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ISSUE 115



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### IN THE MEDIA

#### Sports rorts: Coalition blocking release of Phil Gaetjens' secret report, citing cabinet exemption

Bridget McKenzie claims the report was prepared mainly for the purposes of cabinet. Submissions from the Department of Prime Minister and Cabinet to the OAIC argue the document is covered by cabinet-in-confidence, exempting it from release through Fol. <https://www.theguardian.com/australia-news/2021/jul/18/sports-rorts-coalition-blocking-release-of-phil-gaetjens-secret-report-citing-cabinet-exemption>

#### Law Council calls for more clarity about proposed family violence regimes

While the Law Council of Australia strongly supports the intent of the Family Law Amendment (Federal Family Violence Orders) Bill 2021, there are several issues within the legislation that need clarification, n how the proposed scheme will actually work and how it would interact with existing state and territory Family Violence Order regimes. <https://www.lawcouncil.asn.au/media/media-releases/law-council-calls-for-more-clarity-about-proposed-family-violence-regimes>

#### Strengthening Australia's cyber security regulations and incentives

On 13 July 2021, the Australian Government opened consultation on options for regulatory reforms and voluntary incentives to strengthen the cyber security of Australia's digital economy. This work forms part of Australia's Cyber Security Strategy 2020 and also responds to recommendations of the 2020 Cyber Security Strategy Industry Advisory Panel. <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/cyber-security-regulations-incentives>

#### Court shows sexual harassment will not be tolerated

The Law Council of Australia acknowledges the statement of the Chief Justice and Chief Judge of the Federal Circuit Court of Australia in relation to two complaints against a Judge of that Court.

The Law Council President, commends the Court for its detailed investigations and inquiry process, including the appointment of three independent former judges and a counsel-assisting, which may well be a first in the federal courts. <https://www.lawcouncil.asn.au/media/media-statements/court-shows-sexual-harassment-will-not-be-tolerated>

#### Privacy Act review delayed as reforms stall

A significant review of the Privacy Act has been delayed, with a discussion paper still yet to be released 18 months after it was launched, while draft legislation introducing a new penalty scheme for data breaches announced well over two years ago still hasn't been produced <https://www.innovationaus.com/privacy-act-review-delayed-as-reforms-stall/>

#### LCA: Call for tighter reins on powers in an emergency

While on one hand the Act could provide benefit in a time of crisis, it could if not revised, potentially remove or compromise important provisions in the Freedom of Information Act 1982 (Cth), Privacy Act 1988 (Cth), Australian Human Rights Commission Act 1986 (Cth) and Australian Information Commissioner Act 2010 (Cth) impacting on the broader rights of individuals. <https://www.lawcouncil.asn.au/media/media-statements/call-for-tighter-reins-on-powers-in-an-emergency>

### NSW

#### Final call for open justice reform submissions

People across NSW are encouraged to have their say about proposed reforms to the laws relating to open justice in courts and tribunals. Attorney General Mark Speakman is calling for submissions into the NSW Law Reform Commission before they close on 2 August 2021. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/final-call-for-open-justice-reform-submissions>

## Two men prosecuted for using false documents to obtain work

NSW Fair Trading has successfully prosecuted two persons regarding fraudulent activities in the construction industry. <https://www.nsw.gov.au/customer-service/news-and-events/news/two-men-prosecuted-for-using-false-documents-to-obtain-work>

## Cyber security failures at TfNSW, Sydney Trains

Both agencies are falling short of standards set out by the NSW Cyber Security Policy (CSP). Transport for NSW and Sydney Trains are failing to manage 'significant' cyber security risks despite more than \$40 million worth of funding, the NSW Auditor General says. <https://australiancybersecuritymagazine.com.au/nsw-audit-office-report-exposes-significant-cybersecurity-vulnerabilities-at-sydney-trains-tfnsw/>

## NSW Education department hit by cyber attack

The NSW Department of Education has suffered a cyber attack just days before the school term resumes and students in Greater Sydney are forced to rely on remote learning. The department is currently working with Cyber Security NSW to restore normal access. <https://www.itnews.com.au/news/nsw-education-department-hit-by-cyber-attack-567046>

## IN PRACTICE AND COURTS

### [Strengthening Australia's cyber security regulations and incentives: Discussion Paper](#)

Interested stakeholders are invited to provide a submission to the discussion paper, Strengthening Australia's cyber security regulations and incentives. Submissions on the discussion paper can be made via our submission form before 27 August 2021.

### [Proposed amendments to the Legal Profession Uniform Conduct \(Barristers\) Rules 2015](#)

The Australian Bar Association invites comments and submissions on a proposal to amend Rules 123 and 125 of the Legal Profession Uniform Conduct (Barristers) Rules. Submissions should be sent to the Australian Bar Association on or before 2 August 2021.

## 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. Make a written submission via [humanrights.gov.au/cpwreview](https://humanrights.gov.au/cpwreview). Submissions on the Consultation Paper closed on 9 July. View the Consultation Paper at this [PS News link](#).

## [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

08 July 2021— Law Council  
[National Register of Enduring Powers of Attorney](#)

08 July 2021— Law Council  
[Judicial Impartiality: Consultation Paper](#)

06 July 2021— Law Council  
[Guaranteeing a minimum return of class action proceeds to class members](#)

## [AAT: Translation of fact sheets](#)

AAT has translated some fact sheets into selected languages.

## [AAT Bulletin - Issue No. 14/2021, 12 July 2021](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions

## [OAIC: Our FOI disclosure log](#)

The information described in our disclosure log has been released by the OAIC under the Freedom of Information Act 1982 (FOI Act): updated May 2021.

## Legal and Constitutional Affairs Legislation Committee

### [Family Law Amendment \(Federal Family Violence Orders\) Bill 2021 \[Provisions\]](#)

On 13 May 2021, the Senate referred the provisions of the Family Law Amendment (Federal Family Violence Orders) Bill 2021 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 29 July 2021.

### [Constitution Alteration \(Freedom of Expression and Freedom of the Press\) 2019](#)

Status: Accepting Submissions Date Referred: 17 June 2021 Submissions Close: 20 August 2021. Reporting Date: 31 December 2021

### [Courts and Tribunals Legislation Amendment \(2021 Measures No. 1\) Bill 2021](#)

Status: Accepting Submissions Date Referred: 24 June 2021 Submissions Close: 15 July 2021 Reporting Date: 13 August 2021

## Select Committee on Foreign Interference through Social Media

### [Foreign Interference through Social Media](#)

Select Committee on Foreign Interference through Social Media to inquire into and report on the risk posed to Australia's democracy by foreign interference through social media. The committee is to present its final report on or before the second sitting day of May 2022. The closing date for submissions is 31 October 2021.

## NSW

### [Court and tribunal information: access, disclosure and publication.](#)

The NSW Law Reform Commission has released draft proposals ahead of its final report on Court and tribunal information access, disclosure and publication. The proposals focus on the operation of suppression and non-publication orders and access to information in NSW courts and tribunals. Submissions have been invited (closing date 2 August 2021).

### [Drug Misuse and Trafficking Regulation 2021](#)

The NSW Department of Communities and Justice is seeking comments on the consultation draft of the Drug Misuse and Trafficking Regulation 2021 and Regulatory Impact Statement. There are two documents that you can read to understand the proposed changes: Proposed [Drug and Misuse and Trafficking Regulation 2021](#) and [Regulatory Impact Statement](#) Submissions can be made by email to [policy@justice.nsw.gov.au](mailto:policy@justice.nsw.gov.au) The closing date for submissions is 16 July 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 have again been indexed for the financial year 1/7/2021 - 30/6/2022.

### [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, list matters for hearing by audio link or audio-visual link.

### [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. Have your say to 31 December 2021.

### [NSW Law Society: Applications open for the Access to Justice Innovation Fund](#)

The \$1 million fund from the State Government supports innovative ideas to improve or enhance access to justice in NSW. Grants of between \$50,000 and \$250,000 are available for low cost, high impact projects that make a difference for those who need it most. Applicants will be advised of the outcome of their application by late May 2021.

### [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 13 July 2021.

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

The fourth New South Wales Bar Association Professional Standards Scheme will remain in effect until 30 June 2025. You can learn more about the scheme [here](#).

## CASES

### [Application by the Attorney General of NSW \[2021\] NSWSC 857](#)

CIVIL LAW - order for evidence to be taken on commission - request by foreign court - no question of principle. The Court notes that the right of Civi Corp Pty Limited to apply to the Court to make any objection, based on any privilege or otherwise, to production pursuant to the Subpoena to Produce, is preserved.

### [Wojciechowska v Commissioner of Police \[2021\] NSWCATAD 210](#)

ADMINISTRATIVE LAW – government information – access application – information not held – reasonableness of searches – redacted information - information out of scope ADMINISTRATIVE LAW – jurisdiction of tribunal – matter between a State and resident of another State - whether tribunal exercising judicial power.

### [Egan v Commissioner for Fair Trading, Department Of Customer Service \[2021\] NSWCATAD 209](#)

ADMINISTRATIVE LAW – building and construction – licence - home building - experience - Instrument. Administrative Decisions Review Act 1997

### [Hooper v Willoughby City Council \[2021\] NSWCATAD 208](#)

ADMINISTRATIVE LAW – merits review – access to government information – adequacy of search – information for which there is a conclusive public interest against disclosure (excluded information and privileged information) – information for which there is an overriding public interest against disclosure (cl 1(d) and (f), cl 3(a) and (b) and cl 6(1) of the table to s 14(2) of the Government Information (Public Access) Act 2009) – processing charge.

### [Snape v Commissioner of Police \[2021\] NSWCATAD 206](#)

ADMINISTRATIVE LAW – freedom of information – personal information – Government Information (Public Access) Act 2009 – disclosure.

### [Sydney Trains v Batshon \[2021\] NSWCA 143](#)

ADMINISTRATIVE LAW - workers compensation - examination by approved medical specialist - request for re-examination by appeal panel refused - primary judge held that request not considered by appeal panel - appeal panel in fact considered request - adequacy of reasons of appeal panel - whether denial of procedural fairness by primary judge - whether any denial could be material in light of the right of appeal by way of rehearing - whether other judicially reviewable errors in appeal panel's decision - consideration of differences in assessment regimes under workers compensation and motor accident legislation - appeal allowed and decision of appeal panel reinstated COSTS - whether reason to depart from rule that costs should follow event - inclusion by appellant of voluminous irrelevant pages in appeal materials - where error by primary judge could have been corrected without need for appeal Sydney Trains v Batshon [2021] NSWCA 143.

[ERI v Commissioner for Fair Trading \[2021\] NSWCATOD 95](#)

ADMINISTRATIVE REVIEW - tattoo parlours – tattoo operator licence - adverse security determination - fit and proper person - public interest.

[DYH v NSW Trustee and Guardian \[2021\] NSWCATAD 200](#)

ADMINISTRATIVE LAW – administrative review – applicant seeking review of decisions made by respondent – application by respondent for dismissal – whether decisions in fact made by respondent in the exercise of its functions as financial manager.

[KE v R \[2021\] NSWCCA 119](#)

CRIME – appeals – appeal against conviction – where a majority verdict direction was given instead of a Black direction – whether a miscarriage of justice occurred by the failure to give a Black direction – direction was not a proper perseverance direction – appeal allowed – quash the verdicts of guilty returned by the jury – retrial ordered.

[SafeWork NSW v Solveco Pty Ltd; SafeWork NSW v Brent Martin Lawson; SafeWork NSW v Tiberiu Orden; \(No. 1\) \[2021\] NSWDC 298](#)

(1) Grant leave to the prosecutor to amend the Summons in the manner proposed in the annexes to the affidavit of Mr O’Connell dated 22 June 2021.  
CRIMINAL PROCEDURE – leave to amend summons – factors relevant to exercise of discretion – consideration of width of prosecution case by reference to Summons and Statement of Facts  
STATUTORY INTERPRETATION – meaning of “indictment” in s 20 of the Criminal Procedure Act 1986 (NSW)

[DQV v University of New England \[2021\] NSWCATAP 208](#)

APPEALS – Privacy – Where respondent collected personal information of prospective overseas students and their sponsors for the purpose of making a pre-visa assessment to be provided to a Commonwealth entity - Whether respondent’s purpose of collection was directly related to a function or activity of the respondent – Whether leave should be granted where error of fact established – Whether appellant entitled to appeal in respect of finding about the personal information of his brother, a co-applicant, where brother had not appealed – Whether Tribunal had erred by making findings in reliance upon a policy which had not been published at relevant times.

[Kirby v Health Care Complaints Commission \[2021\] NSWCA 139](#)

STATUTORY CONSTRUCTION – interpretation – Health Care Complaints Act 1993 (NSW) (HCC Act), s 4 – definition of “disciplinary body” – whether disciplinary body “established under” the Health Practitioner Regulation National Law 2009 (NSW) (National Law) – definition required to be read into HCC Act, s 90B – where Commission referred complaint to the Tribunal (NCAT) under the National Law, s 145C – where NCAT “established under” the National Law – whether NCAT authorised by the National Law to exercise the specified power of a disciplinary body in relation to a registered

health practitioner  
STATUTORY CONSTRUCTION – interpretation – HCC Act, s 90B – National Law, s 145C – interaction between HCC Act and National Law – where Director of Proceedings determined that the Commission should prosecute complaint before the Tribunal – whether Director of Proceedings acting ultra vires – whether distinction between Commission “prosecuting” the complaint before a disciplinary body and referring the complaint to the Tribunal  
PROFESSIONS AND TRADES – health practitioners – dental practitioners – whether Commission referred a complaint against registered dentist to the Tribunal pursuant to s 145C of the National Law.

[Kirby v Health Care Complaints Commission \[2021\] NSWCA 138](#)

ADMINISTRATIVE LAW – Particular administrative bodies – Health Care Complaints Commission – Health Care Complaints Act 1993 (NSW) – Registered health practitioner – Whether the Commission failed to consult the appropriate professional council under s 39(2) before making a prohibition order under s 41A – Where the complaint against the health practitioner concerned conduct outside the field of his registration – Whether failure to consult the appropriate professional council rendered the prohibition order invalid.

[Commissioner of the Australian Federal Police v Revell-Reade \[2021\] NSWSC 812](#)

PRIVATE INTERNATIONAL LAW – Assistance to foreign countries in criminal matters – Defendant convicted for conspiracy to defraud in UK – Foreign restraining orders and foreign pecuniary penalty orders registered under the Mutual Assistance in Criminal Matters Act 1987 (Cth) – Application for partial discharge of registered foreign pecuniary penalty order from property in custody and control of the Official Trustee – Interests of third parties – Order made subject to protection of interests of lien holder.

[Kirkman v Minister Administering the Crown Lands Act \(No. 3\) \[2021\] NSWSC 730](#)

ADMINISTRATIVE LAW – the applicant seeks judicial review of a 2017 decision made by the Minister Administering the Crown Lands Act 1989, the first respondent – the Court published a judgment on 30 October 2020 resolving a number of issues raised by the plaintiff – the Court invited further submissions from the Minister and submissions in reply from the applicant on two outstanding issues – the first issue being whether the applicant and second defendant’s enclosure permits remained in conflict over a disputed portion of Crown road at the time of the 2017 decision – and if the enclosure permits are in conflict, whether that conflict requires resolution – the second issue being whether the Crown road is now enclosed, such that the enclosure permits can be lawfully cancelled.  
Kirkman v Minister Administering the Crown Lands Act (No. 3) [2021] NSWSC 730.

## LEGISLATION

### Commonwealth Regulations

#### [National Redress Scheme for Institutional Child Sexual Abuse Amendment \(2021 Measures No. 1\) Rules 2021](#)

This instrument amends the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 to prescribe that certain entities are or are not State or Territory institutions for the purposes of the Scheme and to establish the Scheme's brand as a protected symbol.

#### [Foreign Evidence \(Application of Amendments\) Regulations 2021](#)

This instrument lists States and Territories which have elected to opt-in to certain amendments made to the Foreign Evidence Act 1994 by the Foreign Evidence Amendment Act 2010. The regulations repeal and replace the Foreign Evidence (Application of Amendments) Regulations 2011, which are scheduled to sunset on 1 October 2021. Foreign Evidence (Application of Amendments) Regulations 2021

#### [Fair Work Amendment \(Respect at Work\) Regulations 2021](#)

This instrument amends the Fair Work Regulations 2009 to give effect to recommendation 31 of the Respect@Work: National Inquiry into Sexual Harassment in the Workplace by adding sexual harassment to the list of conduct falling within the definition of 'serious misconduct' and supports amendments that would be made by the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021 to include 'sexual harassment' in the existing stop-bullying jurisdiction. Fair Work Amendment (Respect at Work) Regulations 2021.

#### [Commonwealth Electoral \(Authorisation of Voter Communication\) Determination 2021](#)

This instrument gives effect to the Electoral Commissioner's power at subsection 321D(7) of the Commonwealth Electoral Act 1918 to make a legislative instrument which further determines exceptions to communications or circumstances for electoral and referendum matter, and to also determine further requirements in relation to the particulars which are to be notified as part of the authorisation across a number of pieces of legislation. Commonwealth Electoral (Authorisation of Voter Communication) Determination 2021.

### NSW

#### Regulations and other miscellaneous instruments

[Electronic Transactions \(ECM Courts\) Amendment \(Digital Case File Application\) Order 2021](#) (2021-398) — published LW 16 July 2021

[Electronic Transactions Amendment \(DDT and IRC\) Regulation 2021](#) (2021-382) — published LW 16 July 2021

[Local Government \(General\) Amendment Regulation 2021](#) (2021-371) — published LW 9 July 2021

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

## KEY CONTACTS

### PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with the appropriate expertise and achieving maximum efficiency.

Instructions may be emailed to [nswgovtlegal@tglaw.com.au](mailto:nswgovtlegal@tglaw.com.au) at anytime.



#### [Mark Feetham](#)

Partner  
+61 2 8248 5847  
+61 414 908 225  
[mfeetham@tglaw.com.au](mailto:mfeetham@tglaw.com.au)



#### [Loretta Reynolds](#)

Partner, Markets  
+61 3 8080 3705  
+61 403 069 819  
[ltreynolds@tglaw.com.au](mailto:ltreynolds@tglaw.com.au)

If you would like to receive a Contact Card with full list of contacts please email us.

### NEWSLETTER EDITOR



#### [Sylvia Fernandez](#)

Partner  
+61 2 8248 3499  
+61 418 340 118  
[sfernandez@tglaw.com.au](mailto:sfernandez@tglaw.com.au)

### LIBRARY RESOURCE



#### [Adeline Tran](#)

Lawyer  
+61 2 9020 5709  
[resourcecentre@tglaw.com.au](mailto:resourcecentre@tglaw.com.au)

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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

### Thomson Geer is:

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- particularly recommended for the following areas of law:

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### Cluster Contacts:

Customer Service	Jodi Walkom	Partner	+61 2 8248 5823	jwalkom@tglaw.com.au
Education	Jacque Seemann	Partner	+61 2 9020 5757	jseemann@tglaw.com.au
Health	Lucinda Smith	Partner	+61 2 9020 5748	lsmith@tglaw.com.au
Planning, Industry and Environment	Craig Tidemann	Partner	+61 2 8248 3404	ctidemann@tglaw.com.au
Premier and Cabinet	Sylvia Fernandez	Partner	+61 2 8248 3499	sfernandez@tglaw.com.au
Regional NSW	Melinda Graham	Partner	+61 2 8248 3410	mgraham@tglaw.com.au
Stronger Communities	John Howard	Partner	+61 2 8248 3401	jhoward@tglaw.com.au
Transport	Mark Feetham	Partner	+61 2 8248 5847	mfeetham@tglaw.com.au
Treasury	Simon Ralton	Partner	+61 2 8248 3426	sralton@tglaw.com.au

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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