

14 AUGUST 2020

ISSUE 93



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 93 of the NSW Public Sector Newsletter.

This issue highlights law reform across the State and nationally with the Council of Attorneys-General from across Australia agreeing to support uniform model provisions to modernise defamation laws.

In other news, National Cabinet deliberations may not be exempt from freedom of information disclosure and the Honourable Mark Speakman SC MP, has asked the NSW Sentencing Council to review the sentencing for offences involving assaults on Police and emergency workers.

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

Defamation – a nationwide conversation on law reform

An initial survey of the audience revealed that most participants felt that social media and other emerging 'publication' technologies were the main reason that defamation law requires further reform. Just over a quarter of participants suggested that defamation law is in need of a comprehensive overhaul. (31 July 2020) <https://www.alrc.gov.au/news/defamation-a-nationwide-conversation-on-law-reform/>

Rapid detection, assessment and notification critical in data breaches

An increase in data breaches caused by ransomware attacks and impersonation is among the key findings in the latest statistics report from the Office of the Australian Information Commissioner. (31 July 2020) <https://www.oaic.gov.au/updates/news-and-media/rapid-detection-assessment-and-notification-critical-in-data-breaches/>

Australian Bar Association Joins Expression of Disappointment at Commonwealth's Justice Targets

The Australian Bar Association (ABA) has joined with national and state legal organisations to express its disappointment at the low justice targets set by the Commonwealth for the reduction in incarceration of First Nations people. (31 July 2020) <https://inbrief.nswbar.asn.au/posts/08b347d11316f1372f3414b4c42420d3/attachment/31%2007%2020%20ABA%20release%20-%20Justice%20Targets.pdf>

National cabinet deliberations may not be exempt from FOI, legal advice says

Deliberations of the national cabinet may not be exempt from freedom of information disclosures as the Morrison Government claims, according to legal advice obtained by a major environment group. (30 July 2020) <https://www.theguardian.com/australia-news/2020/jul/30/national-cabinet-deliberations-may-not-be-exempt-from-foi-legal-advice-says>

Australian PM's department refuses to release COVID-19 commission documents

Critics say the freedom of information requests show two things: a significant lack of transparency surrounding the commission's deliberations, and significant gaps in the usual governance, policy and procedures that public servants work under. (30 July 2020) <https://www.theguardian.com/australia-news/2020/jul/30/australian-pms-department-refuses-to-release-covid-19-commission-documents?>

Litigation funding for class actions promotes access to justice, but contingency fees are problematic

Australia's class action regime, including the role of litigation funding, has been an effective and reliable means of delivering access to justice, but contingency fees create undesirable ethical risks, the Law Council of Australia has told a parliamentary inquiry. (29 July 2020) <https://www.lawcouncil.asn.au/media/media-releases/litigation-funding-for-class-actions-promotes-access-to-justice--but-contingency-fees-are-problematic>

Law Council President, Pauline Wright, statement on lack of action to raise the age

Children as young as ten are still to be considered criminally responsible, following the decision by the Council of Attorneys-General to defer consideration of the proposal to raise the age of criminal responsibility for at least twelve months. (28 July 2020) <https://www.lawcouncil.asn.au/media/media-statements/lca-president-statement-on-lack-of-action-to-raise-the-age>

Review of penalties for attacks on Police and emergency workers in NSW

The Honourable Mark Speakman SC MP asked the council to consider sentencing options to deter and reduce the offences of violence against NSW Police Force officers and other emergency workers. The review will take into account recent trends in assaults upon these workers, who keep our community safe, protecting our lives, property and health. (28 July 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/review-of-penalties-for-attacks-on-police-and-emergency-workers>

Nation agrees to NSW-led defamation revolution

The NSW Attorney General the Honourable Mark Speakman SC MP has announced that the Council of Attorneys-General agreed to NSW-led reforms to overhaul defamation laws across Australia. The proposed reforms from the Council of Attorneys General's Defamation Working Party have followed a wide-ranging consultation process. (27 July 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/nation-agrees-to-nsw-led-defamation-revolution>

Nationally consistent power of attorney laws key to mitigating elder abuse

Enhancing protections relating to the use of enduring power of attorney instruments (EPOAs) is a welcome priority for the Council of Attorneys-General and significant focus should be given to creating nationally consistent laws, according to the Law Council of Australia. (24 July 2020) <https://www.lawcouncil.asn.au/media/media-releases/nationally-consistent-power-of-attorney-laws-key-to-mitigating-elder-abuse>

Appointment of Deputy Commonwealth Ombudsman

The Morrison Government congratulates Penny McKay on her five-year appointment as a Deputy Commonwealth Ombudsman. (24 July 2020) <https://www.attorneygeneral.gov.au/media/media-releases/appointment-deputy-commonwealth-ombudsman-24-july-2020>

Law Council President, Pauline Wright, statement on Family Court Bomber

More than three decades have passed since a campaign of death and destruction was waged against the Family Court and its judges, and family lawyers. Any attempt to intimidate a judicial officer to achieve a desired outcome or to punish them for an unfavourable outcome is deplorable and must be condemned. (24 July 2020) <https://www.lawcouncil.asn.au/media/media-statements/law-council-president-pauline-wright-statement-on-family-court-bomber>

OAIC: Global privacy expectations of video teleconference providers

Data protection and privacy authorities from around the world have published an open letter to video teleconferencing companies, reminding them of their obligations to comply with the law and handle people's information responsibly. (22 July 2020) <https://www.oaic.gov.au/updates/news-and-media/global-privacy-expectations-of-video-teleconference-providers/>

Government impersonation scams on the rise

Australians are being urged to watch out for Government impersonation scams with over \$1.26 million lost from more than 7100 reports made to Scamwatch so far this year and in reality, losses are likely to be far greater. (21 July 2020) <https://www.accc.gov.au/media-release/government-impersonation-scams-on-the-rise>

IN PRACTICE AND COURTS

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.

[The Online Register for Modern Slavery Statements](#)

The register will act as a central website for statements from thousands of large businesses required to comply with the Government's landmark Modern Slavery Act 2018. (30 July 2020)

Inquiries and consultations as of 29 July 2020

[Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Criminal Justice System Issues Paper](#), Royal Commission.

[Review of AFP Powers](#), Parliamentary Joint Committee on Intelligence and Security.

[Review of 'Declared Areas' Provisions](#), Parliamentary Joint Committee on Intelligence and Security.

[Review into the Framework of Religious Exemptions in Anti-discrimination Legislation](#), Australian Law Reform Commission.

Elimination of Racial Discrimination (CERD), Attorney-General's Department.

[Review of the amendments made by the Telecommunications and Other Legislation Amendment \(Assistance and Access\) Act 2018 \(Cth\)](#), Parliamentary Joint Committee on Intelligence and Security (*Supplementary Submission*).

[Litigation funding and the regulation of the class action industry](#), Parliamentary Joint Committee on Corporations and Financial Services (*Supplementary Submission*).

Law Council of Australia Submissions

29 July 2020 – Law Council

[Litigation funding for class actions promotes access to justice, but contingency fees are problematic](#)

24 July 2020 – Law Council

[COVID-19, criminal activity and law enforcement](#)

23 July 2020 – Law Council

[Supplementary submission: Australian Security Intelligence Organisation Amendment Bill 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. 20/2020, 27 July 2020.

Resumption of some in-person AAT hearings

The Administrative Appeals Tribunal has advised that they are taking steps to resume some in-person hearings at all AAT registries except for Melbourne.

Council of Attorneys-General (CAG) communiqué

A meeting of the Council of Attorneys-General (CAG) was held on 27 July 2020 by videoconference. All jurisdictions were represented. A summary of decisions included:

- National Commissioner for Defence and Veteran Suicide Prevention
- Operationalising the National Strategic Framework for Information Sharing Between the Family Law and Family Violence and Child Protection Systems
- Family Violence Working Group progress report
- Enduring Power of Attorney Register
- Access to digital records after death or loss of decision-making capacity
- Working Group on Surrogacy
- Age of Criminal Responsibility Working Group
- Criminal justice stay certificates and cost recovery for unlawful non-citizens detained by Australian Border Force
- Draft amendments to the Model Defamation Provisions
- COVID-19 and Criminal Justice Sector Continuity

Parliamentary Counsel's Committee: Model Defamation Amendment Provisions 2020 [Draft]

These are the Model Defamation Amendment Provisions 2020 prepared by the Parliamentary Counsel's Committee and approved by the Council of Attorneys-General on 27 July 2020.

Current APH Inquiries and Consultations

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.

[Native Title Legislation Amendment Bill 2019 \[Provisions\]](#)
On 26 March 2020, the Senate granted an extension of time for reporting until 19 August 2020.

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.

[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

NSW Land and Environment Court

[New Subpoena Practices Practice Note](#)

The Practice Note - Subpoena Practices dated 7 May 2015 has been replaced with a new Practice Note that explains the process for access and production of material through the eSubpoena portal. The new Practice Note commenced on 22 July 2020. (21 July 2020)

[Land and Environment Court 2019 Annual Review](#)

The Land and Environment Court of NSW 2019 Annual Review has been published on the Court's website. (31 July 2020)

[COVID-19: Information for Attending Court - Friday 31 July 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. (31 July 2020)

[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.

[NCAT Legal Bulletin](#)

The NCAT Legal Bulletin provides case summaries of relevant and interesting case law of significance to the work of NCAT.

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

The fourth New South Wales Bar Association Professional Standards Scheme commenced, 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.

[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.

[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 – 31 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

[‘What’s the difference?’: explaining parliamentary terms](#)

Rob Lundie and Nicholas Horne; APH Research Paper Series, 2020-21: 22 July 2020

While the glossary focuses mainly on parliamentary terms, some relevant Government and electoral terms are also included.

CASES

[Schroeder and Australian Securities and Investments Commission \[2020\] AATA 2453](#)

STATUTORY INTERPRETATION – amended legislation – where Corporations Act 2001 (Cth) was amended by the Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures) Act 2020 (Cth) during the course of the Tribunal’s proceedings

– whether the Tribunal should apply the Corporations Act 2001 (Cth) in its current form or its pre-amended form – effect of transitional provisions – Tribunal to apply Corporations Act 2001 (Cth) as amended by the Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures)) Act 2020 (Cth)

[Cottle v NSW Commissioner of Police; Police Association of New South Wales v Commissioner of Police \(NSW Police Force\) \[2020\] NSWCA 159](#)

COURTS AND TRIBUNALS – whether Industrial Relations Commission has jurisdiction to review a decision to dismiss a policer officer pursuant to s 72A of the Police Act 1990 (NSW) – whether matter governed by decision in Commissioner of Police for New South Wales v Eaton (2013) 252 CLR 1; [2013] HCA 2. POLICE – non-probationary officer “caused to be retired” pursuant to s 72A of the Police Act 1990 (NSW) – officer seeking review of decision pursuant to s 84(1) of the Industrial Relations Act 1996 (NSW) – whether Industrial Relations Commission has jurisdiction to hear matter. STATUTORY INTERPRETATION – construction of Police Act 1990 (NSW) and Industrial Relations Act 1996 (NSW) – whether review of a decision made under s 72A of the Police Act 1990 (NSW) amenable to review by Industrial Relations Commission under s 84(1) of the Industrial Relations Act 1996 (NSW)

[Padraic Gibson \(on behalf of the Dungay family\) v Commissioner of Police \(NSW Police Force\) \[2020\] NSWCA 160](#)

APPEAL – whether appeal lies to Supreme Court from order prohibiting proposed public assembly notwithstanding s 27(2) of the Summary Offences Act 1988 (NSW) – discussion of statutory limitation of appeals under the Summary Offences Act. COURTS – Jurisdiction – Whether Supreme Court had jurisdiction to entertain an application to prohibit a proposed public assembly in circumstances where Commissioner of Police was alleged not to have complied with the procedure provided for by s 25(2) of the Summary Offences Act 1988 (NSW). PUBLIC ASSEMBLY – Summary Offences Act 1988 (NSW) – whether Supreme Court had jurisdiction to entertain an application to prohibit a proposed public assembly – whether Supreme Court’s jurisdiction depended on Commissioner first complying with procedure specified in s 25(2) of the Summary Offences Act

[Young v Royal Society for the Prevention of Cruelty to Animals New South Wales t/as RSPCA \[2020\] NSWSC 1001](#)

CIVIL PROCEDURE – Summary disposal – Dismissal of proceedings – Abuse of process – where plaintiff sought relief under Supreme Court Act 1970 (NSW) s 69 against judgment of District Court striking out claim for malicious prosecution – whether abuse of process not to have sought relief by way of application for leave to appeal CIVIL PROCEDURE – Summary disposal – Dismissal of proceedings – whether reasonable cause of action disclosed – claim for malicious prosecution in District Court – where District Court found that order made under Mental Health (Forensic Provisions) Act 1990 (NSW) s 32 is not a termination in favour of the plaintiff – whether arguable jurisdictional error or error of law CIVIL PROCEDURE – Court administration – Removal to Court of Appeal

[Brazel v Sydney Water \[2020\] NSWCATAD 188](#)

ADMINISTRATIVE LAW – access to government information – access application – public interests in favour of disclosure – public interests against disclosure – whether overriding public interest against disclosure – whether disclosure could reasonably be expected to prejudice the supply to an agency of confidential information – whether disclosure could reasonably be expected to reveal an individual's personal information or contravene an information protection principle

[DOI v NSW Trustee and Guardian \[2020\] NSWCATAD 192](#)

ADMINISTRATIVE LAW – review under section 62 NSW Trustee and Guardian Act 2009 (NSW) – Trustee and Guardian – interests and welfare of protected person – financial management order.

[EHK v NSW Trustee and Guardian \[2020\] NSWCATAD 187](#)

ADMINISTRATIVE REVIEW – Decision by NSW Trustee and Guardian as financial manager under Guardianship Tribunal order – application by NSW Trustee and Guardian for dismissal – application misconceived and lacking in substance, not a reviewable decision. Civil and Administrative Tribunal Act, 2013 (NSW); s55(1)(b). Dismissal order

[Mother's Choice Family Day Care Pty Ltd v Secretary, Department of Education \[2020\] NSWCATAD 194](#)

ADMINISTRATIVE LAW – Children (Education and Care Services) National Law (NSW) – decision to cancel provider approval by the regulatory authority – stay sought – relevant principles – stay granted on conditions

[Skiba v Department of Communities and Justice \[2020\] NSWCATAD 191](#)

ADMINISTRATIVE LAW – privacy and personal information – review of conduct – jurisdiction – whether conduct under review relates to the exercise of a judicial function

[Wade v Lord Howe Island Board Administration Office \[2020\] NSWCATAD 190](#)

HUMAN RIGHTS – discrimination – grounds – age and disability CIVIL PROCEDURE – Summary disposal – Dismissal of proceedings

[Ishak v Soldat Group of Companies Pty Ltd \[2020\] NSWCATAP 160](#)

ADMINISTRATIVE LAW – administrative tribunals – Civil and Administrative Tribunal (NSW) – duty to give reasons for decision – reasons inadequate – appeal allowed APPEAL AND NEW TRIAL – Civil and Administrative Tribunal Act 2013 (NSW), s 80(3) – whether to remit proceedings to the Consumer and Commercial Division or deal with the appeal by way of new hearing – proceed by way of a new hearing in this case PROCEDURE – civil – judgments and orders amending, varying and setting aside – setting aside Civil and Administrative Tribunal Regulation 2013 (NSW), cl 9 – principles – conditions for discretion to be enlivened – principles for exercise of discretion – whether a reasonable opportunity to be heard – order set aside

[Klaric v Commissioner of Police \[2020\] NSWCATAP 153](#)

APPEAL – request for access to information under Government Information (Public Access) Act 2009 – where Tribunal affirmed agency's decision – whether the Tribunal made an error of law – whether Appeal Panel should give permission to appeal on ground other than a question of law

[PR v MDM \[2020\] NSWCATAP 151](#)

APPEAL – PRACTICE AND PROCEDURE – meaning of s 64(1) of Civil and Administrative Tribunal Act 2013 (NSW) – where Tribunal made a non-publication order restricting publication of applicant's name in connection with Tribunal proceedings – whether Tribunal made an error of law – fresh evidence – whether Appeal Panel should deal with the appeal by way of a new hearing

[The Owners - Strata Plan No 74698 v Jacinta Investments Pty Ltd \[2020\] NSWCATAP 157](#)

Administrative Law – Civil & Administrative Tribunal (NSW) Appeal – application for stay pending appeal – refused – exercise of discretion

[Webb v Port Stephens Council \[2020\] NSWCATAP 152](#)

APPEAL – whether decision dismissing an application for contempt is an internally appealable decision under the Civil and Administrative Tribunal Act 2013 (NSW) APPEAL – statutory interpretation – meaning of s 63(3)(d) of the Administrative Decisions Review Act 1997 (NSW) – whether Tribunal has jurisdiction to entertain a new application for administrative review of the failure to make a decision following remittal under s 63(3)(d) – whether Tribunal has jurisdiction to entertain a new application for administrative review of a decision following remittal under s 63(3)(d) APPEAL – apprehended bias – where Tribunal member advised respondent to institute proceedings against applicant – whether assurances as to impartiality overcame perception of bias

Administrative Decisions Review Act 1997 (NSW); Civil and Administrative Tribunal Act 2013 (NSW); Government Information (Public Access) Act 2009

LEGISLATION**Commonwealth****Act Compilation**[Privacy Act 1988](#)

29/07/2020 – Act No. 119 of 1988 as amended

[Criminal Code Act 1995](#)

21/07/2020 – Act No. 12 of 1995 as amended

[Crimes Act 1914](#)

20/07/2020 – Act No. 12 of 1914 as amended

[Age Discrimination Act 2004](#)

20/07/2020 – Act No. 68 of 2004 as amended

Regulations

[Electronic Transactions Regulations 2020](#)

29/07/2020 - This instrument provides an updated list of Commonwealth laws that are exempt from the Electronic Transactions Act 1999.

[Australian Prudential Regulation Authority \(confidentiality\) determination No.1 of 2020](#)

23/07/2020 - The effect of this determination is that the non-confidential information (other than personal information within the meaning of the Privacy Act 1988) may be published under subsection 56(5C) of the Australian Prudential Regulation Authority Act 1998.

[Marriage \(Celebrant Professional Development\) Second Amendment Statement 2020](#)

21/07/2020 - This instrument amends the Marriage (Celebrant Professional Development) Statement 2020 by adding an additional activity and correcting the course reference number for the Certificate IV in Celebrancy activities.

NSW

Proclamations commencing Acts

[Justice Legislation Amendment Act \(No 2\) 2019 No 20](#) (2020-425) — published LW 24 July 2020

The object of this Proclamation is to commence amendments to the Legal Aid Commission Act 1979 relating to the engagement of law practices for the provision of legal aid.

Environmental Planning Instruments

[State Environmental Planning Policy \(Housing for Seniors or People with a Disability\) Amendment \(Metropolitan Rural Areas Exemption\) 2020](#) (2020-441) — published LW 29 July 2020

[State Environmental Planning Policy Amendment \(Byron Filming\) 2020](#) (2020-432) — published LW 29 July 2020

Bills introduced- Government

[Defamation Amendment Bill 2020](#)

Bills passed by both Houses of Parliament

[Digital Restart Fund Bill 2020](#)

KEY 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

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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