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ISSUE 96



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 96 of the NSW Public Sector Newsletter.

In this issue, the NSW Privacy Commissioner issued a statement surrounding the reports of a data breach involving scanned copies of NSW drivers' licences and the Australian Law Reform Commission has considered the issues of attributing criminal responsibility to corporations.

In other news, the Department of Prime Minister and Cabinet has released its Corporate Plan for 2020-24. In light of the impacts of COVID-19 and the natural disasters Australia suffered in the prelude to 2020-21, the four-year agenda is aimed at strengthening the economy, supporting families, regions and communities, keeping people safe and protecting national interests.

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

Attorney General: Reviews of Judicial Impartiality and the Legislative Framework for Corporations and Financial Services Regulation

The Morrison Government has referred two matters to the Australian Law Reform Commission (ALRC) for review. First, on the issue of judicial impartiality, and the second, a review of the legislative framework for corporations and financial services regulation. <https://www.attorneygeneral.gov.au/media/media-releases/reviews-judicial-impartiality-and-legislative-framework-corporations-and-financial-services-regulation-11-september-2020>

LCA: ASIO's extraordinary detention powers extended until March 2021

The LCA says COVID-19 should not be used as an excuse to curtail Australia's personal freedoms that are unrelated to the pandemic. Law Council President, Pauline Wright, noted the highly extraordinary nature of these powers, which have no equivalent in the laws of Australia's closest intelligence partners, including the United States, United Kingdom, Canada and New Zealand. <https://www.lawcouncil.asn.au/media/media-releases/asio-extraordinary-detention-powers-extended-until-march-2021>

LCA calls for parliamentary inquiry into the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020

The LCA has called for its referral to a parliamentary inquiry. Australia is a signatory to some 33 key treaties and protocols regarding the environment. The Commonwealth Government must remain at the helm in ensuring that Australia's obligations under those treaties and protocols are met. <https://www.lawcouncil.asn.au/media/media-releases/law-council-of-australia-calls-for-parliamentary-inquiry-into-environmental-bill>

Statement by NSW Privacy Commissioner about reports of a data breach involving scanned copies of NSW drivers' licences

The NSW Privacy Commissioner is aware of media reports about a data breach involving scanned copies of NSW drivers' licences. Cyber Security NSW has investigated the breach and indicated that the data referred to in media coverage has been exposed via a commercial entity and was not provided by, nor sourced from, NSW Government agencies. <https://www.ipc.nsw.gov.au/statements/statement-nsw-privacy-commissioner-about-reports-data-breach-involving-scanned-copies-nsw-drivers-licences>

Corporate Plan 2020-21 sets out OAIC strategic priorities

The Office of the Australian Information Commissioner (OAIC) has published its Corporate Plan for 2020-21, which sets out its strategic priorities and key activities for the next four years. The OAIC will achieve our core purpose — to promote and uphold privacy and information access rights — in the context of a vastly different environment to that of a year ago. <https://www.oaic.gov.au/updates/news-and-media/corporate-plan-2020-21-sets-out-oaic-strategic-priorities/>

ALRC: The Attribution Game - Corporate Fault and Attribution of Criminal Responsibility

In its Final Report on Corporate Criminal Responsibility, the ALRC recommended that there be a single legislative method for attributing criminal responsibility to corporations. <https://www.alrc.gov.au/news/the-attribution-game-corporate-fault-and-attribution-of-criminal-responsibility/>

ALRC Review: Law Council urges caution on changes to fundamental principles of criminal responsibility

The LCA is urging the parliament to take a cautious approach when considering fundamental principles of criminal law. Unless the corporation could prove that it took reasonable precautions to prevent the individual officer from committing the crime, it would be guilty. <https://www.lawcouncil.asn.au/media/media-releases/alrc-review-law-council-urges-caution-on-changes-to-fundamental-principles-of-criminal-responsibility>

ALRC's final report on Australia's corporate criminal responsibility regime

Attorney-General Christian Porter today tabled the Australian Law Reform Commission's (ALRC) final report on Australia's corporate criminal responsibility regime, representing one of the most detailed examinations ever undertaken of the nation's corporate accountability framework. <https://www.attorneygeneral.gov.au/media/media-releases/alrcs-final-report-australias-corporate-criminal-responsibility-regime-31-august-2020>

IN PRACTICE AND COURTS

National Mediators Board - Review of the NMAS

The Mediator Standards Board (MSB) has announced it will work with Melbourne-based Resolution Resources (RR) to review the National Mediator Accreditation System (NMAS) governing Australia's professional mediators.

Department of the Prime Minister and Cabinet: Corporate Plan 2020-24

The plan sets out six key purposes for the Department, including: Growing the economy, incomes and creating jobs; Vibrant and resilient regions; Strengthening families and communities; Enhancing Australia's international and national security; Governing well; and Preparing well to respond to critical issues.

APSC: Social media - Guidance for Australian Public Service Employees and Agencies

This guidance was aimed at helping APS employees, managers, and Agencies understand and assess the risks that employees' online behaviour could pose to public confidence in Agencies and the APS, and strike a reasonable balance between employees' rights as individuals and their obligations as Public Servants.

High Court of Australia

High Court of Australia Bulletin [2020] HCAB 06 (14 August 2020).

Consultation on interest payable on fidelity fund claims

The Legal Services Council has issued a consultation paper proposing a new formula to calculate the interest payable on fidelity fund claims made under the Legal Profession Uniform Law. The interest rate is fixed at 5 per cent by s 243(2) of the Uniform Law in the absence of specific provision in the Uniform General Rules. [See the Legal Services Council website](#)

LSC: Regulation of litigation funding 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.

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. 23/2020, 7 September 2020.

**Family Court and Federal Circuit Court of Australia –
Current ongoing projects – September 2020****[Priority Property Pool 500](#)**

The Federal Circuit Court of Australia has introduced a new process to manage family law property disputes for cases where the value of the net property pool is under \$500,000. The new process, known as the Priority Property Pool 500 (PPP500), started on 1 March 2020 and will operate for two years as a pilot program in Adelaide, Brisbane, Melbourne and Parramatta. For more information, please visit the Court's website.

[The Lighthouse Project](#)

The Lighthouse Project is a ground-breaking and innovative initiative in the way in which the Courts will screen for risk and focus on public health and improved outcomes for families involved in the family law system. A pilot for this project will commence in Adelaide, Brisbane and Parramatta and the Courts are looking to secure additional government funding to expand nationally.

[Family Court and FCC welcome risk-screening Bill](#)

The Family Court of Australia and Federal Circuit Court of Australia have declared their support for this week's introduction of the [Family Law Amendment \(Risk Screening Protections\) Bill 2020](#).

While it is very uncommon for the courts to take a public stance on proposed legislation, it is understandable as the Bill establishes a framework to facilitate the courts' new Lighthouse Project family violence and risk-screening initiative. It will operate as a pilot program in Adelaide, Brisbane and Parramatta. Family Court and FCC welcome risk-screening Bill.

LCA Submissions

11 September 2020— Business Law Section
[Extension to temporary insolvency emergency measures](#)

03 September 2020— Law Council
[2020 Inquiry into Legal Practitioners' Scales of Costs](#)

03 September 2020— Business Law Section
[Response to IP Australia public consultation: ACIP Designs Bill](#)

03 September 2020— Business Law Section
[Input to ASBFEO Insurance Inquiry launched in July 2020](#)

31 August 2020— Business Law Section
[The repeal of section 144 of the Patents Act 1990 \(Cth\)](#)

28 August 2020— Law Council
[Draft news media bargaining code](#)

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 as of
9 September**

[Exemption of delegated legislation from parliamentary oversight](#)

[Draft Propositions by Counsel Assisting](#)

[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.

[Guidance for digital check-in providers collecting personal information for contact tracing](#).

[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.

[COVID-19: Information for Attending Court - 11 September 2020](#)

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.

[Protocol for the Bar Associations of Australia to raise any concern about Judicial conduct in Commonwealth courts](#)

The President of the ABA has written to remind ABA members of the Protocols which the ABA entered into with the Heads of federal jurisdictions in August 2019 regarding raising of concerns about Judicial conduct in Commonwealth courts, and which were recently refreshed.

[ICAC: Dealing with Corruption, Fraud and the ICAC: the role of public sector Audit and Risk](#)

The NSW ICAC has produced a paper to help guide audit and risk committees on their role in dealing with corruption, fraud and the ICAC.

[ICAC: Public inquiry into allegations concerning former MP Daryl Maguire](#)

The NSW ICAC will hold a public inquiry starting Monday 21 September 2020 as part of an investigation it is conducting into allegations concerning the former NSW Member of Parliament for Wagga Wagga.

[NCAT: Change to Appeal Panel callover days](#)

From Monday 14 September 2020, the Appeal callover days will change from Tuesday and Thursday to Wednesday and Friday. NCAT will continue to notify parties in writing of the date and time of the callover. The appeal itself is not heard at the callover. For information about how to prepare for a callover, please refer to the 'Appeal an NCAT decision' web page.

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

The fourth New South Wales Bar Association Professional Standards Scheme will remain in effect until 30 June 2025.

[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.

[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.

CASES

[Brala v Cabramatta Golf Club Limited \[2020\] NSWCATAD 217](#)

HUMAN RIGHTS – equal opportunity – whether leave required for complaint to proceed – principles applying to grant of leave EQUAL OPPORTUNITY – discrimination by registered club – whether impugned conduct falls within s 49M or s 49O of the Anti-Discrimination Act 1977.

[DQU v University of New England \[2020\] NSWCATAD 226](#)

ADMINISTRATIVE LAW – privacy – review of conduct of a public sector agency in collecting personal information from the applicants for the purpose of assessing whether a prospective overseas student will meet the Genuine Temporary Entrant (GTE) and financial requirements specified by the Australian Government for the issue of a student visa – whether the collection of this information for this purpose is a lawful purpose that is directly related to a function or activity of the University and the collection of that information is reasonably necessary for that purpose (s 8 of the Privacy and Personal Information Protection Act 1998) – whether the conduct of the public sector agency contravened the information protection principles in s 9, 10 and 11 of Privacy and Personal Information Protection Act 1998.

[Kastanias v Georges River Council \[2020\] NSWCATAD 213](#)

Administrative Law – access to government information – confidential information – whether prejudice to the effective exercise of that agency's functions – whether prejudice to a deliberative process – whether prejudice to exercise of the agency's functions – breach of confidence – whether prejudice to conduct, effectiveness or integrity of any audit, test, investigation or review conducted – whether disclosure reveals personal information – whether disclosure contravenes an information protection principle – whether disclosure reveals false or unsubstantiated allegations – whether disclosure prejudices legitimate business, commercial, professional or financial interests- whether public interest considerations against disclosure outweigh the public interest considerations favouring disclosure.

[Ruyters v Commissioner of Police \[2020\] NSWCATAD 223](#)

ADMINISTRATIVE LAW – administrative review – Government Information – refusal to deal with application – whether substantial and unreasonable diversion of agency's resources – consideration of s 60(3A) and (3B) factors – meaning of "general public interest" in s 60(3B) – nature of balancing task to be undertaken by decision-maker in determining whether dealing with an application would require an unreasonable and substantial diversion of the agency's resources.

[Rice Marketing Board for the State of New South Wales v Forbidden Foods Pty Limited; Forbidden Foods Pty Limited v Rice Marketing Board for the State of New South Wales \[2020\] NSWCATAP 182](#)

APPEALS – government information – access application – appeals from decision that government information be disclosed – public interest considerations – whether public interest considerations applied inconsistently – whether Tribunal misapplied s 13 of the Government Information (Public Access) Act 2009 PROCEDURE – standing of third party to bring an appeal – whether "party" in proceedings below – whether "intervenor" in proceedings below – meaning of "party" in s 80(1) of Civil and Administrative Tribunal Act 2013 PROCEDURE – parties on appeal – joinder – principles as to joinder of parties – application of s 44(1) of Civil and Administrative Tribunal Act 2013 – whether joinder necessary or proper

– whether interests of applicant affected by orders made below – other factors considered – application for joinder granted PROCEDURE – right to appear and be heard – whether third party has statutory entitlement to appear and be heard under s 104(3) of the Government Information (Public Access) Act 2009 – STATUTORY CONSTRUCTION – whether s 104(3) applies to internal appeals PROCEDURE – role of Information Commissioner under s 104(1) of Government Information (Public Access) Act 2009 – whether limited to principles of statutory construction, applicable law, policies and guidelines.

LEGISLATION

Commonwealth

Acts

[Tertiary Education Quality and Standards Agency Amendment \(Prohibiting Academic Cheating Services\) Act 2020](#)

07/09/2020 - Act No. 78 of 2020 as made

[National Vocational Education and Training Regulator Amendment \(Governance and Other Matters\) Act 2020](#)

07/09/2020 - Act No. 77 of 2020 as made

Bills

[Crimes Legislation Amendment \(Economic Disruption\) Bill 2020](#)

Introduced HR 02 September 2020

The Bill contains a range of measures to improve and clarify Commonwealth arrangements targeting the criminal business model, ensuring that law enforcement has suitable tools to detect illicit financial flows through effective information-gathering, confiscate relevant assets and prosecute responsible individuals. The Bill amends the Crimes Act 1914 (Crimes Act), Criminal Code Act 1995 (the Criminal Code), the COAG Reform Fund Act 2008 and the Proceeds of Crime Act 2002 (the POC Act).

[Fair Work Amendment \(One in, All in\) Bill 2020](#)

Registered 01 September 2020

This bill will give the Fair Work Commission (FWC) the power to deal with disputes relating to employee eligibility for the Jobkeeper payment. This bill extends the FWC's jurisdiction to deal with disputes about whether an employee is eligible for the Jobkeeper scheme.

[Australia's Foreign Relations \(State and Territory Arrangements\) \(Consequential Amendments\) Bill 2020](#)

House of Representatives Second reading moved 03 September 2020

To prevent "arrangements" with foreign governments that the government says "adversely affect Australia's foreign relations or are inconsistent with our foreign policy". This Bill makes consequential amendments to the Administrative Decisions (Judicial Review) Act 1977 (the ADJR Act) to list the Foreign Relations Bill as a law to which the ADJR Act does not apply.

[Electoral Legislation Amendment \(Miscellaneous Measures\) Bill 2020](#)

Senate Committee of the Whole debate 03 September 2020; Third reading agreed to 03 September 2020

Amends the: Commonwealth Electoral Act 1918 to: clarify the interaction between federal, state and territory electoral funding and disclosure regimes following the High Court decision in *Spence v Queensland* [2019] HCA 15; make technical amendments in relation to entity registration and public election funding rules; and allow a senior Australian Electoral Commission staff member rather than a senior Divisional Returning Officer to be on the Redistribution Committee for the Australian Capital Territory; Commonwealth Electoral Act 1918 and Referendum (Machinery Provisions) Act 1984 to amend various aspects of voting and scrutiny processes; and Referendum (Machinery Provisions) Act 1984 to extend the electronically assisted voting method to Australians working in Antarctica.

[Counter-Terrorism Legislation Amendment \(High Risk Terrorist Offenders\) Bill 2020](#)

House of Representatives Second reading moved 03 September 2020

This Bill will establish an extended supervision order scheme to ensure that high risk terrorist offenders who are released into the community at the end of their custodial sentences are subject to close supervision in proportion to the level of risk they pose to community safety.

NSW

Regulations and other miscellaneous instruments

[Annual Holidays Amendment \(COVID-19 Prescribed Period\) Regulation 2020](#) (2020-534) — published LW 11 September 2020

[Criminal Procedure Amendment \(Legally Assisted Persons\) Regulation 2020](#) (2020-535) — published LW 11 September 2020

[Public Holidays Amendment \(Lismore City Council and Grafton City\) Order 2020](#) (2020-533) — published LW 9 September 2020

[Road Transport Legislation Amendment \(Registration Information Disclosure Agreement\) Regulation 2020](#) (2020-541) — published LW 11 September 2020 - to clarify that Transport for NSW may enter into an agreement, with 1 or more toll operators, that provides for the release to the toll operator or toll operators of particular information with respect to a registrable vehicle and to make consequential amendments.

Bills assented to

[Casino Control Amendment \(Inquiries\) Act 2020 No 20 – Assented to 07 September 2020](#)

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

KEY CONTACTS

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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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