



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 92 of the NSW Public Sector Newsletter.

In this issue, NCAT has announced that it will continue determining matters by phone, audio visual link or on the papers until at least the end of August 2020 and the Local Court of NSW has resumed hearing some defended matters.

In other news, The NSW Bar Association consolidated guide (updated version included in this newsletter), provides a useful resource on changes to practice and procedure arising from 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](#)

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

[Travel and transport advice](#)

IN THE MEDIA

Gladys Berejiklian urged to end delays to Australia's strongest anti-slavery laws

The New South Wales premier is facing fresh calls to bring into force the nation's strongest anti-slavery laws, which remain in limbo amid fears the government is coming under pressure from the business community. (20 July 2020) <https://www.theguardian.com/australia-news/2020/jul/20/gladys-berejiklian-urged-to-end-delays-to-australias-strongest-anti-slavery-laws>

Australian Security Intelligence Organisation Amendment Bill 2020

The Law Council made a comprehensive written submission to the Committee, with the valuable input of its constituent bodies and advisory committees. The submission identified numerous elements of the Bill that were not necessary for, or proportionate to, a legitimate national security-related objective. (17 July 2020) <https://www.lawcouncil.asn.au/media/news/australian-security-intelligence-organisation-amendment-bill-2020-lca-update>

National Roundtable on Addressing Sexual Harassment in the Legal Profession

Following informative and practical discussions, participants agreed on certain proposals for further consideration and advancement by the Law Council in consultation with its constituent bodies and the relevant stakeholders outlined here. (17 July 2020) <https://www.lawcouncil.asn.au/media/news/national-roundtable-on-addressing-sexual-harassment-in-the-legal-profession>

Federal Parliament to be cancelled amid growing interstate COVID-19 outbreaks

The next sitting of Federal Parliament will be cancelled because of the risk of COVID-19 transmission as cases rise in NSW and Victoria. Parliament was going to sit for a fortnight from August 4 but the next sitting week, in which the government can pass legislation and the opposition can scrutinise its agenda, will now be from August 24. (18 July 2020) <https://www.theage.com.au/politics/federal/federal-parliament-sitting-cancelled-amid-growing-interstate-covid-19-outbreaks-20200718-p55d7w.html>

Correspondence between the Queen and Sir John Kerr sheds new light on Whitlam dismissal

A first look at the newly released 'Palace letters' reveals then Governor-General Sir John Kerr dismissed the Whitlam Government before telling the Queen, because "it was better for Her Majesty not to know". (14 July 2020) <https://www.abc.net.au/news/2020-07-14/sir-john-kerr-queen-whitlam-palace-letters-released/12452616>

Update on Australia's Third Open Government Partnership National Action Plan

As Open Government Partnership Australia (OGPAU) starts the next round of consultation to develop its Third Open Government National Action Plan (NAP3), the Open Government Forum is pleased to release a report on the public engagement received so far. (13 July 2020) <https://www.pmc.gov.au/news-centre/public-data/update-australia%E2%80%99s-third-open-government-partnership-national-action-plan>
Comments can be made on the [OGPAU website](#).

Government website platform stands up under COVID-19 pressure

GovCMS, the Government website hosting and content management system, saw record numbers of visits on the platform at the height of the COVID-19 pandemic as Australians accessed critical online information to protect their health and safety. (09 July 2020) <https://www.finance.gov.au/about-us/news/2020/government-website-platform-stands-under-covid-19-pressure-0>

Commission warns of ASIO Bill overreach

The Australian Human Rights Commission says the Bill would simultaneously expand ASIO's questioning powers while limiting oversight of those powers, including by limiting the subject's right to legal representation during questioning and enabling prescribed authorities to remove, at their discretion, a lawyer deemed to be 'unduly disrupting' questioning. (09 July 2020) <https://humanrights.gov.au/about/news/commission-warns-asio-bill-overreach>

New Independent National Security Legislation Monitor

Attorney-General Christian Porter announced that Mr Grant Donaldson SC would be appointed Australia's acting Independent National Security Legislation Monitor (INSLM). (08 July 2020) <https://www.attorneygeneral.gov.au/media/media-releases/new-independent-national-security-legislation-monitor-8-july-2020>

Finding a path towards justice

The Government is currently considering justice targets as part of a refresh of closing the gap. Given the renewed focus on addressing the over-incarceration Aboriginal and Torres Strait Islander people, it is timely to consider the nature of the problems in detail and the solutions the ALRC identified. (07 July 2020) <https://www.alrc.gov.au/news/finding-a-path-towards-justice/>

NSW Attorney-General seeks advice on stripping Dyson Heydon of QC title

Former High Court Judge Dyson Heydon could be stripped of his Queen's Counsel title after sexual harassment allegations were made against him. NSW Attorney-General Mark Speakman said Mr Heydon couldn't practice law anymore. The NSW Supreme Court has released new policy governing inappropriate workplace conduct. (03 July 2020) <https://www.abc.net.au/news/2020-07-03/nsw-attorney-general-seeks-to-strip-dyson-heydon-of-qc-title/12419320>

IN PRACTICE AND COURTS

[High Court of Australia](#)

High Court of Australia Bulletin [2020] HCAB 05 (10 July 2020)

[Family Court of Australia and Federal Circuit Court of Australia COVID-19 update: Victorian restrictions](#)

An update from the Family Court of Australia and Federal Circuit Court of Australia has been provided regarding the COVID-19 Victorian restrictions. (08 July 2020)

Open Government Partnership Consultation - Open by Design

The Open Government Partnership (OGP) has invited comment on several draft concepts, including the Open by Design concept, as a part of the next phase of development for [Australia's Third National Action Plan](#). The draft concepts have emerged from earlier responses to the online engagement space and a series of public workshops held in February 2020. The draft concepts are not the opinion of the Australian Government.

[Interchange of client information - Data elements and interchange formats](#)

Standards Australia AS 4590.1:2017 Amd 1:2020

This revised Standard is a result of industry and government concern at the myriad of data interchange formats used within the information technology industry for the exchange of client information and the requirement of machine to machine sharing of client information across platforms.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability is [seeking submissions](#) in relation to its [terms of reference](#). You can share your experiences by [making a submission](#) or applying for a [private session](#) with a Commissioner. QLS is currently focussing on the [Rights and Attitudes, Education and Learning, Employment, First Nations People with Disability and Emergency Planning and Response](#) Issues Papers.

[OAIC: Part 9 of the FOI Guidelines \(Internal review\)](#)

The OAIC seeks comment from interested stakeholders on the content, guidance, readability and accessibility of the updated Part 9 of the FOI Guidelines.

Law Council of Australia Submissions

10 July 2020— Law Council

[Inquiry into food pricing and food security in remote Indigenous communities](#)

10 July 2020— Law Council

[Question taken on notice - Australian Security Intelligence Organisation Amendment Bill 2020](#)

10 July 2020— Law Council

[Supplementary submission - Inquiry into the Australian Security Intelligence Organisation Amendment Bill 2020](#)

08 July 2020— Law Council

[Universal Periodic Review of Australia \(3rd Cycle\)](#)

[ACMA position paper: Misinformation and news quality on digital platforms in Australia](#)

A position paper to guide code development—includes a model code framework for consideration, including objectives and outcomes to be achieved for the benefit of Australian users of digital platforms. The ACMA anticipates to have in place a single, industry-wide code by December 2020.

[New Law Council of Australia Guidelines - Equitable Briefing Policy](#)

The Law Council's portal for the annual reporting by Equitable Briefing Policy adoptees (Policy adoptees) has opened on 1 July 2020. To assist in this process, the Law Council has updated its Equitable Briefing Policy Reporting Template and Guidelines in response to feedback from previous reporting periods. Policy adoptees have until 30 September 2020 to provide their annual report.

[Annual Federal Courts and Tribunals Fee Increases from 1 July 2020 - Amended Notice](#)

The Commonwealth Attorney-General's Department has advised that, due to a number of small errors identified in the Annual Federal Courts and Tribunals Fee Increases Gazette Notice published on 9 June 2020, an amended notice has been published in the Government Notices Gazette on 29 June 2020 setting out the new fees payable from 1 July 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. 19/2020, 13 July 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.

[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.

NSW

[COVID-19: Current hearing arrangements to continue at NCAT](#)

NCAT has been conducting all stages of its hearings by phone, audio visual link or on the papers since 30 March 2020. These current arrangements will continue until at least the end of August 2020. (10 July 2020)

[NCAT Appeal Panel Decisions Digest](#)

Issue 3 of 2020 - The NCAT Appeal Panel Decisions Digest provides monthly keyword summaries of decisions of the NSW Civil and Administrative Tribunal (NCAT) Internal Appeal Panel.

[New South Wales Bar Association Committees for 2020-21](#)

President Tim Game SC has announced the appointment of Bar Association committees for 2020-21. The new committees formally come into effect on Monday 20 July 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.

[Reminder: 2020 Professional Standards Scheme commences](#)

The fourth New South Wales Bar Association Professional Standards Scheme commenced on 1 July 2020 and will remain in effect until 30 June 2025.

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.

[Prosecution outcomes web table](#) (10 July 2020)

[Briefs with the DPP web table](#) (10 July 2020)

[JUDCOM: Decisions reserved](#)

The Court of Appeal maintains a list of matters before the Court for which judgment is reserved. The list is updated weekly.

[Administrative review of the Bail Act 2013](#)

The NSW Department of Communities and Justice is reviewing the Bail Act 2013 to determine whether the policy objectives remain valid and if the terms remain appropriate for securing those objectives. Submissions close on 6 August 2020.

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

There are two cohorts of those matters, matters that were listed for hearing from 23 March 2020 to 4 May 2020 and those listed for 4 May 2020 to 1 July 2020 (as per paragraph 12 of Memorandum 10). The Court is endeavouring to ensure that as far as possible these defended hearings proceed as defended hearings and are not the subject of pleas of guilty on the day of hearing or of adjournments or delay .

PUBLISHED - ARTICLES, PAPERS, REPORTS[Final report of outgoing Independent National Security Legislation Monitor](#)

The final report of the outgoing Independent National Security Legislation Monitor Dr James Renwick CSC SC - "Trust but Verify - A report concerning the Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 and related matters" - was provided on 30 June to the Attorney-General of Australia, the Hon Christian Porter MP and the Parliamentary Joint Committee on Intelligence.

Australian Bureau of Statistics

09/07/2020 [Recorded Crime - Victims, Australia, 2019](#) (cat no. 4510.0)

CASES[Coffs Harbour City Council v Noubia Pty Ltd \[2020\] NSWCA 142](#)

CIVIL PROCEDURE – hearings – procedural fairness – judge preferring evidence of one expert over another – earlier role of expert addressed during proceedings – basis of preference based on earlier role – no unfairness

ENVIRONMENT AND PLANNING – consent – conditions – construction – transfer of land to Council – public purpose – importation of valuation principles from the Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

JURISDICTION – Land and Environment Court – valuation of land – no compulsory acquisition – proceedings transferred from Equity Division – conferral of jurisdiction on transferee court – Civil Procedure Act 2005 (NSW), s 149B, 149E – Class 4 jurisdiction exercised – Land and Environment Court Act 1979 (NSW), s 20(1)(c)

JUDGMENTS AND ORDERS – reasons – duty to give reasons – failure to give reasons – constructive failure to exercise jurisdiction distinguished

VALUATION – methods of valuation – "before and after" method – developed land on alluvial floodplain – whether alternative hypothetical developments the most financially advantageous use of land – proposed alternative development subject to natural features of the land and associated constraints on use – whether alternative development would have received approval

VALUATION – valuation of land – principles – whether detention and management of upstream water flows by downstream land owner a "public purpose" to be disregarded in a valuation exercise

[Michael Brown Planning Strategies Pty Ltd v Wingecarribee Shire Council \[2020\] NSWCA 137](#)

ENVIRONMENT AND PLANNING – development application – power to grant consent – local environmental plan – requirement that proposed development "is compatible" with the "flood hazard" of the land – assessing compatibility at date of determining application – whether future measures to ameliorate flood hazard relevant – future measures not part of application – Wingecarribee Local Environmental Plan 2010 (NSW), cl 7.9(3)(a)

STATUTORY INTERPRETATION – extrinsic materials – dictionaries – usefulness of reliance on dictionaries in statutory interpretation

STATUTORY INTERPRETATION – immediate context – consistency of operation – local environmental plan – statutory precondition to granting development consent – grammatical tense of clause – requirement for contextual construction of clause

[Application by the Planning Ministerial Corporation \[2020\] NSWSC 903](#)

CIVIL PROCEDURE – parties – commencement of proceedings without naming defendant – proceedings for possession of land – where plaintiff was registered proprietor – where land occupied by squatters – order made under r 6.1A

UCPR JUDGMENTS AND ORDERS – default judgment – where no defendant named – where judgment in rem sought – Rules

[Director of Public Prosecutions v Yerbury \[2020\] NSWSC 905](#)

CRIME – appeal and review – appeal by prosecutor against evidentiary ruling by Local Court in summary proceedings – not "an interlocutory order" – ruling not amenable to a grant of leave to appeal

EVIDENCE – improperly or unlawfully obtained – record of interview conducted following arrest – whether magistrate failed to apply correct onus of proof in determining whether arrest was unlawful – whether magistrate then erred in excluding interview pursuant to s 138 Evidence Act 1995 (NSW) – jurisdictional error established – order to exclude evidence set aside

ADMINISTRATIVE LAW – where magistrate erred with respect to onus of proving that evidence was unlawfully obtained – magistrate proceeded to exercise discretionary judgment to exclude – jurisdictional error

[Du v Feng \[2020\] NSWSC 875](#)

CIVIL PROCEDURE – interim preservation – freezing orders – requirements to be met before order made – arguable case on a justiciable cause of action but not sufficient to justify orders sought – evidence does not establish that any judgment given will be unsatisfied due to disposal of assets – application refused – crime – review of judgment of District Court on appeal from Local Court – jurisdictional error – no tenable ground

[Environment Protection Authority v Grafil Pty Ltd; Environment Protection Authority v Mackenzie \(No 3\) \[2020\] NSWLEC 90](#)

PROSECUTION – defendant company liable for the offence under s 144 of the Protection of the Environment Operations Act 1997 of unlawful use of land as waste facility

PROSECUTION – defendant company director liable under executive liability provision for same offence as defendant company

[Lu v Walding \[2020\] NSWLEC 94](#)

BIAS: application by first and second respondents for judge to recuse herself on the grounds of apprehended bias – association between trial judge and expert witness for the applicant – expert witness the spouse of the trial judge’s former longstanding associate – trial judge met the expert as a consequence of that employment relationship – trial judge in contact with former associate – application upheld.

[Pastoral Investment Land & Loan Pty Ltd v Central Coast Council \[2020\] NSWLEC 85](#)

APPEAL - appeal against Commissioner’s decision on questions of law – dismissal of proceedings for want of prosecution with due despatch under r 12.7

UCPR – whether misdirection, misconstruction and misapplication of r 12.7 – absence of assessment of significance of impacts on threatened fauna species – significance assessment not a jurisdictional fact – absence of significance assessment not fatal to determining development application – absence of significance assessment did not delay proceedings – failure to consider and balance prejudice to parties by dismissing or not dismissing proceedings – whether denial of procedural fairness on summary dismissal – failure to give fair opportunity to be heard before dismissal – remitter of proceedings to Commissioner

[Shapkin v The Council of the City of Sydney \[2020\] NSWLEC 1309](#)

APPEAL – busker permit – revocation – proper notice

[BVV v Commissioner of Police \[2020\] NSWCATAD 182](#)

ADMINISTRATIVE LAW – Privacy – jurisdiction – whether an application for internal review has been made

[Southey v The Australian Press Council \[2020\] NSWCATAD 177](#)

HUMAN RIGHTS – Anti-Discrimination – transgender grounds – preliminary question – definition of ‘services’ – anonymisation order

[Eberand v Department of Customer Service \[2020\] NSWCATAD 176](#)

ADMINISTRATIVE LAW – Public access to government information – Legal professional privilege – Whether prejudice to the effective exercise of an agency’s functions – Balancing public interest considerations

[ALL v Sydney Local Health District \[2020\] NSWCATAD 174](#)

ADMINISTRATIVE REVIEW – health record – deletion of health record - personal information – review of conduct of agency – contravention of - Health Records and Information Privacy Act 2002 - contravention of Privacy and Personal Information Protection Act 1998 – order for compensation

[Pacula v Trustee for the Sommers Freedom Fund trading as National Construction Cleaners \[2020\] NSWCATAD 172](#)

HUMAN RIGHTS – discrimination – grounds – gender discrimination – claim that employer permitted unlawful sexual harassment – whether conduct of a sexual nature – sex discrimination – victimisation

[Dalton v Qantas Airways Ltd; Dalton v Morrison \[2020\] NSWCATCD 2](#)

CONSTITUTIONAL LAW – federal matter – jurisdiction of the Tribunal to determine – Part 3A of the Civil and Administrative Tribunal Act, 2013 – “Federal proceedings” – administrative functions of Tribunal when dispute involves federal jurisdiction.

LEGISLATION**Commonwealth**[Criminal Code Act 1995](#)

13/07/2020 - Act No. 12 of 1995 as amended

Regulations[Electoral and Referendum Amendment \(Pre-poll Voting and Other Measures\) Repeal Regulations 2020](#)

15/07/2020 - The purpose of the Electoral and Referendum Amendment (Pre-Poll Voting and Other Measures) Repeal Regulations 2020 (the Regulations) is to repeal the Electoral and Referendum Amendment (Pre-Poll Voting and Other Measures) Regulations 2010 (the 2010 Regulations).

NSW**Regulations and other miscellaneous instruments**[Public Health Amendment \(COVID-19 Border Control\) Regulation 2020 \(2020-392\)](#) – published LW 8 July 2020**Reminder: Bills passed by both Houses of Parliament**[Evidence Amendment \(Tendency and Coincidence\) Bill 2020](#)

Enables more evidence about an accused person’s sexual interest in children to be considered by the jury in child sexual assault proceedings. The reforms commenced 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.

Instructions may be emailed to nswgovtlegal@tglaw.com.au at anytime.



Mark Feetham

Partner
+61 2 8248 5847
+61 414 908 225
mfeetham@tglaw.com.au



Loretta Reynolds

Partner, Markets
+61 3 8080 3705
+61 403 069 819
lreynolds@tglaw.com.au

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
sfernandez@tglaw.com.au



Adeline Tran

Lawyer
+61 2 9020 5709
resourcecentre@tglaw.com.au

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Thomson Geer is delighted to offer access to NSW Government to its Legal Help Desk on our usual terms of engagement and as set out below.

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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