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ISSUE 98



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 98 of the NSW Public Sector Newsletter.

We acknowledge the passing of the former commissioner of the NSW Independent Commission against Corruption and NSW Court of Appeal judge, the Honourable David Ipp AO QC.

In other news, the various courts continue to update their practices and procedures in light of the ongoing COVID-19 pandemic. This includes that in the Land and Environment Court of NSW, the use of the online Court has been expanded to include the adjudication of notices of motion that are listed for return before the Registrar. Parties can now request to have a notice of motion listed for adjudication using the online Court if considered appropriate.

There is a new part to Part 2B of the *Electronic Transaction Act 2000* which took effect on 28 September 2020 and provides that witnessing of a signature required under an Act or another law to be witnessed may be witnessed by audio visual link. The new part is in force on a pilot basis until 31 December 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

Senate Inquiry into the Aboriginal Flag News Update

On 22 September 2020, the Australian Copyright Council (ACC) CEO, was invited to appear at the Select Senate Committee's Inquiry into the Aboriginal Flag. The ACC

submission emphasised the importance that, Luritja artist and copyright owner, Mr. Harold Thomas retain copyright and a say in the landscape in which the flag continues to be used. The Committee is due to report to Parliament on 13 October 2020. https://www.copyright.org.au/ACC_Prod/ACC/News_items/2020/Senate_Inquiry_into_the_Aboriginal_Flag_News_Update.aspx

International Convention on the Rights of Older Persons

The Law Council has recently adopted an in-principle position in support of the development of an international Convention on the Rights of Older Persons (International Convention). It considers the International Convention to have the potential to play an important role in improving the lives of older people globally, and in turn to inform Australia's own domestic legal and policy frameworks. <https://www.lawcouncil.asn.au/media/news/international-convention-on-the-rights-of-older-persons>

Formal family agreements will protect older people

Age Discrimination Commissioner the Hon. Dr Kay Patterson AO has welcomed today's announcement that the Federal Government is removing a disincentive for older people to put in place formal 'family agreements' (also known as 'assets for care' agreements). <https://humanrights.gov.au/about/news/media-releases/formal-family-agreements-will-protect-older-people>

Updates to the Disability (Access to Premises – Buildings) Standards

The Morrison Government is pleased to announce the finalisation of the Disability (Access to Premises – Buildings) Standards 2020. <https://www.attorneygeneral.gov.au/media/media-releases/updates-disability-access-premises-buildings-standards-2-october-2020>

The Family Court of Australia and Federal Circuit Court of Australia welcome Government funding announced in the 2020-21 Budget

The Family Court of Australia and Federal Circuit Court of Australia (the Courts) welcome additional resources announced on 6 October as part of the 2020-21 Budget. Securing key and ongoing funding

for judicial and registrar resources has been a priority for the Courts. <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/media-releases/2020/mr0810200>

Digital goal to top world by 2030

The Government's Digital Business Plan includes a number of initiatives to support businesses along the journey towards improved business resilience and performance. This would be underpinned by the 2020 Cyber Security Strategy which would ensure Australia's cyber security was robust by improving security practices and awareness across the economy. <https://www.pm.gov.au/media/digital-business-plan-drive-australias-economic-recovery>

Supporting the justice system during the COVID-19 pandemic

As part of Australia's Economic Recovery Plan, the Morrison Government is providing additional support for Australia's legal system to help those affected by the COVID-19 pandemic and to support those using the courts to resolve their matters as quickly and efficiently as possible. <https://www.attorneygeneral.gov.au/media/media-releases/supporting-justice-system-during-covid-19-pandemic>

Services Australia passes risk audit

A performance audit assessing whether Services Australia has appropriately managed risks involved in operating its current welfare payment system while managing transition to a future system has concluded that it has "largely done so". https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2020-21_10.pdf

NSW

Law reforms will encourage more victims sexual or family violence seek help

President of the Law Society of NSW, Richard Harvey, said the Law Society welcomed proposed changes to the offence of concealing a serious indictable offence under section 316 of the Crimes Act 1900. The amendment to the Act, which has been introduced into NSW Parliament, provides an exemption in adult cases of sexual or family violence offences where the individual does not want the matter reported to police. <https://www.lawsociety.com.au/law-reforms-will-encourage-more-victims-sexual-or-family-violence-seek-help>

The effect of moving offences from the District Court to the Local Court on court delay and sentencing

A legislative change allowing a selection of break and enter offences to be heard in the Local Court has delivered a reduction in court delay, a reduction in District Court workload and a reduction in imprisonment according to a new evaluation released today by the NSW Bureau of Crime Statistics and Research (BOCSAR). https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2020/mr-Table-Offences-Reform-cjb231.aspx

Information Commissioner releases Community Attitudes Survey Results - Right to Know Week NSW 2020

The results of the IPC Community Attitudes 2020 survey provide a strong endorsement for data

driven services with 72% of respondents agreeing that de-identified information should be used to inform planning and delivery of services provided by government agencies. <https://www.ipc.nsw.gov.au/news/information-commissioner-releases-community-attitudes-survey-results-right-know-week-nsw-2020>

IN PRACTICE AND COURTS

[Federal Budget 2020-21](#)

The Federal Government delivered the Budget for 2020-21 on 6 October. *Cyber safety*: \$39.4 million in new funding for the Federal eSafety Commissioner to continue its work protecting Australians from online harms.

Office of the National Data Commissioner Exposure draft: Data Availability and Transparency Bill

We are [seeking submissions](#) on the exposure draft of the [Data Availability and Transparency Bill](#) and explanatory materials, and an [Accreditation Framework](#) discussion paper. Submissions are open between 14 September and 6 November 2020. You can also find a second independent Privacy Impact Assessment that examined the privacy implications of the Bill, and see our response.

[Nomination of legal representative - Australian Tax Office](#)

The ATO recently reviewed the way it engages with legal practitioners who are representing their clients in relation to tax and superannuation matters. As part of this review the ATO consulted with legal practitioners to better understand the role they typically play with respect to taxation and superannuation and their priorities and timelines when dealing with the ATO.

[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. 25/2020, 5 October 2020.

[Consultation on Financial Products and the Personal Property Securities Act 2009](#)

The Attorney-General's Department has released its consultation paper on the Personal Properties Securities Act 2009 and Financial Products. This consultation process will inform the Attorney-General's policy considerations and help ensure the law regarding financial property and intermediated securities is clear and fit for purpose in the PPS Act. Consultation closes on 30 October 2020.

[Family Law Amendment \(Powers Delegated to Registrars\) Rules 2020 and Federal Circuit Court Amendment \(Powers Delegated to Registrars\) Rules 2020](#)

Family Law Amendment (Powers Delegated to Registrars) Rules 2020 and the Federal Circuit Court Amendment (Powers Delegated to Registrars) Rules 2020 commenced on Saturday 26 September 2020. The amendments delegate additional powers to Registrars and Deputy Registrars of the Family Court of Australia (known respectively in practice as 'Senior Registrars' and 'Registrars') and Registrars of the Federal Circuit Court of Australia.

[Law Council Update](#)

The Law Council produces a fortnightly newsletter which highlights the Law Council's important activities and advocacy, along with any relevant media and events stakeholders would be interested in.

LCA Submissions

06 October 2020— Business Law Section
[Major reform of the Foreign Investment Review Framework - Tranche 2](#)

28 September 2020— Law Council
[Supplementary Submission: Inquiry into family, domestic and sexual violence](#)

28 September 2020— Law Council
[Supplementary submission: 'Declared areas' provisions of ss 119.2 and 119.3 Criminal Code Act 1995 \(Cth\)](#)

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

[Nationhood, national identity and democracy](#)

The committee's reporting date is extended to 8 December 2020

[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.

[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

[COVID-19: Information for Attending Court - 9 October 2020](#)

The NSW Bar Association's consolidated guide to COVID-19-related court arrangements has today again been updated in terms of recent developments.

[Commercial Law Section - Updated notes on COVID-19 related developments in commercial law and practice](#)

The NSW Association's Commercial Law Section has today provided an updated version of its notes on COVID-19 related developments in commercial law and practice.

[NSW ICAC: Prosecution briefs with the DPP and outcomes](#)

The tables on this page each provide information on 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.

[NSW Land and Environment Court: Notices of Motion Before the Registrar](#)

The Court's use of Online Court is expanding to include the adjudication of Notices of Motion that are listed for return before the Registrar. Parties can request to have a Notice of Motion listed for adjudication using Online Court or other means (by Teams or in person) if considered appropriate and in accordance with the Court's COVID-19 Pandemic Arrangements Policy.

[Amendment to the Uniform Civil Procedure Rules - Amendment to Rules 3.10, 36.12, 50.14, and 51.27](#)

The Uniform Rules Committee has approved Amendment No 94 to the Uniform Civil Procedure Rules. Amendments were made to the following rules to make provision with respect to the certification of reasons for judgment and the use of certified reasons in proceedings: 3.10: Request for a certified copy of a judgment or order; 36.12: Registrar to furnish copies of judgments and other documents; 50.14: Reasons for decision, transcript and other parts of the record of the court below; and 51.27: Contents of Red Book.

Extension of charge certification period

In response to a request from the Office of the Director of Public Prosecutions, the chief magistrate, Judge Graeme Henson AM, has extended the charge certification period from six to eight weeks, commencing 16 November 2020 until the end of the 2020 Law Term.

[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.

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Supplementary submission by the Commonwealth Ombudsman Inquiry into Centrelink's compliance](#)

Commonwealth Ombudsman: 08 October 2020

[2019 Report on Commonwealth Ombudsman's activities under Part V of the Australian Federal Police Act 1979](#)

Commonwealth Ombudsman: 02 October 2020
For the period: 1 July 2018 to 30 June 2019

[Auditor-General's mid-term report](#)

ANAO: 07 October 2020

The fifteenth Commonwealth Auditor-General of Australia, Grant Hehir, has prepared a mid-term report reflecting on his first five years in the role. The report presents a description and analysis of the role and impact of audit, as well as analysis of the financial audit and performance audit work of the Australian National Audit Office (ANAO). The report concludes with coverage of ANAO continuous improvement activities across audit quality, better communication, transparency, efficiency and workforce capability.

[ANAO Annual Report 2019–20](#)

ANAO: 28 September 2020

The report addresses all applicable obligations under the Public Governance, Performance and Accountability Act 2013; the Public Governance, Performance and Accountability Rule 2014; the Auditor-General Act 1997; the performance measures set out in the outcome and programs framework in the ANAO's Portfolio Budget Statements 2019–20 and the ANAO Corporate Plan 2019–20; and annual reporting requirements set out in other relevant legislation.

[Not for publication: declining transparency in the federal budget](#)

Rod Campbell; The Australia Institute: 09 October 2020

Budgets are a key part of Australia's democratic system, with budget papers giving the public a valuable opportunity to see how much money is spent and on what. In this paper, Rod Campbell argues that while there may be circumstances where non-publication of budget information.

[Democracy under lockdown: the impact of COVID-19 on the global struggle for freedom](#)

Sarah Repucci, Amy Slipowitz Freedom House: 02 October 2020. The COVID-19 pandemic has fuelled a crisis for democracy around the world. Based on a survey of 398 journalists, civil society workers, activists, and other experts, as well as research on 192 countries by Freedom House's global network of analysts, this report provides an in-depth analysis.

[Evaluating the first tranche of the Table Offences Reform](#)

Crime and Justice Bulletin No. 231, Clare Ringland: October 2020. Results from this study suggest that reclassifying offences from strictly indictable to Table offences significantly reduced both the number of matters finalised in the District Court and court delay, and decreased the likelihood of a custodial penalty being imposed.

[Equality before the Law Bench Book](#)

JUDCOM: 28 September 2020

Section 7 – Women - This chapter has been rewritten, with updated cases and legislation, new and updated statistics and new sections on socio-economic factors and gender disadvantage, sexual harassment, intersectional discrimination and violence against women.

[Sentencing Bench Book](#)

JUDCOM: 30 September 2020

Sentencing guidelines has been updated to include reference to *Moodie v R* [2020] NSWCCA 160. Sentencing Commonwealth offenders has been revised and updated to reflect recent amendments.

CASES

[Lawrence v State of New South Wales \[2020\] NSWCA 248](#)

CONSTITUTIONAL LAW – Commonwealth Constitution – Chapter III – Terrorism (High Risk Offenders) Act 2017 (NSW) – whether the Act is constitutionally invalid – involuntary detention of a citizen by the State – preventative detention orders – whether the Act directs the Supreme Court as to the manner of the exercise of its jurisdiction – judicial discretion – whether the Act creates procedural unfairness – whether the Act is inconsistent with the institutional integrity of the Supreme Court as a repository of federal jurisdiction STATUTORY INTERPRETATION – departure from literal meaning – Terrorism (High Risk Offenders) Act 2017 (NSW) s 39(4) – meaning when read in context – meaning having regard to the purpose of the Act STATUTORY INTERPRETATION – legislative purpose – Terrorism (High Risk Offenders) Act 2017 (NSW) s 10(1)(c)(ii) – necessary connection between the association or affiliation and the advocacy of terrorist acts or violent extremism.

[JE v Secretary, Department of Communities and Justice \(No 2\) \[2020\] NSWCA 243](#)

ADMINISTRATIVE LAW – judicial review – appeal from Children's Court to District Court – whether error of law on the face of the record or jurisdictional error established – no error made out. PRACTICE – representation of children and young persons in judicial review proceedings – common interest with Secretary – nature of appropriate representation in such cases.

LAW - State Constitution - extra-territorial operation of legislation - power to provide for - drafting techniques - desirability of providing explicit legislative guidance as to intended territorial reach of laws STATUTORY INTERPRETATION - legal presumptions - presumption of territoriality - Interpretation Act 1987 (NSW) s 12 - applicants were women of Yazidi ethnicity - plaintiffs claimed they were victims of acts of violence perpetrated upon them in Northern Iraq and Syria by a man who had previously lived in New South Wales - Commissioner and NCAT dismissed application for support because acts of violence did not occur in New South Wales - plaintiffs submitted sufficient connection with New South Wales - nature of territorial nexus of Victims Rights and Support Act 2013 (NSW) with New South Wales - consideration of history and construction of s 12 Interpretation Act, extraterritorial legislative capacity, counterparts and precursors to victims compensation schemes - displacement of legal presumptions - appeal dismissed.

[Commissioner of Police, New South Wales Police Force v Zisopoulos \[2020\] NSWCA 236](#)

ADMINISTRATIVE LAW – judicial review of decisions of Industrial Relations Commission relating to removal of officer from NSW Police Force – whether IRC erred in

law and failed to exercise jurisdiction whilst undertaking statutory task of review under s 181E of the Police Act 1990 (NSW) – whether IRC misapplied s 181F(2) concerning onus of proof – legal, tactical and evidential burdens of proof considered – where decision was not affected by jurisdictional error. INDUSTRIAL RELATIONS – Industrial Relations Commission – whether the removal of an officer from the NSW Police Force was “harsh, unreasonable or unjust” – whether IRC erred in law and failed to exercise jurisdiction whilst undertaking statutory task of review under s 181E of the Police Act 1990 (NSW). STATUTORY INTERPRETATION – construction of s 181F(2) of the Police Act 1990 (NSW) – whether the removal of an officer from the NSW Police Force was “harsh, unreasonable or unjust”.

[Chen v Commissioner NSW Police Force \[2020\] NSWCATAD 245](#)

Leave for the complaint to proceed is refused under s 96(1) of the Anti-Discrimination Act 1977 (NSW). HUMAN RIGHTS – equal opportunity – whether leave required for complaint to proceed – principles applying to grant of leave Chen v Commissioner NSW Police Force [2020] NSWCATAD 245.

[Choi v Legal Aid Commission of NSW \[2020\] NSWCATAD 242](#)

ADMINISTRATIVE LAW – Access to information – application for Tribunal to refuse to deal with review application – application for summary dismissal of review application – Tribunal refused to deal with and dismissed review application.

[Henadeck Pty Ltd v Independent Liquor and Gaming Authority; Niraula v Independent Liquor and Gaming Authority \[2020\] NSWCATAP 200](#)

ADMINISTRATIVE LAW – administrative review – hotel licence – refusal of application to vary an ongoing extended trading authorisation – whether decision administratively reviewable STATUTORY INTERPRETATION – meaning of cl 7(b) of the Gaming and Liquor Administration Regulation 2016 – whether application to vary an extended trading authorisation is an “application for an ongoing extended trading authorisation in relation to a licence ... that would result in trading after midnight” PRECEDENT – Supreme Court obiter dicta – meaning of “seriously considered” dicta.

[Purcell v The Health Secretary on behalf of NSW Ambulance \[2020\] NSWIRComm 1065](#)

PUBLIC SECTOR DISCIPLINARY APPEAL – three allegations of misconduct against Duty Operations Manager – one allegation substantiated by employer – temporary reduction in classification for 12 months imposed – allegation not proven to requisite standard of proof on the evidence before the Commission – appeal allowed.

LEGISLATION

Commonwealth

Bills

[Judges’ Pensions Amendment \(Pension Not Payable for Misconduct\) Bill 2020](#)

Introduced to Senate – 06/10/2020 - This Bill will address a deficit in the current Judges’ Pensions Act 1968 (Pensions Act), and in particular the limitation that the Act only applies to Judges currently holding positions on the bench. This Bill is retrospective in operation for the purpose of ensuring all past Judges are held accountable for any serious misconduct done while they held their position and that only becomes apparent after their retirement or departure from the Bench Judges’ Pensions Amendment (Pension Not Payable for Misconduct) Bill 2020 .

[Royal Commissions Amendment \(Confidentiality Protections\) Bill 2020](#)

Introduced to Senate – 06/10/2020 -The Royal Commissions Amendment (Confidentiality Protections) Bill 2020 will amend the Royal Commissions Act 1902 and make consequential amendments to the Freedom of Information Act 1982. The proposed amendments will apply limitations on use and disclosure to information given by individuals to the Disability Royal Commission Royal Commissions Amendment (Confidentiality Protections) Bill 2020.

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

Amends the Family Law Act 1975 to provide that: family risk screening information is confidential and cannot be disclosed except in limited circumstances; family safety risk information is inadmissible in court, except in limited circumstances; and court workers (such as registrars and family counsellors) have immunity when involved in family risk screening procedures.

Regulations

[Competition and Consumer \(Consumer Data Right\) Amendment Rules \(No. 2\) 2020](#)

01/10/2020 - This instrument amends the Competition and Consumer (Consumer Data Right) Rules 2020 to permit the use of accredited 3.intermediaries to collect CDR data, through an expansion of the rules relating to CDR outsourcing arrangements.

[Defence Determination, Conditions of service Amendment \(Imprisonment, detention and custody\) Determination 2020 \(No. 18\)](#)

This instrument reinstates the authority for suspending and forfeiting a member’s salary and allowances during a period of imprisonment, detention or custody and provides what happens to a member’s leave, housing benefits and other conditions of service during a period of imprisonment, detention or custody.

[Public Governance, Performance and Accountability \(Relevant Company\) Amendment \(2020 Measures No. 1\) Rules 2020](#)

This instrument makes an amendment to the Public Governance, Performance and Accountability (Relevant company) Rule 2016, to add a relevant company item to the Relevant companies table in section 5, as well as incorporate the proposed relevant company’s objects into Column 3 of the Relevant companies table under section 5.

NSW**Regulations and other miscellaneous instruments**

[Government Sector Finance Amendment \(Independent Planning Commission\) Regulation 2020 \(2020-600\)](#) — published LW 9 October 2020

[Uniform Civil Procedure \(Amendment No 94\) Rule 2020 \(2020-604\)](#) — published LW 9 October 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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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.

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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) | 4(f) Discrimination |
| 2(a) Commercial and contractual matters | 6(b) General litigation and dispute resolution |
| 4(a) Employment and industrial relations law | 6(c) Debt recovery |

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