



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 94 of the NSW Public Sector Newsletter.

The report on the Special Commission of Inquiry into the voyage of the Ruby Princess from the 8th - 19th of March 2020 and the subsequent efforts to diagnose, treat and contain the community transmission of COVID-19 was released on 14 August 2020 and can be accessed [here](#).

In other news this fortnight, the NSW Parliament became the first jurisdiction in Australia to pass legislation to reform defamation law in order to unclog courts from trivial claims, to rein in massive payouts for non-economic loss and to support public interest journalism. The Australian Human Rights Commission released new guidelines for public transport operators setting out disability access standards and The High Court of Australia has published the High Court (2021 Sittings) Rules 2020, which set out the Court's sitting schedule for 2021.

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

LCA: Modern Slavery Act

The Law Council of Australia, guided by its Business and Human Rights Committee, have collaborated with the Association of Corporate Counsel to release a new fact sheet to help businesses understand their reporting requirements under the Modern Slavery Act. (13 August 2020) <https://www.lawcouncil.asn.au/media/news/modern-slavery-act>

LCA: Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 (Cth)

On 27 July 2020, the Law Council appeared at a public hearing of the Parliamentary Joint Committee on Intelligence and Security, as part of its inquiry into the Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 (Cth) (TOLA Act). Significantly, the INSLM endorsed a longstanding recommendation of the Law Council for an independent authorisation process for compulsory industry assistance notices. (13 August 2020) <https://www.lawcouncil.asn.au/media/news/telecommunications-and-other-legislation-amendment-assistance-and-access-act-2018-cth>

LCA: Litigation funding and the regulation of the class action industry

On 29 July 2020, the Law Council appeared before the Parliamentary Joint Committee on Corporations and Financial Services as part of its Inquiry into Litigation Funding and the Regulation of the Class Action Industry. Key positions outlined by the Law Council's representatives at the hearing are outlined here. (13 August 2020) <https://www.lawcouncil.asn.au/media/news/litigation-funding-and-the-regulation-of-the-class-action-industry>

Easier hospital access for domestic violence victims

Victims of domestic and family violence will now have easier access to NSW public hospitals for the treatment of their injuries, as part of the NSW Government's COVID-19 response. (13 August 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/easier-hospital-access-for-domestic-violence-victims>

Privacy concerns over Australian businesses collecting data for COVID-19 contact tracing

Australian businesses are being warned to be careful about how they collect and store people's names and phone numbers amid privacy concerns if contact lists are left out in the open, or staff misuse the data. (11 August 2020) <https://www.theguardian.com/australia-news/2020/aug/11/privacy-concerns-over-australian-businesses-collecting-data-for-covid-contact-tracing>

A fine time to pay online and other court upgrades

NSW courts are introducing new look websites that will make it faster and easier for the community to access important information and pay fines. (10 August 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/a-fine-time-to-pay-online-and-other-court-upgrades>

COVID-19 triggers drop in prisoner numbers and an opportunity to reinvent the criminal justice system, lawyers say

A dramatic decline in the number of people behind bars during the COVID-19 pandemic presents a significant opportunity for governments to review policies that had been driving up prisoner numbers before the crisis, experts say. (09 August 2020) <https://www.abc.net.au/news/2020-08-09/remarkable-declines-prisoner-numbers-coronavirus-pandemic/12533218>

NSW first to pass national defamation reforms

The NSW Parliament became the first jurisdiction in Australia to legislate far-reaching reforms to defamation laws to unclog courts from trivial claims, to rein in massive payouts for non-economic loss and to support public interest journalism. (06 August 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/nsw-first-to-pass-national-defamation-reforms>

New birth certificates to recognise adoption

Adopted people in NSW will be able to have both their birth and adopted families included on a birth certificate for the first time in the State's history following new reforms introduced to Parliament. (05 August 2020) <https://www.dcj.nsw.gov.au/news-and-media/media-releases/new-birth-certificates-to-recognise-adoption>

New guidelines for public transport accessibility

The Australian Human Rights Commission (AHRC) has released new guidelines for public transport operators, setting out standards for ensuring people with disability enjoyed 'equivalent access' when using transport services. (03 August 2020) <https://humanrights.gov.au/about/news/new-guidelines-public-transport-accessibility>

IN PRACTICE AND COURTS

[High Court \(2021 Sittings\) Rules 2020](#)

The High Court of Australia has published the High Court (2021 Sittings) Rules 2020, which set out the Court's sitting schedule for 2021.

[ABA protocols - conduct of judges in Commonwealth courts and AAT](#)

Protocols directed to judicial conduct entered into by the Australian Bar Association with the Federal Court of Australia, the Family Court of Australia, the Federal Circuit Court of Australia and the Administrative Appeals Tribunal have been recently updated. The protocols are no longer restricted to conduct in court.

[Release of personal information under the Privacy Act \[NLD\]](#)

CDPP: 04 August 2020 - Relevant Australian Privacy Principles, Disclosure.

[AAT Bulletin](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. Issue No. 21/2020, 10 August 2020.

[LCA Submissions](#)

10 August 2020— Law Council

[Supplementary submission: Review of the amendments made by the Telecommunications and Other Legislation Amendment \(Assistance and Access\) Act 2018 \(Cth\)](#)

[Inquiries and consultations as of 12 August 2020](#)

[Insurance Inquiry](#), Australia Small Business and Family Enterprise Ombudsman.

[Inquiry into the human rights of women and girls in the Pacific](#), Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade.

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

[News media bargaining code](#), Australian Competition & Consumer Commission.

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

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

[Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#), Royal Commission.

[An Investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal](#), Inspector-General of Taxation.

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

[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) opened on 1 July 2020. 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.

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.

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 Law Society: 2019/2020 Workplace Gender Equality Agency \(WGEA\) Report has been lodged](#)

The Law Society has lodged the 2019/20 Workplace Gender Equality Agency (WGEA) Report. WGEA is an Australian Government statutory agency created by the Workplace Gender Equality Act 2012 and aims to promote and improve gender equality in Australian workplaces. (10 August 2020)

[NSW Law Society: A fine time to pay online and other court tech upgrades](#)

NSW courts are introducing new-look websites that will make it faster and easier to access important information and pay fines. (10 August 2020)

JUDCOM

[Criminal Trial Courts Bench Book](#)

The suggested directions and accompanying text of the Criminal Trial Courts Bench Book are produced as guidelines only. (3 August 2020)

[Criminal Trial Courts Bench Book – Update 63 published](#)

The following changes have been incorporated into this update: Sexual assault communications privilege
This chapter has been revised at Introduction and Applications for leave. (3 August 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. (14 August 2020)

NCAT

[Current hearing arrangements to continue at NCAT until December 2020](#) (12 August 2020)

[NCAT has a new website coming soon](#) (06 August 2020)

[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

[NSW school education: PISA 2018, socioeconomic background and proposals for reform](#)

Issues Backgrounder 02/2020 by Tom Gotsis

Reflecting national outcomes, NSW students from the lowest socioeconomic quartile performed approximately three years behind students from the highest socioeconomic quartile. PISA 2018 data further suggests that socioeconomically disadvantaged students may have been particularly disadvantaged by the need for remote learning due to COVID-19 social distancing requirements.

[Artificial intelligence in communications and media: Occasional paper](#)

ACMA: 03 August 2020

This report explores artificial intelligence (AI) technologies within the communications and media markets, and the challenges and opportunities they bring.

[Online fraud victimisation in Australia: Risks and protective factors](#)

Emami, Catherine, Smith, Russell, Jorna, Penny: Australian Institute of Criminology: 31 July 2020 [Latest Update: 10-08-2020]

Online fraud includes dating or romance scams, deceptive sales of products and services, dishonest investment schemes, lottery or inheritance scams, working from home scams or lottery fraud involving false prize draws or sweepstakes. These findings support the development of targeted awareness-raising campaigns focusing on the online behaviour most likely to lead to fraud victimisation.

[Notifiable Data Breaches \(NDB\) Report for January to June 2020](#)

OAIC: 31 July 2020

Showed a slight fall in the number of eligible breaches reported (518) against the previous six-month period (532), but an increase of 16 per cent compared to the same period last year.

[Guidelines: Equivalent Access under the Disability Standards for Accessible Public Transport 2002 \(Cth\)](#)

Developed by AHRC and the Department of Infrastructure, Transport, Regional Development and Communications: 30 July 2020

Guidelines provided information on the operation of the equivalent access provisions of the Transport Standards, their interaction with the Disability Discrimination Act 1992 (Cth).

[Murray–Darling Basin water markets inquiry Interim report](#)

Australian Competition and Consumer Commission (ACCC): August 2020

The report found that the \$1.5 billion-a-year basin water markets had outgrown the frameworks that governed them, with change needed for the market to operate efficiently and for the benefit of industries that depended on it.

[NSW Custody Statistics: Quarterly update June 2020](#)

NSW Bureau of Crime Statistics and Research: 04 August 2020

Aboriginal people; prison; prison population; remand; sentenced custody; social distancing; Women; Young people.

[The impact of COVID-19 measures on the NSW adult prison population](#)

Nicholas Chan; BOSCAR Bureau Brief No. 149: 04 August 2020

Aboriginal people; Coronavirus; COVID-19; prison; prison population; remand; sentenced custody; Women.

CASES

[Clarence City Council v Commonwealth of Australia \[2020\] FCAFC 134](#)

HIGH COURT AND FEDERAL COURT – jurisdiction of the Federal Court – power to award declaratory relief – nature of a declaratory judgment – standing to seek declaratory relief – discretion to award declaratory relief – municipal councils seek declaration in respect of the interpretation and application of leases to which they are not a party – leases between Commonwealth and corporate lessees of airports – contractual mechanism for payment of rates, land tax and other taxes by lessees to councils – mechanism contemplates that councils will participate in, and derive benefits under, the leases – Commonwealth and lessees in agreement as to calculation of payments – councils dispute calculation of payments – whether councils have standing to seek declaratory relief – whether councils have a sufficient interest in declaratory relief – whether “matter” arises under laws made by Commonwealth Parliament

CONSTITUTIONAL LAW – judicial power of the Commonwealth – requirement for a “matter” – whether there is a “matter” before the Court – whether there is a justiciable controversy – whether there is an enforceable right, duty or liability to found a “matter”

Held: appeals allowed – notices of contention dismissed

a “matter” exists before the court – councils have standing to seek declaratory relief – councils have real commercial and practical interest in declaratory relief

Airports Act 1996 (Cth); Airports (Transitional) Act 1996 (Cth); Commonwealth Places (Application of Laws) Act 1970 (Cth), s 4; Federal Court of Australia Act 1976 (Cth), ss 19(1), 21, 23; Fire Service Act 1979 (Tas), Div 3 of Pt VI; Judiciary Act 1903 (Cth), ss 39(1B), s 39A(1A), 39B(1A), 78B; Local Government Act 1993 (Tas), s 93A

Valuation of Land Act 2001 (Tas)

[Chugha and Comcare \(Compensation\) \[2020\] AATA 2835](#)

The Reviewable Decision of the Respondent dated 4 April 2018 is set aside.

It is directed that within 14 days of the date of this determination each party may apply to the Tribunal for orders in

Application to cease payments – psychiatric injury – credit in dispute – Facebook and social media – hearing via Microsoft Teams – decision under review set aside

The proceedings took place pursuant to the COVID-19 Special Measures Practice Direction – Freedom of Information, General and Veterans’ Appeals Divisions (“COVID-19 Practice Direction”) given under s 18B of the Administrative Appeals Tribunal Act 1975 dated 27 April 2020

[Wallis v Rudek \(No. 2\) \[2020\] NSWCA 175](#)

JUDGMENTS AND ORDERS – Court of Appeal – Whether order staying the giving up of vacant possession pending the resolution of appeal proceedings should be discharged – Whether undertakings proffered in support of the stay have been breached – Stay discharged - Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020; Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No. 4) 2020

[Hastwell v Legal Services Commissioner \[2020\] NSWSC 1008](#)

ADMINISTRATIVE LAW – reviewability – justiciability – whether decision amenable to orders in the nature of certiorari and mandamus – jurisdictional error – bias rule – actual or apprehended - ground of review other than procedural fairness – irrelevant and relevant considerations – unreasonableness – where consideration of grounds of review not relevant to primary decision

[IAG Limited t/as NRMA Insurance v Qin \[2020\] NSWSC 1025](#)

ADMINISTRATIVE LAW – Judicial review – Motor Accidents Compensation Act 1999 (NSW) s 92(1) (b) Decision to refuse an application for exemption from statutory assessment process – Whether claims assessor misconstrued the scope and power of the statutory test – Whether claims assessor took into account irrelevant considerations – Review dismissed

[Insurance Australia Group Limited t/as NRMA Insurance v Saraceni \[2020\] NSWSC 1045](#)

ADMINISTRATIVE LAW – judicial review – Motor Accidents Compensation Act – motor vehicle accident – medical review panel – medical assessments – review panel decision – Motor Accident Permanent Impairment Guidelines – legal consequences non-adherence to guidelines – findings of inconsistencies – inconsistencies not brought to first defendant's attention – inconsistencies contemplated by guidelines – duty to provide procedural fairness – materiality – reasons for determination – whether review panel failed to set out lawful reasons – whether decision was vitiated by legal unreasonableness – errors of law – whether jurisdictional error – whether constructive failure to exercise jurisdiction – appeal upheld – costs follow the event – orders COSTS – Suitors' Fund Act 1951 – eligibility to be granted indemnity certificate – indemnity certificate – certificate granted

[Slade v Insurance Australia Ltd t/as NRMA \[2020\] NSWSC 1031](#)

ADMINISTRATIVE LAW – Judicial review – Decision under the Motor Accidents Compensation Act 1999 – Whether medical assessor's decision affected by error of law on the face of the record – Principles to be applied in determining causation under the Motor Accidents Permanent Impairment Guidelines – Where subsequent unrelated incident leads to injury from previous motor accident being symptomatic – Relevant legal principles derived from State Government Insurance Commission v Oakley – Failure to give adequate reasons for decision – Certificates set aside and matter remitted for reassessment

[The Owners – Strata Plan No 70871 v Turek \[2020\] NSWSC 1027](#)

APPEALS – Appeal from NSW Civil and Administrative Tribunal Appeal Panel – application for leave – whether proceedings were required to be dismissed if commenced before Tribunal had power to make order sought APPEALS – costs – special circumstances finding based on erroneous assessment of solicitor's conduct

[Andrew Kennedy Funeral Directors Pty Ltd v Commissioner of Fair Trading \[2020\] NSWCATAD 195](#)

ADMINISTRATIVE LAW – costs – whether there are special circumstances warranting an award of costs

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

[Barrett v Department of Planning, Industry and Environment \[2020\] NSWCATAD 196](#)

ADMINISTRATIVE LAW – Public access to government information – Legal professional privilege – waiver

[Chatwin v Bodyline Spa and Sauna Pty Ltd \(No 2\) \[2020\] NSWCATAD 198](#)

CIVIL PROCEDURE – Parties – joinder of parties as respondents – principles applying – removal of party as respondent HUMAN RIGHTS – discrimination – grounds - disability – continued conduct

[Rae v Commissioner of Police \[2020\] NSWCATAD 189](#)

ADMINISTRATIVE REVIEW – government information - reviewable decision - conclusive presumption against disclosure - public interest considerations against disclosure - private rights and public interest considerations in favour of disclosure - balancing of public interests

Administrative Decisions Review Act 1997; Civil and Administrative Tribunal Act 2013; Civil Liability Act 2002; Government Information (Public Access) Act 2009; Police Act 1990; Privacy and Personal Information Protection Act 1998

[Commissioner of Police v DTN \[2020\] NSWCATAP 165](#)

ADMINISTRATIVE LAW – Privacy – appeal from an interlocutory decision of the Tribunal – leave to appeal - application for internal review of conduct – meaning of 'the time the applicant first became aware of the conduct the subject of the application' – principal and agent – imputed knowledge

LEGISLATION**Commonwealth
Act Compilation**[Crimes Act 1914](#)

08/08/2020 - Act No. 12 of 1914 as amended

[Criminal Code Act 1995](#)

05/08/2020 - Act No. 12 of 1995 as amended

[Freedom of Information Act 1982](#)

05/08/2020 - Act No. 3 of 1982 as amended

Regulations

[High Court \(2021 Sittings\) Rules 2020](#)

13/08/2020 - This instrument appoints the High Court days of sitting for 2021.

NSW

Regulations and other miscellaneous instruments

[Crimes \(Administration of Sentences\) Amendment \(X-ray Scanning\) Regulation 2020](#) (2020-449) — published LW 7 August 2020

[Crimes Regulation 2020](#) (2020-450) — published LW 7 August 2020

[Director of Public Prosecutions Regulation 2020](#) (2020-451) — published LW 7 August 2020

[Evidence Regulation 2020](#) (2020-452) — published LW 7 August 2020

[Fines Regulation 2020](#) (2020-453) — published LW 7 August 2020

[Subordinate Legislation \(Postponement of Repeal\) Order 2020](#) (2020-455) — published LW 7 August 2020

[Summary Offences Regulation 2020](#) (2020-456) — published LW 7 August 2020

Bills introduced Government

[Adoption Legislation Amendment \(Integrated Birth Certificates\) Bill 2020](#)

[Police Amendment \(Promotions\) Bill 2020](#)

Non-Government

[Anti-Discrimination Amendment \(Sex Workers\) Bill 2020](#)

Bills assented to

Digital Restart Fund Act 2020 No 15 — Assented to 03 August 2020

For the full text of Bills, and details on the passage of Bills, see [Bills](#).

KEY CONTACTS

PANEL RELATIONSHIP 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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