



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 95 of the NSW Public Sector Newsletter.

The NSW Bar Association has made a submission to the inquiry into the reputational impact on an individual being adversely named in the ICAC's investigation. The submission considers two issues: the protection offered by existing safe guards and problematic aspects of an exoneration protocol. A copy of the submission can be found [here](#).

The ICAC has also published its report into the alleged corrupt practices of a head lease coordinator. As part of its report, the ICAC has made a number of recommendations for corruption prevention.

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

Identity crime and misuse in Australia, 2019

The estimated cost of identity crime in Australia in 2018–19 (including direct and indirect costs) was \$3.1b—17 percent more than in 2015–16. The Australian Institute of Criminology (AIC) has released three new statistical reports examining identity crime and misuse in Australia. <https://www.aic.gov.au/media-centre/news/identity-crime-and-misuse-australia-2019>

HRLC: Laws to protect public interest journalism must be strengthened

A long awaited report from a Parliamentary committee has recognised the need for significant legal changes to protect public interest journalism, however the recommendations don't go far enough to ensure journalists are not sent to prison for doing their job.

<https://www.hrlc.org.au/news/2020/8/27/laws-to-protect-public-interest-journalism-must-be-strengthened>

Law Council welcomes recommendations for sweeping changes to media freedom laws

The Law Council of Australia has welcomed key recommendations of the Parliamentary Joint Committee on Intelligence and Security in its review of press freedom, including the requirement for search warrants to be issued by senior judges and contested by public interest advocates. <https://www.lawcouncil.asn.au/media/media-releases/law-council-welcomes-recommendations-for-sweeping-changes-to-media-freedom-laws>

Boosting support for at risk families in the family law system

The Morrison Government will establish a \$13.5 million pilot program to better identify and support families who are entering the family law system and are at risk of domestic violence. <https://www.attorneygeneral.gov.au/media/media-releases/boosting-support-risk-families-family-law-system-26-august-2020>

New data shows Australians want accountable AI

New research released by the Australian Human Rights Commission shows 46% of people in Australia are not aware that the government makes important decisions about them using artificial intelligence (AI). <https://humanrights.gov.au/about/news/new-data-shows-australians-want-accountable-ai>

COVIDSafe app updated and improved

The Digital Transformation Agency (DTA) has released an update of the COVIDSafe app, set to improve notifications and allow users to use the app in Turkish and Punjabi. The Agency said that since the app's launch a number of iterative enhancements had been made, focused on performance, privacy and accessibility. <https://www.dta.gov.au/news/better-notifications-privacy-and-performance-covidsafe>

ASIO Guidelines: room for further improvement

While the revised ASIO Guidelines contain several valuable improvements from the previous iteration, in the Law Council's view, there are concerns that must be addressed. These include that essential matters, such as guidance on the collection, use, disclosure, storage, destruction or retention of particularly sensitive information, and inadequate guidance on proportionality and how an ASIO officer would assess the level of intrusiveness when it comes to surveillance. <https://www.lawcouncil.asn.au/media/media-statements/asio-guidelines-room-for-further-improvement>

NSW

Legal stoush over South Korean company Kepco's Bylong Valley coal mine project not over yet

Hearings in the NSW Land and Environment Court have seen South Korean company Kepco attempt to have the decision to reject a multi-million-dollar mining project in the NSW Bylong Valley overturned. The IPC took a back seat in this week's proceedings because they needed to remain impartial in case the judge rules against the commission. <https://www.abc.net.au/news/2020-08-29/bylong-coal-mine-project-heads-to-nsw-land-and-environment-court/12603134>

ICAC finds former FACS officer corruptly obtained over \$1.67 million for own company

The NSW ICAC has found that a former headlease coordinator for the then Department of Family and Community Services (FACS) engaged in serious corrupt conduct by authorising, or arranging authorisation, for over \$1.67 million in payments for work on properties leased for public housing to be made to his own company. <https://www.icac.nsw.gov.au/media-centre/media-releases/2020-media-releases/icac-finds-former-facs-officer-corruptly-obtained-over-1-67-million-for-own-company>

Strong early results for landmark justice reforms

The first evaluation of the NSW Government's sentencing reforms shows they are working as intended by giving more offenders an opportunity to turn their lives around. Attorney General and Minister for the Prevention of Domestic Violence Mark Speakman said these reforms are a key component of the government's strategy to drive down reoffending rates and ensuring community safety remains paramount. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/strong-early-results-for-landmark-justice-reforms>

IN PRACTICE AND COURTS

Regulation of litigation funding schemes

Amendments to the Corporations Regulations 2001 (Cth) took effect on 22 August 2020, providing for the regulation of litigation funding schemes as managed investment schemes. The Legal Services Council has amended the Legal Profession Uniform General Rules 2015 with effect from 22 August 2020 so the prohibitions in s 258(1) and (3) of the Legal Profession Uniform Law do not apply in relation to litigation funding schemes now regulated as managed investment schemes. The new rule will operate for 12 months to allow for consultation. See the [Legal Services Council website](#).

An investigation into the effectiveness of ATO communications of taxpayers' rights to review, investigate and appeal

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) is investigating how effectively the Australian Taxation Office communicates appropriate information on taxpayers' rights to review, complain and appeal decisions made and actions taken by the ATO. The closing date for submissions is 30 September 2020. More information is available on the [IGTO website](#).

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) will soon open 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, and will be updated once the portal is opened on 1 July 2020.

LCA: The Criminal Justice System – Issues Paper

The Law Council made a substantial [submission](#) to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) in response to its Issues Paper: Criminal Justice System. The Law Council welcomes the Royal Commission's focus on this issue. [Read more](#).

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
<https://www.aat.gov.au/AAT/media/AAT/Files/AAT%20Bulletins/21-20.pdf>

LCA Submissions

25 August 2020— Law Council
[Review of 'declared areas' provisions of the Criminal Code Act 1995 \(Cth\)](#)
25 August 2020— Law Council
[Comments on the Minister's Guidelines to the Australian Security Intelligence Organisation](#)

19 August 2020— Law Council

[Responses to Questions on Notice – Inquiry into litigation funding and the regulation of the class action industry](#)

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.

LCA Current Inquiries and Consultations

[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.

[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

NSW Bar Association: Submission to the NSW Parliamentary Inquiry into the Reputational Impact on an Individual Being Adversely Named in the ICAC's Investigations

The Association has made a submission to the Committee on the Independent Commission Against Corruption's inquiry into the reputational [impact on an individual being adversely named in the ICAC's...](#)

The submission considered existing safeguards and remedies, and problematic aspects of an exoneration protocol. The Association's submission is available [here](#).

District Court Practice Notes Civil No 1; Civil No 7 and Criminal No 20 commencement dates

His Honour Justice Derek Price AO, the Chief Judge of the District Court of NSW, has issued an updated District Court Practice Notes [Civil No 1](#), [Civil No 7](#) and [Criminal Practice Note No 20](#), which have been Gazetted and commence on Monday 31 August 2020.

COVID-19: Information for Attending Court

The New South Wales Bar Association's [consolidated guide](#) to COVID-19-related court arrangements has today again been updated in terms of recent developments.

[Coronavirus \(COVID-19\): 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.

[ICAC: Reports](#)

Investigation into the over-payment of public funds by the University of Sydney for security services (Operation Gerda).

[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. View the latest publication here:

[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

[Postal Industry - Quarterly Update Four: 1 April to 30 June 2020](#)

Commonwealth Ombudsman: 27 August 2020
The Commonwealth Ombudsman received a 92.8 per cent increase in postal industry complaints during the 1 April to 30 June 2020 quarter compared to the same period last year. This was as a result of disruptions to the postal industry from the COVID-19 pandemic.

[NSW and Commonwealth Government funding responses to the COVID-19 pandemic](#)

IB 03/2020 August 2020

Australian governments have announced extraordinary funding measures in response to the global COVID-19 pandemic. The measures have aimed to boost the health system, support the economy, and assist households and vulnerable groups in the community. This issues background outlines NSW Government funding measures.

[AIJA Newsletters](#)

The Institute's newsletter, AIJA News, is designed to keep members informed of the Institute's activities and also to bring its work to the attention of a wider national and international audience.

CASES

[Palmer v State of Western Australia \(No 3\) \[2020\] FCA 1220](#)

The Directions prohibit entry into Western Australia of persons other than those defined as "exempt travellers". On 25 May 2020, the applicants, Clive Frederick Palmer and Mineralogy Pty Ltd (the Palmer parties), commenced proceedings in the High Court of Australia seeking a declaration that the Emergency Management Act and/or the Directions are invalid, in whole or in part, on the basis that they contravene s 92 of the Constitution.

Section 92 of the Constitution provides that, "trade, commerce, and intercourse among the States...shall be absolutely free".

PRACTICE AND PROCEDURE – issue remitted from High Court of Australia – whether intervener requires leave to withdraw – leave to withdraw not required – whether respondents would be prejudiced by withdrawal – where respondents seek rehearing of evidence – rehearing refused

Constitution s 92; Judiciary Act 1903 (Cth) ss 44 and 78A

[Carter v Hastings River Greyhound Racing Club \[2020\] NSWCA 185](#)

TORTS – negligence – general principles – Civil Liability Act 2002 (NSW) – contributory negligence STATUTORY INTERPRETATION – departure from literal meaning – whether additional words can be read into statute to avoid potential unintended consequences – whether ordinary meaning of defined terms can be used in construction of the statutory definition of the term – unreasonable consequences – activities caught under the definition of "recreational activity" asserted to have an unacceptable reach.

[South Eastern Sydney Local Health District v Lazarus \[2020\] NSWCA 183](#)

ADMINISTRATIVE LAW – Judicial review – jurisdictional error – whether primary judge erred in holding that District Court did not have jurisdiction to make directions for compensation pursuant to s 97(1) of the Victims Rights and Compensation Act 2013 (NSW) in circumstances where defendant originally convicted in Local Court – whether District Court had jurisdiction to make a compensation order when it was not the court which convicted the offender but which "confirmed" convictions on appeal.

[GAR v Attorney General for the State of New South Wales \(No. 3\) \[2020\] NSWCA 179](#)

ADMINISTRATIVE LAW – Jurisdictional error – Application for an inquiry into conviction – Whether primary judge who refused to consider or otherwise deal further the application in accordance with s 79(3) (a) of the Crimes (Appeal and Review) Act 2001 fell into jurisdictional error – Whether material presented on the application had been considered in previous applications for an inquiry – Nature of the discretion under s 79(3)

[Doueihi v State of New South Wales \[2020\] NSWSC 1065](#)

CIVIL PROCEDURE - pleadings – claim for tort of misfeasance in public office – claim in respect of actions of police officers – claim against State of New South Wales on the basis of vicarious liability - whether the further amended statement of claim adequately pleads the cause of action - where plaintiff fails to identify the officers involved, invalid acts they committed or damage suffered – whether the defendant is vicariously liable - Law Reform (Vicarious Liability) Act 1983 (NSW) – pleading struck out – whether plaintiff should be permitted to re-plead – third iteration of the statement of claim but first one where plaintiff legally represented - where associated claim in trespass is unchallenged - leave given to the plaintiff to re-plead

[Hall v Council of the Law Society of New South Wales \[2020\] NSWCATOD 96](#)

ADMINISTRATIVE LAW – Reviewability – Jurisdiction – Statutory Jurisdiction to Review decision under s 299 of the Legal Profession Uniform Law (NSW) of decision of local regulatory authority.

[Price v Commissioner for Fair Trading \[2020\] NSWCATOD 93](#)

ADMINISTRATIVE LAW – administrative review – licensing – whether Applicant meets requirements for Issue of builders licence - application of Instrument as policy – experience requirements not met – not unfair or unjust to apply policy Price v Commissioner for Fair Trading [2020] NSWCATOD 93.

[DQF v Information and Privacy Commission \[2020\] NSWCATAD 209](#)

ADMINISTRATIVE REVIEW - privacy - complaint by person aggrieved - use of personal information by public sector agency - internal review of conduct by public sector agency - review of conduct by the Tribunal - jurisdiction of Tribunal on review - orders available on review - no order made.

[BWY v Secretary, Department of Education \[2020\] NSWCATAD 208](#)

ADMINISTRATIVE LAW – Personal information – whether used or disclosed – whether held by an agency – whether used or disclosed otherwise than in good faith.

[Wojciechowska v Commissioner of Police \[2020\] NSWCATAP 173](#)

GOVERNMENT INFORMATION – onus – application of s 105 of the Government Information (Public Access) Act 2009 (NSW) – whether applicant bears a "practical onus" to establish that requested information exists and is held⁴

by the agency ADMINISTRATIVE REVIEW – whether Tribunal has power to review a decision that is not the subject of an application for administrative review made under s 100 of the Government Information (Public Access) Act – whether parties can confer jurisdiction on the Tribunal by consent PROCEDURAL FAIRNESS – apprehended bias – bias by association – whether Member’s previous association with a party’s legal representative gives rise to a reasonable apprehension of bias PROCEDURAL FAIRNESS – apprehended bias – bias by conduct – whether Member’s conduct in hearing gives rise to a reasonable apprehension of bias PROCEDURAL FAIRNESS – hearing rule – whether by permitting party to amend documents the Tribunal failed to give a party a reasonable opportunity to be heard.

LEGISLATION

Commonwealth

Bills

[Family Law Amendment \(Risk Screening Protections\) Bill 2020](#)

Introduced Senate 26 August 2020 - The Bill will amend the Family Law Act 1975 to establish protections for sensitive information generated through, and confer immunity on court workers involved in, family safety risk screening in the federal family law courts.

[Sport Integrity Australia Amendment \(World Anti-Doping Code Review\) Bill 2020](#)

Introduced Senate 26 Aug 2020 - Aligns Australia’s anti doping legislation with the revised World Anti Doping Code (Code) and International Standards (Standards) that come into force on 1 January 2021. The Code provides the framework for the operation of global harmonised rules and regulations.

[Interactive Gambling Amendment \(Prohibition on Credit Card Use\) Bill 2020](#)

Introduced Senate 25 August 2020
The Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020 aims to minimise the scope for problem gambling among Australians betting online by amending the Interactive Gambling Act 2001 (the IGA) to implement a ban on the use of credit cards for betting using certain regulated interactive gambling services.

Regulations

[Electoral and Referendum Amendment \(Prescribed Authorities\) Regulations 2020](#)

26/08/2020 - This instrument amends the Electoral and Referendum Regulation 2016 to include the statutory agency called the National Disability Insurance Scheme Launch Transition Agency, commonly known as the National Disability Insurance Agency (NDIA) to the list of prescribed authorities for the purposes of the Electoral Act.

[ASIC Corporations \(Litigation Funding Schemes\) Instrument 2020/787](#)

21/08/2020 - This instrument provides exemptions to responsible entities of litigation funding schemes from certain provisions in Chapter 7 and Chapter 5C of the Corporations Act 2001 to facilitate the implementation of the regulatory framework for litigation funding schemes commencing on 22 August 2020. This instrument provides relief from the obligation to give Product Disclosure Statements to some members of an open class action; limited exemptions from the content requirements of product disclosure statements; modifications to withdrawal procedures for illiquid schemes in relation to litigation funding scheme members; an exemption from the general licensee duty to maintain a register of members; and an exemption from the obligations in relation to the valuation of scheme property.

NSW

Regulations and other miscellaneous instruments

[Building and Construction Industry Security of Payment Regulation 2020](#) (2020-504) – published LW 28 August 2020

[Industrial Relations \(General\) Regulation 2020](#) (2020-509) – published LW 28 August 2020

[Public Holidays Amendment \(COVID-19 Revocations\) Order \(No 3\) 2020](#) (2020-503) – published LW 26 August 2020

[Justices of the Peace Regulation 2020](#) (2020-489) – published LW 21 August 2020

[Legal Profession Uniform General Amendment \(Litigation Funding Schemes\) Rule 2020](#) (2020-490) – published LW 21 August 2020

[Relationships Register Regulation 2020](#) (2020-494) – published LW 21 August 2020

[Subordinate Legislation \(Postponement of Repeal\) Order \(No 2\) 2020](#) (2020-496) – published LW 21 August 2020

Bills passed by both Houses of Parliament – 28 August 2020

[Casino Control Amendment \(Inquiries\) Bill 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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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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