRO) designed and is implementing its property investment strategy in a way that is delivering the intended benefits, and how any lessons learned are being reflected in a new strategy that is being developed.

[Interim Report on Key Financial Controls of Major Entities](#)

ANAO Financial statement audit (Auditor-General Report No.38 of 2019–20): 28 May 2020

This report focuses on the results of the interim financial statements audits, including an assessment of entities' key internal controls, supporting the 2019–20 financial statements audits. This report examines 24 entities, including all departments of state and a number of major Australian government entities.

[Procurement of Garrison Support and Welfare Services](#)

ANAO Performance audit (Auditor-General Report No.35 of 2019–20): 28 May 2020

The audit objective was to assess whether the Department of Homes Affairs has appropriately managed the procurement of garrison support and welfare services for offshore processing centres in Nauru and PNG (Manus Island).

[Faster, Further, Fairer: Putting people at the heart of tackling the climate and nature emergency](#)

IPPR Environmental Justice Commission; Institute for Public Policy Research: 27 May 2020

This interim report of the IPPR Environmental Justice Commission finds that to act with the ambition and at the scale that the climate and nature emergency demands, requires a new approach.

CASES[Brett Cattle Company Pty Ltd v Minister for Agriculture \[2020\] FCA 732](#)

In accordance with the practice of the Federal Court in some cases of public interest, importance or complexity, the following summary has been prepared to accompany the orders made

ADMINISTRATIVE LAW – validity of delegated legislation – test for validity – representative proceeding under Pt IVA of the Federal Court of Australia Act 1976 (Cth) – livestock export industry – where public affairs broadcast revealed inhumane treatment of Australian cattle exported to Indonesian abattoirs – where broadcast resulted in public outcry and political pressure on Government – where the Minister made two control orders under s 7 of the Export Control Act 1982 (Cth) in short succession – where second control order prohibited the export of all livestock from Australia to the Republic of Indonesia for a period of 6 months – where first control order did, but second control order did not, provide power to grant exceptions – where purpose of second control order was to enable Australian Government to develop a regulatory and compliance regime to address concerns regarding slaughter of livestock in Indonesian abattoirs – where various exporters were already capable of ensuring livestock exported to the Republic of Indonesia would remain within a closed loop system and not be subject to inhumane conditions up to the time of slaughter – whether second control order was valid exercise of Minister's power under s 7 of the Export Control Act – whether second control order invalid on basis of unreasonableness – application of proportionality tool of analysis to evaluate validity of delegated legislation – whether second control order was suitable, necessary and appropriate and adapted to achieve a legitimate end within power conferred on Minister by s 7 of the Export Control Act – second control order was unreasonable, capricious, unnecessary and inadequate in its balance – second control order invalid

TORTS – misfeasance in public office – whether Minister committed tort of misfeasance in public office by making second control order

DAMAGES – compensatory damages

EVIDENCE – where Minister did not give evidence – no direct evidence of Minister's state of mind or of what he would have done had he exercised his power validly – where impugned decision made after Cabinet meeting – where Minister put no documents before Cabinet – whether inference open that any evidence the Minister would have given would not have assisted the respondents

Australian Meat and Live-Stock Industry Act 1997 (Cth), ss 3, 4, 10, 17

Evidence Act 1995 (Cth), s 140

Export Control Act 1982 (Cth), ss 3, 7, 25

Federal Court of Australia Act 1976 (Cth), Part IVA

Judiciary Act 1903 (Cth), s 39B

Legislative Instruments Act 2003 (Cth), ss 4, 17, 26, 38, 42

[Jannis v Ant-Hassa Pty Ltd \[2020\] NSWCATAP 99](#)

ADMINISTRATIVE LAW – breach of procedural fairness - failure to allow party opportunity to cross-examine - error of law

[Danis v Commissioner of Police, NSW Police Force \[2020\] NSWCATAD 138](#)

ADMINISTRATIVE REVIEW – Government Information (Public Access) – whether to exercise discretion to refuse to deal – whether functions exercised under the GIPA Act in good faith – public interest considerations against disclosure – whether information was given in confidence – whether prejudice to the supply of confidential information – personal information – whether information disclosed in family law proceedings has been revealed – whether disclosure exposes a child to a risk of harm or of serious harassment or serious intimidation – best interests of the child – public interest considerations in favour of disclosure – public interest in transparency and accountability – whether disclosure of DVD could reveal or substantiate allegations of police misconduct or unlawful conduct – personal factors of the application – weight of evidence – balancing of public interests – overriding public interest against disclosure

[DPD v Far West Local Health District \[2020\] NSWCATAD 141](#)

ADMINISTRATIVE LAW - Privacy – Personal Information – Use of personal information – Accuracy of personal information – whether reasonable steps taken to check accuracy – disclosure of personal information

[WaterNSW v Goldfinch \[2020\] NSWCATAD 139](#)

ADMINISTRATIVE LAW – administrative review – Inquiry into desirability of grant of surface water licence – consideration of factors to be taken into account – whether respondents interests may be affected – transfer of existing entitlement – minimal impact

[WaterNSW v Hurrell \[2020\] NSWCATAD 140](#)

ADMINISTRATIVE LAW – administrative review – Inquiry into desirability of grant of surface water licence – consideration of factors to be taken into account – whether respondents interests may be affected – replacement licence – minimal impact

LEGISLATION

Commonwealth

Act Compilation

[Privacy Act 1988](#)

29/05/2020 - Act No. 119 of 1988 as amended

NSW

Regulations

[Civil and Administrative Tribunal \(Amendment No 7\) Rule 2020](#) (2020-250) – published LW 5 June 2020

[Crimes \(Interstate Transfer of Community Based Sentences\) Regulation 2020](#) (2020-239) – published LW 5 June 2020

[Legal Profession Uniform Law \(Indexed Amounts\) Notice 2020](#) (2020-242) – published LW 5 June 2020

Bills introduced Government – 03 June 2020

[Crimes Amendment \(Special Care Offences\) Bill 2020](#)
Awaiting 2R Debate, Debate adjourned 5 clear days, 03 June 2020

To strengthen NSW's 'special care' offences which hold to account adults in positions of authority who engage in sexual activity with 16 or 17 year olds under their care.

[Law Enforcement Conduct Commission Amendment Bill 2020](#)

Bills passed by both Houses of Parliament – 03 June 2020

[Evidence Amendment \(Tendency and Coincidence\) Bill 2020](#)

Passed in Parliament, waiting assent, 03 June 2020

Will enable more evidence about an accused person's sexual interest in children to be considered by the jury in child sexual assault proceedings. The reforms will commence on 1 July 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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