

18 JUNE 2021

ISSUE 112



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

IN THE MEDIA

Release of the Foster Report

The Government has released the consultation report provided by Stephanie Foster PSM into the processes and procedures relating to serious incidents in the parliamentary workplace. This report has made some significant findings and recommendations to improve how serious incidents are prevented and dealt with in the parliamentary workplace. <https://www.financeminister.gov.au/media-release/2021/06/04/release-foster-report>

Legal profession leading change on domestic and family violence

President of the Law Council, said the Law Council convened the roundtable following the findings of several recent inquiries that called for the legal system to be better equipped to respond to family violence and protect vulnerable individuals. Participants agreed that problems caused by the differing definitions of domestic and family violence between jurisdictions should be further considered. <https://www.lawcouncil.asn.au/media/media-releases/legal-profession-leading-change-on-domestic-and-family-violence>

Australian court finds government has duty to protect young people from climate crisis

The Federal Court of Australia has found the Environment Minister, Sussan Ley, has a duty of care to protect young people from the climate crisis in a judgment hailed by lawyers and teenagers who brought the case as a world first. https://www.theguardian.com/australia-news/2021/may/27/australian-court-finds-government-has-duty-to-protect-young-people-from-climate-crisis?fbclid=IwAR3ypf4UaqCRCdV_A8hzO-NNnGX4CT2gwwCtZQ4iSGQ1dOMceP4yvVwNOyU

Australians deserve tech that protects their rights

A new report by the AHRC calls for far-reaching changes to ensure governments, companies and others safeguard human rights in the design, development and use of new technologies like artificial intelligence

(AI). The Human Rights and Technology final report, makes 38 recommendations to ensure human rights are upheld in Australia's laws, policies, funding and education on AI. <https://humanrights.gov.au/about/news/media-releases/australians-deserve-tech-protects-their-rights>

NSW

Supporting People with Cognitive Impairment

People with a cognitive impairment will receive greater support across the criminal justice system following the NSW Government's \$28 million investment in the statewide Justice Advocacy Service (JAS) and a nation-leading court-based diversion program. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/supporting-people-with-cognitive-impairment>

World-first app to help address domestic violence in NSW

A world-first app aimed at holding domestic violence perpetrators to account and increasing their compliance with protection orders to help safeguard victims has been unveiled. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/world-first-app-to-help-address-domestic-violence>

New judge appointed to the District Court

A new judge has been appointed to the District Court of NSW, stepping up from her role as a magistrate in the Local Court. Attorney General Mark Speakman said Magistrate Karen Robinson will be sworn in as a judge of the District Court on 15 June. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/new-judge-appointed-to-the-district-court>

Consent law reform

Sexual consent laws will be strengthened and simplified under NSW Government reforms designed to protect victim-survivors and educate the community. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/consent-law-reform>

IN PRACTICE AND COURTS

[Commonwealth Parliamentary Review now open for submissions and interviews: Sex Discrimination](#)

The AHRC is inviting contributions for its [Independent Review into Commonwealth Parliamentary Workplaces](#), accepting written contributions from groups covered by the [Review's Terms of Reference](#). The Review aim is to ensure all Commonwealth Parliamentary workplaces are safe and respectful and that our national Parliament reflects best practice in the prevention and handling of bullying, sexual harassment and sexual assault. Make a written submission via humanrights.gov.au/cpwreview.

[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.

[Law Council of Australia Submissions](#)

04 June 2021— Law Council

[Supplementary submission: Intelligence Oversight and Other Legislation Amendment \(Integrity Measures\) Bill 2020](#)
28 May 2021—Law Council

[Australia's Humanitarian Program 2021-22](#)

25 May 2021—Law Council

[Supplementary submission: Inquiry into extremist movements and radicalism in Australia](#)

[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. 11/2021, 31 May 2021.

[The Information Commissioner and Privacy Commissioner have published joint regulatory advice](#)

The Information Commissioner and Privacy Commissioner have published joint regulatory advice entitled 'Digital Restart Fund: assessment information and privacy impacts' for NSW public sector agencies as part of Information Awareness Month 2021.

[Costs Disputes – Uniform Law - Indexed Amounts](#)

Sections 291, 292 and 293 of the Legal Profession Uniform Law (NSW) relate to costs disputes. The amounts were increased as a result of indexation for the financial years 1/7/2019 - 30/6/2020 and 1/7/2020 - 30/6/2021. The amounts have again been indexed for the financial year 1/7/2021 - 30/6/2022. The Legal Profession Uniform Law (Indexed Amounts) Notice 2021 has been published and is available [here](#).

[Personal Injury Commission - Hearings during COVID-19](#)

The President of the Personal Injury Commission has advised the NSW Bar Association that the PIC will continue to apply Procedural Direction 10 until further notice. Procedural Direction 10 provides that, during the currency of the COVID-19 pandemic and until further notice, the Commission will, wherever possible, list matters for hearing by audio link or audio-visual link.

[Consent proposals could result In significant injustice](#)

The proposals announced by the NSW Attorney General in relation to consent in sexual assault matters are likely to result in significant injustice, the President of the New South Wales Bar Association Michael McHugh SC said in a media statement. The President's media release is available [here](#) and the NSW Government's media statement can be found [here](#).

[Latest edition of the 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.

[Artificial Intelligence \(AI\)](#)

The NSW Government believes that the NSW Government can use AI to benefit the community and is taking actions to ensure that AI is used safely, ethically and effectively. We have an AI Strategy(External link) that outlines our vision for the use of AI, and ensures transparency, fairness and accountability.

[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. Last updated 2 June 2021.

[NCAT Digitisation of warrants for possession](#)

From 24 May 2021, all warrants for possession issued by NCAT will be electronically transmitted to the Office of the Sheriff. The new process is part of NCAT's strategy to increase digitisation of its services.

CASES

[Australian Conservation Foundation Incorporated v Minister for the Environment \[2021\] FCA 550](#)

ADMINISTRATIVE LAW – statutory construction – application for judicial review – where proposed action for construction of and operation of infrastructure to harvest and supply water to a coal mine by a different but related company – where proposed action intended to provide an alternative source of water from that approved in the initial proposal for the construction and operation of the coal mine – where the delegate of the Minister for the Environment decided under s 75(1) of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) that ss 24D and 24E (the water trigger controlling provisions) were not controlling provisions for the proposed action (the controlled action decision) – whether the delegate erred in construing the phrase involves large coal mining development in ss 24D and 24E and definition of "large coal mining development" in s 528 as encompassing only an activity which forms part of the process of extracting coal from a mine – where so-called definition enacts substantive criteria – whether delegate's construction supported by the penal nature of the controlling provisions – where contrary to the delegate's construction an action will involve a large coal mining development if the action is so closely

associated with the mining of coal as to be integral to it – application for judicial review granted – controlled action decision to be remitted to the Minister for determination according to law.

The Action was to construct and operate the NGWS Project. Adani Infrastructure explained in its referral that the project: Separate applications for State and local government approvals.

[Wilson Transformer Company Pty Ltd v Anti-dumping Review Panel \(No 2\) \[2021\] FCA 591](#)

ADMINISTRATIVE LAW – application for judicial review of a determination of the Anti-Dumping Review Panel (the Panel) to affirm decisions of the Commissioner of the Anti-Dumping Commission to terminate anti-dumping investigations – whether each of the decisions involved an error of law – whether each of the decisions was not authorised by the Customs Tariff (Anti-Dumping) Act 1975 (Cth) (the Customs Act) – whether the decisions were affected by jurisdictional error – where the Panel did not err in law by adopting and applying an erroneous construction of the Customs Act – where the Court is satisfied that it was not impermissible for the Panel to have reasoned as it did.

ADMINISTRATIVE LAW – whether a breach of the rules of natural justice occurred in connection with the making of each of the decisions – whether the decisions were affected by jurisdictional error – where the Panel failed to comply with the requirements of procedural fairness by not advising the Applicant of its intended course to hold a conference and undertaking to provide the Applicant with an opportunity to respond to any relevant information it might obtain during that conference subject to its obligations of confidentiality – where the error made by the Panel was not material and thus not jurisdictional error.

[Edway Training Pty Ltd v SafeWork NSW \[2021\] NSWCATAD 152](#)

ADMINISTRATIVE LAW – Civil and Administrative Tribunal – administrative review jurisdiction – no jurisdiction to administratively review a decision by SafeWork NSW to refuse to enter into a contract with a Registered Training Organisation to do General Construction Induction Training in NSW.

[McMahon v Northern Beaches Council \[2021\] NSWCATAD 137](#)

ADMINISTRATIVE LAW – access to information – legal professional privilege
Government Information (Public Access) Act 2009;
Evidence Act 1995 (NSW)

This is an application for review by the Tribunal of the decision of the Respondent, the Northern Beaches Council (which, together with the antecedent local government bodies that were merged into so as to become the Respondent, “the Council”, not to provide access to a number of documents which fall within the scope of a request made by the Applicant in April 2020.

[Toplace Pty Ltd v City of Parramatta \[2021\] NSWCATAD 149](#)

1. The deemed decision to refuse to deal with the access application is affirmed.

ADMINISTRATIVE LAW – government information – access application – legal professional privilege – waiver – whether overriding public interest against disclosure. Administrative Decisions Review Act 1997; Evidence Act 1995; Government Information (Public Access) Act 2009.

[Williams v University of New England \[2021\] NSWCATAD 151](#)

ADMINISTRATIVE LAW – access to Government information – Government Information (Public Access) Act 2009 (NSW) – items 1(d), 1(g) and 3(a) of the Table to s14 GIPA Act – whether information provided in confidence – if so, whether it is still confidential – appropriate redaction to avoid the public interest consideration against disclosure under item 3(a) of the Table to s 14 GIPA Act.

[Decision restricted \[2021\] NSWCATAD 145](#)

ADMINISTRATIVE LAW – Administrative review – review of decision to cancel and disqualify the accreditation of an assessor of high risk work licences under the cl 134 of the Work Health and Safety Regulation 2017 – whether Conditions for conducting high risk work license assessments in NSW breached – decisions set aside and varied.

[SafeWork NSW v SNAP Programs Limited; SafeWork NSW v State of New South Wales \(Department of Communities and Justice\) \[2021\] NSWDC 203](#)

(1) The non-publication orders and pseudonym orders made by the Court on 27 April 2020 and 29 July 2020 are revoked. CRIMINAL PROCEDURE - Suppression and Non-Publication Orders - Children (Criminal Proceedings) Act 1987; Court Suppression and Non-Publication Orders Act 2010; Work Health and Safety Act 2011 SafeWork NSW v SNAP Programs Limited; SafeWork NSW v State of New South Wales (Department of Communities and Justice) [2021] NSWDC 203.

[Sidoti v Hardy \[2021\] NSWCA 105](#)

LAND LAW – Adverse possession – Actual possession – Old system title – Conversion to Torrens title – Limited title – Indefeasibility of title – Exceptions to indefeasibility – Where successful claim at trial in respect of adverse possession of small portion of a ‘dunny lane’ commencing before creation of limited folio – Whether statutory possessory application over Torrens title land able to be made – Appeal dismissed
LIMITATION OF ACTIONS – Actions to recover land – Adverse possession – Interaction of Limitation Act 1969 (NSW), ss 27 and 65, with Real Property Act 1900 (NSW), s 45C
STATUTORY INTERPRETATION – Interpretation of Real Property Act 1900 (NSW) – Extrinsic materials – Explanatory memoranda and notes – Legislative history – Registrar-General’s guidelines – Second reading speeches
MORTGAGES AND SECURITIES – Mortgages – Duties, rights and remedies of mortgagee.

LEGISLATION**Commonwealth****Bills**[Liability for Climate Change Damage \(Make the Polluters Pay\) Bill 2021](#)

HR 24/05/2021 - This Bill makes fossil fuel companies liable for climate change damage, giving victims of climate change, such as the 2019 – 2020 bushfire survivors, the right to bring an action against thermal coal, oil and gas companies for climate change damage.

[Independent Office of Animal Welfare Bill 2021](#)

HR 24/05/2021 - Commonwealth statutory authority with responsibility for the development of animal welfare policy at the Commonwealth level. The Office will have a leadership role on matters of animal welfare, as well as the ability to conduct inquiries and reviews into the effectiveness and implementation of our animal welfare laws.

Acts Compilation[Freedom of Information Act 1982](#)

27/05/2021 - Act No. 3 of 1982 as amended
Freedom of Information Act 1982

Regulations[Telecommunications \(Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations\) Determination 2021](#)

This instrument determines the circumstances where the connection obligation and the supply obligation do not arise in relation to requests for wholesale broadband services from a carriage service provider to a statutory infrastructure provider for the purposes of the Telecommunications Act 1997.

NSW**Regulations and other miscellaneous instruments**

[Companion Animals \(Adjustable Fee Amounts\) Notice 2021](#) (2021-260) — published LW 3 June 2021

[Electoral Funding \(Adjustable Amounts\) \(Political Donation Caps\) Notice 2021](#) (2021-262) — published LW 4 June 2021

[Electronic Transactions \(ECM Courts\) Amendment \(Online Criminal Registry\) Order 2021](#) (2021-263) — published LW 4 June 2021

[Fair Trading Amendment \(Code of Conduct for Short-term Rental Accommodation Industry\) Regulation 2021](#) (2021-250) — published LW 28 May 2021

[Legal Profession Uniform Law \(Indexed Amounts\) Notice 2021](#) (2021-248) — published LW 27 May 2021

[NSW Admission Board Amendment \(Schedule of Fees\) Rule 2021](#) (2021-259) — published LW 28 May 2021

[Public Health Amendment \(COVID-19 Spitting and Coughing\) Regulation \(No 2\) 2021](#) (2021-251) — published LW 28 May 2021

[Public Notaries Appointment Amendment \(Fees\) Rule 2021](#) (2021-256) — published Gazette No 225 of 28 May 2021, n2021-1083

[Residential Apartment Buildings \(Compliance and Enforcement Powers\) Amendment Regulation 2021](#) (2021-252) — published LW 28 May 2021

Proclamations commencing Acts

[Stronger Communities Legislation Amendment \(Miscellaneous\) Act 2020 No 31 \(2021-230\) — published LW 21 May 2021](#) - The object of this Proclamation is to commence amendments to the Criminal Procedure Act 1986 that extend case management provisions under the Act so that they apply to District Court prosecutions under the Work Health and Safety Act 2011.

[Consultation: Privacy and Personal Information Protection Amendment Bill 2021 \[Draft\]](#)

If passed, this Bill will introduce a scheme that will ensure greater openness and accountability in relation to the handling of personal information held by NSW public sector agencies.

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.

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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