

20 NOVEMBER 2020

ISSUE 100



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 100 of the NSW Public Sector Newsletter.

Clive Palmer was unsuccessful in his attempt to overturn the Western Australian Border Closures that have been legislated due to the COVID-19 pandemic. In his application to the High Court of Australia, Mr Palmer argued that the border closures offended s92 of The Constitution that trade within the Commonwealth be free. The Court constituted by Justices Gageler, Keane, Gordon, Edelman and Chief Justice Kiefel held that on their proper construction ss56 and 67 of *The Emergency Management Act 2005* (WA), in their application to an emergency constituted by the occurrence of a hazard in the nature of a plague or epidemic, comply with the constitutional limitation of s92 of The Constitution in each of its limbs and that the exercise of the powers given by these provisions did not raise a constitutional issue.

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

Clive Palmer has lost his WA border battle. What does it mean for state and territory boundaries?

The High Court has knocked back billionaire miner Clive Palmer's challenge against Western Australia's COVID-19 hard border closure. Chief Justice Susan Kiefel said the court had found the Act complied with the constitution and the directions did not raise a constitutional issue. <https://www.abc.net.au/news/2020-11-06/clive-palmer-has-lost-his-wa-border-battle-so-what-does-it-mean/12856366>

PS corruption watchdog a step closer

The Attorney-General has announced that work has begun to establish a Commonwealth Integrity Commission (CIC) to strengthen anti-corruption measures and law enforcement directed at the national Public Service to keep it free from criminal corruption. <https://www.attorneygeneral.gov.au/media/media-releases/release-commonwealth-integrity-commission-consultation-draft-2-november-2020>

We need movement on the Commonwealth Integrity Commission

The Law Council of Australia is calling on the Federal Government to move forward with the establishment of a Commonwealth Integrity Commission, by releasing the Exposure Draft of the Bill as soon as possible. The government is falling behind Australia's obligations as a signatory of the United Nations Convention against Corruption, which includes developing policies in relation to anti-corruption. <https://www.lawcouncil.asn.au/media/media-releases/we-need-movement-on-the-commonwealth-integrity-commission>

DTA digitising PS client identities

The Digital Transformation Agency (DTA) has announced that it is developing an initiative to make it simpler and safer to securely access Government services online. <https://www.dta.gov.au/about-us>

Time to revisit ALRC report to close the justice gap

A panel of Indigenous leaders has called on the necessity for governments to listen to Aboriginal and Torres Strait Islander peoples and have 'challenging discussions' if there is ever going to be a drop in their alarming incarceration rates. <https://www.lawcouncil.asn.au/media/media-releases/time-to-revisit-alc-report-to-close-the-justice-gap>

OAIC welcomes Privacy Act review

The Australian Government's review of the Privacy Act is a landmark opportunity to ensure our privacy framework can respond to new challenges in the digital environment, Australian Information Commissioner and Privacy Commissioner Angelene Falk said. <https://www.oaic.gov.au/updates/news-and-media/oaic-welcomes-privacy-act-review/>

Intelligence Committee recommends scaling back privacy-invading metadata laws

The Parliamentary Joint Committee on Intelligence and Security (PJICIS) has made bi-partisan recommendations for the scaling back of Australia's controversial metadata retention regime. <https://www.hrlc.org.au/news/2020/10/29/intelligence-committee-recommends-scaling-back-privacy-invading-metadata-laws>

LCA: Response to the release of the Royal Commission into National Natural Disasters Arrangements Report

As noted in the report, the delivery of legal assistance is a key example of non-government recovery support playing a fundamental role in helping individuals who are adversely affected by natural disasters. The report includes a recommendation for pre-agreed recovery programs that includes the provision of legal assistance. <https://www.lawcouncil.asn.au/media/media-statements/response-to-the-release-of-the-royal-commission-into-national-natural-disasters-arrangements-report>

Privacy Act review - terms of reference and issues paper

The Morrison Government has released the terms of reference and issues paper for a wide-ranging review of the Privacy Act 1988 (the Privacy Act). <https://www.attorneygeneral.gov.au/media/media-releases/privacy-act-review-30-october-2020>

'Metadata law' review makes key changes

The AHRC has welcomed recommendations for reform of the mandatory data retention regime (known as the 'metadata law'). The Parliamentary Joint Committee on Intelligence and Security (PJICIS) has made 22 recommendations to improve human rights and other protections following its review of the metadata law. <https://humanrights.gov.au/about/news/metadata-law-review-makes-key-changes>

Data retention legislation needs more work

The Report specifically recommends that the Law Council should be consulted in (a) the development of national guidelines on the operation of the scheme; and (b) defining the term 'content or substance of a communication', and we are ready and willing to assist in that regard. <https://www.lawcouncil.asn.au/media/media-releases/data-retention-legislation-needs-more-work>

Appointments to the High Court of Australia

His Excellency the Governor-General has accepted the advice of the Government to appoint the Honourable Justice Simon Steward and the Honourable Justice

Jacqueline Gleeson as Justices of the High Court of Australia. <https://www.attorneygeneral.gov.au/media/media-releases/appointments-high-court-australia-28-october-2020>

A safe and stable home for women and children escaping domestic violence

Women and children escaping domestic violence will secure housing and the support they require as part of a new homelessness project in Orange. Mr Speakman said the homes would provide women and children privacy, independence and access to specialist homelessness and domestic violence services. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/a-safe-and-stable-home-for-women-and-children-escaping-domestic-violence>

Strict new laws to regulate short-term rentals in NSW

Short-term rental accommodation hosts, guests, letting agents and online booking platform operators will soon be subject to strict new laws with a mandatory Code of Conduct for the industry to begin in December. <https://www.nsw.gov.au/media-releases/strict-new-laws-to-regulate-short-term-rentals>

New team to lead Legal Services Council

A new team of high-profile lawyers, including the current head of the NSW Law Reform Commission, has been chosen to lead the body that regulates lawyers in both NSW and Victoria. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/new-team-to-lead-legal-services-council>

IN PRACTICE AND COURTS

New Family Court and FCC form for child abuse, family violence or risk

A new form aims to harmonise risk notification in both the Family Court and Federal Circuit Court. The Family Court and Federal Circuit Court will implement a new form – Notice of Child Abuse, Family Violence or Risk – on 31 October. The form will be available from the [Family Court of Australia](#) and [Federal Circuit Court of Australia](#) from 31 October.

New Australian Standards

[AS/NZS IEC 62676.2.31:2020](#)

Video surveillance systems for use in security applications - Live streaming and control based on web services Standards Australia.

[OAIC: Consumer Data Right milestone](#)

The Consumer Data Right will mark an important milestone on 1 November 2020, when major bank customers will be able to authorise access to their consumer data relating to home loans, personal loans, investment loans, mortgage offset accounts, direct debits, scheduled payments and payees. Find out more about the rollout of the Consumer Data Right at www.cdr.gov.au

Lawyers Alliance Submissions

Justice: [Review of the Counter-Terrorism Legislation Amendment \(High Risk Terrorist Offenders\) Bill 2020](#) - Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia.

[Office of the National Data Commissioner Exposure draft: Data Availability and Transparency Bill](#)

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

[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. 27/2020, 2 November 2020.

[Recent appearance at Senate Estimates](#)

The AAT's Registrar, Sian Leathem delivered an opening statement at the commencement of the Senate Estimates hearing on 22 October 2020.

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. 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.

Legal and Constitutional Affairs References Committee

[Nationhood, national identity and democracy](#)

On 31 August 2020 the committee's reporting date was extended to 8 December 2020.

Finance and Public Administration Legislation Committee Consultations

[Commonwealth Electoral Amendment \(Banning Dirty Donations\) Bill 2020](#)

The closing date for submissions is 6 November 2020.

[Intelligence and Security Legislation Amendment \(Implementing Independent Intelligence Review\) Bill 2020](#)

On 6 October 2020 the Senate extended the committee's reporting date to 9 December 2020.

[Commonwealth Electoral Amendment \(Donation Reform and Other Measures\) Bill 2020](#)

Senate extended the committee's reporting date to 3 December 2020.

[Office of the National Data Commissioner: Exposure draft open for comment.](#)

[Submissions](#) are being sought 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.

[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.

LCA Submissions

02 November 2020— Law Council

[Social Security \(Administration\) Amendment \(Continuation of Cashless Welfare\) Bill 2020](#)

30 October 2020— Law Council

[Inquiry into Customary Law and Aboriginality](#)

30 October 2020—Law Council

[National Disability Strategy](#)

30 October 2020— Law Council

[Review of the Expensive Commonwealth Criminal Cases Fund](#)

29 October 2020— Business Law Section
[Civil Dispute Resolution Regulations 2011](#)

NSW

NSW legal identity document - available 16 November

The NSW Government has introduced a new birth certificate that may be used as a legal identity document for people adopted in NSW. Both an IBC and a post-adoptive birth certificate will automatically be issued where a person is adopted, and the adoption is registered in NSW from 16 November. IBCs are also available for people who were adopted prior to the introduction of IBCs, upon application to Births, Deaths and Marriages (BDM). You can find more information about the IBC in the [Fact Sheet](#) or at www.facs.nsw.gov.au/families/adoption or www.nsw.gov.au/births-deaths-marriages

Note: A sample IBC is available [here](#). It is equally important that lawyers and others using the IBC as an identity document understand that the IBC does not change the legal effect of adoption.

[COVID-19: Information for Attending Court - 6 November 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, and includes [e-bulletin No 110](#) -... from the Workers Compensation Commission.

[Court of Appeal's Decisions of Interest bulletin](#)

The Decisions of Interest bulletin is a regular publication produced by the Court of Appeal, summarising appellate decisions from Australia and internationally.

[Legal Aid NSW DX account decommissioned effective from 30 November 2020](#)

Legal Aid NSW has advised that it is changing its mail service provider from the DX to Australia Post. This change will be effective from 30 November 2020.

To ensure no documents are lost Legal Aid NSW encourages members to communicate with them via email using Legal Aid NSW office mailing addresses which are available on the Legal Aid NSW website.

[Extension of the Retail and Other Commercial Leases \(COVID-19\) measures](#)

The Retail and Other Commercial Leases (COVID-19) Regulation (No 2) 2020 commenced on 24 October 2020, and extended with some amendments, the prohibitions and requirements in relation to the exercise of certain rights of lessors during the COVID-19 pandemic period, until the end of 31 December 2020.

[NSW ICAC Section 75 report - November 2020](#)

The NSW ICAC has released a second Section 75 report: "NSW Independent Commission Against Corruption - A parliamentary solution to a funding model for the ICAC". [View the Download the pdf.](#)

[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.

[JUDCOM: Update 138, November 2020](#)

Specific penalties and orders -has been updated as a result of the following recent amendments: Court Security Act 2005 by the Stronger Communities Legislation Amendment (Courts and Civil) Act 2020 Law Enforcement (Powers and Responsibilities) Act 2002 by the Justice Legislation Amendment Act (No 2) 2018

Work Health and Safety Act 2011 by the Work Health and Safety Amendment (Review) Act 2020.

[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.

[COVID-19: Information for Attending Court - Friday 23 October](#)

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.

Extension of charge certification period - Practice and procedure

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.

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

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

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Privacy Act review: issues paper](#)

Attorney-General's Department (Australia); Government of Australia: 30 October 2020

This review takes account of, and builds upon the Australian Competition and Consumer Commission's (ACCC's) Digital Platforms Inquiry (DPI) final report. The issues paper outlines current privacy laws and seeks feedback on potential issues relevant to reform during the Attorney-General's Department's review.

[Digital Platform Services Inquiry interim report](#)

ACCC: 26 October 2020

Showed how the use of online private messaging services had grown significantly during the COVID-19 pandemic and identified competition and consumer issues across digital platforms; large platforms and advertising service providers were able to receive a range of user information from Android apps.

[Review of the mandatory data retention regime](#)

Parliamentary Joint Committee on Intelligence and Security: 28 October 2020

The Parliamentary Joint Committee on Intelligence and Security is required by Part 5-1A of the Telecommunications (Interception and Access) Act 1979 (TIA Act) to undertake a review of the mandatory data retention regime (MDRR). This report outlines the findings from the 2020 inquiry.

[Commonwealth Ombudsman Annual Report 2019-20](#)

Annual reports: 27 October 2020.

[Australian Bureau of Statistics](#)

05/11/2020 Public Consultation: Census Lesson Guide, 2020 (cat no. 1655.0).

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

NSW Bureau of Crime Statistics and Research: Nov 2020
Aboriginal people, prison, prison population, remand, sentenced custody, social distancing, Women, Young people.

[ICAC Annual Report 2019-20](#)

The NSW ICAC Annual Report 2019-20 was made public on 27 October 2020.

CASES

[Feeney v Secretary, Department of Communities and Justice \[2020\] NSWCATAD 269](#)

ADMINISTRATIVE LAW – Government Information (Public Access) Act -- GIPA – discretion decline to deal with application – how discretion should be applied – systemic factors – weight applied to factors.

[Sykes v Transport for NSW \[2020\] NSWCATAD 268](#)

HUMAN RIGHTS – equal opportunity – whether leave required for complaint to proceed – principles applying to grant of leave ykes v Transport for NSW [2020] NSWCATAD 268.

[Commissioner of Police v DYD \[2020\] NSWCATAP 224](#)

APPEAL – questions of law – making a finding of fact for which there is no evidence – meaning of giving “proper, genuine and realistic consideration” to a matter; STATUTORY INTERPRETATION – meaning of s 75 of Government Information (Public Access) Act 2009 ORDERS – scope of remittal powers under s 63 and s 65 of Administrative Decisions Review Act 1997 (NSW).

[Grifols \(HK\) Limited v DHL Supply Chain \(Australia\) Pty Ltd \[2020\] NSWSC 1504](#)

CIVIL PROCEDURE – Court administration – Assignment of business – Divisions and Lists – Power to transfer from Common Law Division to Commercial List in Equity Division – Effect of Practice Note SC Eq 3 – Nature of claim pursued by plaintiff – Whether proceedings properly commenced in Common Law Division – Whether sufficient case for transfer made out CIVIL PROCEDURE – Discovery – Practice Note SC Eq 11 – Relevance of Practice Note in Common Law Division – Application for disclosure of documents prior to service of evidence – Overriding purpose – Just, quick and cheap resolution

[Page v Sydney Seaplanes Pty Ltd t/as Sydney Seaplanes \[2020\] NSWSC 1502](#)

CIVIL PROCEDURE – Jurisdiction – Proceedings commenced in Federal Court dismissed for want of jurisdiction – Where plaintiff seeks order that proceedings be treated as brought in Supreme Court – Whether a finally determined proceeding may be treated as a proceeding in Supreme Court – Federal Courts (State Jurisdiction) Act 1999 (NSW) s 11 LIMITATION OF ACTIONS – Operation of bar – Distinction between statutory bar and extinguishment of cause of action – Whether Civil Aviation (Carriers’ Liability) Act 1959 (Cth) s 34 is a limitation law for purposes of Federal Courts (State Jurisdiction) Act 1999 (NSW) – Whether plaintiff’s cause of action has extinguished STATUTORY INTERPRETATION – Inconsistency of laws – Federal Courts (State Jurisdiction) Act 1999 (NSW) s 11 – Civil Aviation (Carriers’ Liability) Act 1959 (Cth) s 34 – Whether inconsistency between laws – Legislative purpose – Adoption of international treaty – Remedial legislation

[Wojciechowska v Blue Mountains City Council \[2020\] NSWCATAD 264](#)

GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 - access to government information – whether the respondent holds any further information in relation to identified categories.

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

Finally passed both Houses 29 Oct 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.

[Higher Education Support Amendment \(Freedom of Speech\) Bill 2020](#)

House of Representatives 28 Oct 2020
The proposed amendments insert a new definition of ‘academic freedom’ into the HESA and replace the existing term ‘free intellectual inquiry’ in relevant provisions with the allied concepts of ‘freedom of speech’ and ‘academic freedom’.

[Australian Federal Integrity Commission Bill 2020](#)

House of Representatives 26 Oct 2020 - The bill establishes the Australian Federal Integrity Commission –a new independent body responsible for the implementation of a national pro-integrity framework, and have appropriate powers of assessment, investigation and referral to enable clear, proportionate and practical responses to allegations of serious and/or systemic corruption issues at the federal level in the public interest, with comprehensive procedural fairness and whistleblower safeguards.

[Commonwealth Parliamentary Standards Bill 2020](#)

House of Representatives 26 Oct 2020 - The Bill will strengthen public confidence in the Commonwealth Parliament by equipping it with the appropriate powers and resources to prevent, manage and resolve its own integrity issues where possible, and provide clear pathways for the assessment, investigation, resolution and/or referral of serious integrity issues –including through the Australian Federal Integrity Commission.

[Criminal Code \(Terrorist Organisation—Islamic State Khorasan Province\) Regulations 2020](#)

This instrument repeals and replaces the Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2017, and specifies Islamic State Khorasan Province as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Criminal Code. Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2020.

[Criminal Code \(Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin\) Regulations 2020](#)

This instrument repeals and replaces the Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017, and specifies Jama’at Nusrat al-Islam wal-Muslimin as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Criminal Code.

[Family Law Amendment \(Notice of Child Abuse, Family Violence or Risk\) Rules 2020](#)

30/10/2020 - This instrument amends the Family Law Rules 2004 to allow for a consistent Notice of Child Abuse, Family Violence or Risk form between the Federal Circuit Court of Australia and the Family Court of Australia.

[Federal Circuit Court Amendment \(Notice of Child Abuse, Family Violence or Risk\) Rules 2020](#)

This instrument amends the Federal Circuit Court Rules 2001 to allow for a consistent Notice of Child Abuse, Family Violence or Risk form between the Federal Circuit Court of Australia and the Family Court of Australia.

[Australian National University \(Governance\) Statute 2020](#)

This instrument provides governance arrangements for the Australian National University. Australian National University (Governance) Statute 2020.

NSW

Proclamations commencing Acts

[Adoption Legislation Amendment \(Integrated Birth Certificates\) Act 2020 No 22](#) (2020-650) — published LW 6 November 2020

Regulations and other miscellaneous instruments

[Fair Trading Amendment \(Code of Conduct for Short-term Rental Accommodation Industry\) Regulation \(No 2\) 2020](#) (2020-634) — published LW 28 October 2020

[Fair Trading Amendment \(Code of Conduct\) Regulation 2020](#) (2020-635) — published LW 28 October 2020

Bills assented to

Statute Law (Miscellaneous Provisions) Act 2020 No 30 — Assented to 27 October 2020

Stronger Communities Legislation Amendment (Miscellaneous) Act 2020 No 31 — Assented to 27 October 2020

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

KEY CONTACTS

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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.

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) | 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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