



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### IN THE MEDIA

#### Privacy concerns cast shadow over vaccination passports

The lack of a clear blueprint for vaccination 'passports' that addresses public concerns around safety and security risks is undermining the implementation of vaccine mandates, warns the Australia Institute's Centre for Responsible Technology. <https://australiainstitute.org.au/post/privacy-concerns-cast-shadow-over-vaccination-passports/>

#### Human rights charter needed to protect press freedom and public debate in Australia

Australia's journalists and whistleblowers are under increasing threat and urgently need better legal protections, the Human Rights Law Centre has advised in a submission to a Senate inquiry examining free speech and press freedom. <https://www.hrlc.org.au/news/2021/9/6/human-rights-charter-needed-to-protect-press-freedom-and-public-debate-in-australia>

#### COVID-19 sees huge increase in support for a Charter of Human Rights: poll

There has been a dramatic increase in support for a Charter of Human Rights compared to before the COVID-19 pandemic, new data reveals. <https://www.hrlc.org.au/news/2021/9/7/covid-19-sees-huge-increase-in-support-for-a-charter-of-human-rights-poll>

#### Extraordinarily dangerous': Backlash to govt's new hacking powers grows

Australia's "extraordinary" new hacking powers for law enforcement authorities represent the next step in the "explosion of the surveillance state", according to a leading digital rights advocate, with backlash against the recently passed legislation gaining pace. <https://www.innovationaus.com/extraordinarily-dangerous-backlash-to-govts-new-hacking-powers-grows/>

#### We need to get Australia's digital vaccine certificates right first time

In its current format, Australia's COVID-19 vaccination certificate system is alarmingly vulnerable. Far from

being effective, secure and tamper-proof, it is wide open to the risks posed by fakes and forgeries. <https://www.innovationaus.com/we-need-to-get-australias-digital-vaccine-certificates-right-first-time/>

#### Commission welcomes appointment of Human Rights Commissioner

The Australian Human Rights Commission welcomes the Government's decision to fill the role of Human Rights Commissioner, a role which is a foundational one to the Commission. <https://humanrights.gov.au/about/news/commission-welcomes-appointment-human-rights-commissioner>

#### Statement on passage of Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021

The AHRC welcomes the passage of the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021. The Bill contains important reforms to address sexual harassment in Australian workplaces which were recommended by the AHRC following its world-leading National Inquiry into Sexual Harassment in Australian Workplaces, Respect@Work. <https://humanrights.gov.au/about/news/statement-passage-sex-discrimination-and-fair-work-respect-work-amendment-bill-2021>

#### Commencement of the Federal Circuit and Family Court of Australia

The Morrison Government welcomes the commencement of the Federal Circuit and Family Court of Australia (FCFC). <https://www.attorneygeneral.gov.au/media/media-releases/federal-circuit-and-family-court-of-australia-1-september-2021>

#### DPC rolls out PS vaccine directions

The Department of Premier and Cabinet (DPC) has issued a Circular to guide Agencies in determining if their employees should be directed to be vaccinated against COVID-19. <https://arp.nsw.gov.au/c2021-16-guidance-for-government-sector-agencies-regarding-covid-19-vaccinations-for-their-employees/>

**NSW****Thousands watch live stream of court cases challenging mandatory COVID-19 vaccines for NSW workers**

Lawyers say NSW's mandatory COVID-19 vaccines order or frontline workers breaches the right to privacy, as the Supreme Court hears four separate cases against the rules. <https://www.abc.net.au/news/2021-09-09/supreme-court-hears-covid-order-challenges/100445878>

**New laws set to tackle religious discrimination**

The NSW Government will introduce a bill in Parliament to amend the Anti-Discrimination Act 1977 (NSW), adding religion to existing protected grounds of disability, sex, race, age, marital or domestic status, homosexuality, transgender status and carer's responsibilities. These reforms will see NSW join other states and territories in making religious discrimination unlawful. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/new-laws-set-to-tackle-religious-discrimination>

**New taskforce to protect vulnerable children in NSW**

A new child protection taskforce will work to prevent vulnerable children slipping through the cracks, by better coordinating services and support throughout the lockdown and beyond. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/new-taskforce-to-protect-vulnerable-children>

**IN PRACTICE AND COURTS****[Federal Circuit and Family Court of Australia - Rules of Court - Family Law, General Federal law and Bankruptcy](#)**

The Chief Justice of the Family Court of Australia and Chief Judge of the Federal Circuit Court of Australia has advised that new Rules regarding the family law and child support jurisdictions and general federal law and bankruptcy proceedings in the FCFCOA have been made and will commence on 1 September 2021. [Update to the profession No.4: Commencement of the new Federal Circuit and Family Court of Australia](#) Last updated on August 20, 2021

**[Update to the family law profession: Commencement of the new FCFCOA](#)**

The Family Court of Australia and Federal Circuit Court of Australia released information last week outlining changes to court operations that will occur on the commencement of the Federal Circuit and Family Court of Australia (FCFCOA) from 1 September 2021.

**Department of Infrastructure, Transport, Regional Development and Communications: Draft Online Safety (Basic Online Safety Expectations) Determination 2021 consultation**

We are seeking submissions on an exposure draft of the Online Safety (Basic Online Safety Expectations) Determination 2021. The draft determination sets out the government's demands for providers that offer a social media service, "relevant electronic service" or "designated internet service", including the nine principle-based "core expectations" included in the Act. View the [consultation and consultation paper](#) Submissions to the consultation close on 15 October 2021.

**[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 3 September 2021.

**Law Council of Australia Submissions**

06 September 2021— Law Council [Developing the next National Plan to Reduce Violence against Women and their Children](#)

06 September 2021— Law Council [Operationalising the National Strategic Framework for Information Sharing Between the Family Law and Family Violence and Child Protection Systems](#)

**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. 18/2021, 6 September 2021](#)

**Legal and Constitutional Affairs Legislation Committee**

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

Status: Accepting Submissions Date Referred: 17 June 2021 Submissions Closed: 20 August 2021 Reporting Date: 31 December 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****NSW Court Appointments**

[Sydney silk to become Supreme Court judge](#)

08 September 2021

[Children's Court President to head NSW Local Court](#)

01 September 2021

**Supreme Court Appointments**

11 August 2021 [New Chief Judge at Common Law appointment](#)

**[COVID-19: Information for Attending Court - 10 September 2021](#)**

The New South Wales Bar Association's consolidated guide to COVID-19-related court arrangements has again been updated in terms of recent developments and includes the District Court update.

**[Equitable briefing report due 30 September 2021](#)**

A reminder to all barristers who have adopted the Equitable Briefing Policy that you are required to submit your FY21 report to the Law Council of Australia by 30 September 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.

### [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 10 September 2021.

## **PUBLISHED – ARTICLES, PAPERS, REPORTSCASES**

### [National COVID-19 Privacy Principles](#)

OAIC: 2 September 2021

The Office of the Australian Information Commissioner and state and territory privacy commissioners and ombudsmen have produced the following universal privacy principles to support a nationally consistent approach to solutions and initiatives designed to address the ongoing risks related to the COVID-19 pandemic.

## **CASES**

### [Secretary, NSW Department of Education v Gabriel's Family Day Care Pty Ltd \[2021\] NSWCATAP 263](#)

ADMINISTRATIVE LAW-Children (Education and Care Services) National Law-cancellation of provider approval-whether s 31 (e) ground for cancellation included breach of condition to comply with National Law imposed by s 19 (2)-multiple alleged breaches-whether systemic failure to comply with condition of provider approval-whether alleged breaches established-whether alleged breaches sufficient to warrant cancellation of provider approval-whether Briginshaw principle applicable. APPEAL-adequacy of reasons-whether the Tribunal erred in failing to deal with the essence of the case for cancellation.

### [Tripodina v Commissioner for Fair Trading \[2021\] NSWCATAD 258](#)

ADMINISTRATIVE REVIEW – Real estate agent – Application for Class 1 licence – Qualification and experience requirements set out in an Order issued by the Minister – Mandatory nature of requirements - Whether the applicant meets the terms of the Order.

### [Rahman v Health Secretary in respect of the Sydney Local Health District and the South West Sydney Local Health District \[2021\] NSWIRComm 1065](#)

EMPLOYMENT AND INDUSTRIAL LAW – Termination – Statutory rights – Unfair dismissal – Security officer intervened in patient restraint – absence of direction to intervene – consideration of gravity of physical conduct

– verbal altercation with co-worker following the restraint – whether conduct was misconduct warranting termination of employment – impact of termination at one Local Health District on employment at another – whether dismissal harsh, unreasonable or unjust.

### [Christopher v Independent Commission Against Corruption \[2021\] NSWCATAD 256](#)

ADMINISTRATIVE LAW – access to government information – invalid access application – excluded information.

### [Anwari v Commissioner for Fair Trading \[2021\] NSWCATOD 129](#)

ADMINISTRATIVE LAW – administrative review – licensing – whether Applicant meets requirements for issue of builders licence - application of Instrument - experience – referee statements - “wide range of building construction work” Anwari v Commissioner for Fair Trading [2021] NSWCATOD 129.

## **LEGISLATION**

### **Commonwealth**

#### **Bills**

### [Sex Discrimination and Fair Work \(Respect at Work\) Amendment Bill 2021](#)

Assent Act no: 104 Year: 2021 10 Sept 2021 - Implements certain recommendations of the Australian Human Rights Commission report, Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces by amending the: Australian Human Rights Commission Act 1986 to amend the definition of 'unlawful discrimination'; and extend the period of time between an alleged incident and the lodging of a complaint in relation to the President's discretion to terminate a complaint.

### [Commonwealth Electoral Amendment \(Integrity of Elections\) Bill 2021](#)

On 2 September 2021 the Senate referred the Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021 for inquiry and report by 14 October 2021. The closing date for submissions is 20 September 2021.

### [Commonwealth Electoral Amendment \(Integrity of Elections\) Bill 2021](#)

Introduced Senate 01 Sept 2021 - A bill to amend the Commonwealth Electoral Act 1918 to provide for the routine auditing of the electronic component of Australian federal elections and the provision of voter identification. This bill does not cover referendums.

### [Charter of the United Nations Amendment Bill 2021](#)

Finally passed both Houses - 02 Sept 2021 - Amends the Charter of the United Nations Act 1945 to: specify that certain counter-terrorism financial sanctions lists and revocations be made by legislative instrument; and confirm the validity of action that has been taken, or which may need to be taken, in respect of conduct in relation to existing counter-terrorism financial sanctions listings that were made but not registered on the Federal Register of Legislation at the time of their making.



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

Senate – 3rd reading – 02 Sept 2021 - Amends the: A New Tax System (Family Assistance) (Administration) Act 1999, Administrative Appeals Tribunal Act 1975, Child Support (Registration and Collection) Act 1988, Paid Parental Leave Act 2010 and Social Security (Administration) Act 1999 to standardise, across all divisions, the powers of the Administrative Appeals Tribunal (AAT) to issue summonses to require persons to give evidence or produce documents; Administrative Appeals Tribunal Act 1975 in relation to: procedural fairness; alternative dispute resolution processes; constitution and reconstitution of the AAT; dismissal powers; correction of errors; appointments, authorisations and assignments; taxation of costs; and protection and immunity of reviewers in the Immigration Assessment Authority; and more.

### [Independent National Security Legislation Monitor Amendment Bill 2021](#)

Senate 2nd reading – 02 Sept 2021 - Amends the Independent National Security Legislation Monitor Act 2010 to: enable the Independent National Security Legislation Monitor (INSLM) to report on own-motion inquiries in standalone reports; provide that the INSLM's annual report may include information relating to the performance of the INSLM's functions in relation to a referral from the Parliamentary Joint Committee on Intelligence and Security; specify reporting arrangements for statutory reviews conducted by the INSLM; provide a framework for the engagement of staff (including contractors) to assist the INSLM in the performance of its functions or exercise of its powers; and provide current and former staff of the INSLM with certain legal protections during the course of assisting the INSLM with performing functions or exercising powers of the INSLM.

### [Crimes Amendment \(Remissions of Sentences\) Bill 2021](#)

On 26 August 2021, the Senate referred the Crimes Amendment (Remissions of Sentences) Bill 2021 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 14 October 2021. The deadline for submissions to this inquiry is 17 September 2021.

### [No Requirement for Medical Treatment \(Including Experimental Injections\) Without Consent \(Implementing Article 6 of the Universal Declaration on Bioethics and Human Rights\) Bill 2021](#)

HR 30 August 2021 – Although Australia is signatory to the Universal Declaration on Bioethics and Human Rights, the articles of this Declaration do not form part of Australian law. 4. Australians are currently not receiving 'adequate information' to enable them to give 'free and informed consent' in regard to the administration of preventative medical intervention (the covid vaccinations).

### **Acts – 07 September 2021**

#### [Foreign Intelligence Legislation Amendment Act 2021](#)

Act No. 95 of 2021 as made

#### [Electoral Legislation Amendment \(Party Registration Integrity\) Act 2021](#)

Act No. 94 of 2021 as made

#### [Electoral Legislation Amendment \(Electoral Offences and Preventing Multiple Voting\) Act 2021](#)

Act No. 93 of 2021 as made

#### [Electoral Legislation Amendment \(Counting, Scrutiny and Operational Efficiencies\) Act 2021](#)

Act No. 92 of 2021 as made

#### [Australian Organ and Tissue Donation and Transplantation Authority Amendment \(Governance and Other Measures\) Act 2021](#)

Act No. 89 of 2021 as made

#### [Counter-Terrorism Legislation Amendment \(Sunsetting Review and Other Measures\) Act 2021](#)

Act No. 88 of 2021 as made

### **Regulations**

#### [Broadcasting Services \(Parental Lock\) Amendment Technical Standard 2021 \(No.2\)](#)

This instrument amends the Broadcasting Services (Parental Lock) Technical Standard 2020 to correct a technical legal flaw in the definition of domestic digital television receiver that was included by the Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No. 1).

#### [Biosecurity \(Human Biosecurity Emergency\) \(Human Coronavirus with Pandemic Potential\) Variation \(Extension No. 3\) Instrument 2021](#)

This instrument amends the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020 to extend the human biosecurity emergency period for a further 3 months until 17 December 2021.

#### [Marriage \(Celebrancy Qualifications or Skills\) Amendment \(Guidelines\) Determination 2021](#)

01/09/2021 - This instrument amends the Marriage (Celebrancy Qualifications or Skills) Determination 2018 to include a reference to the Guidelines on the Marriage Act 1961 for Authorised Celebrants September 2021 as a training material to be utilised in the delivery of the Certificate IV in Celebrancy.

#### [Federal Circuit and Family Court of Australia Legislation \(Consequential Amendments and Other Measures\) Regulations 2021](#)

This instrument amends family law and court-related regulations to ensure that they continue to operate effectively following the commencement of the Federal Circuit and Family Court of Australia Act 2021 and the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021. It also makes minor and consequential amendments to other Commonwealth regulations to reflect the commencement of the Federal Circuit and Family Court of Australia.

[Federal Circuit and Family Court of Australia \(Consequential Amendments and Transitional Provisions\) Rules 2021](#)

This instrument provides transitional rules in respect of amendments to the Federal Court and Federal Circuit Court Regulation 2012 and the Family Law (Fees) Regulation 2012 made by the Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021.

[Federal Circuit and Family Court of Australia \(Division 2\) \(Family Law\) Rules 2021](#)

These Rules adopt the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 to apply in family law and child support proceedings in the Federal Circuit and Family Court of Australia (Division 2), in order to harmonise the rules of court that apply across the federal family law and child support jurisdictions.

[Family Law \(State and Territory Courts\) Rules 2021](#)

This instrument adopts the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 to apply to state and territory courts exercising family law jurisdiction, in order to harmonise the rules of court that apply to all courts when exercising family law jurisdiction (with the exclusion of Western Australia).

NSW

Regulations and other miscellaneous instruments

[Administrative Arrangements \(Administrative Changes—Miscellaneous\) Order \(No 2\) 2021](#) (2021-524) — published LW 10 September 2021

[Public Health Amendment \(COVID-19 Penalty Notice Offences\) Regulation \(No 4\) 2021](#) (2021-522) — published LW 6 September 2021

[Residential Tenancies Amendment \(COVID-19 Pandemic Emergency Response\) Regulation \(No 2\) 2021](#) (2021-527) — published LW 10 September 2021

[Residential Tenancies Amendment \(COVID-19 Pandemic Emergency Response\) Regulation \(No 2\) 2021](#) (2021-527) — published LW 10 September 2021

[Residential Tenancies Amendment \(COVID-19 Pandemic Emergency Response\) Regulation \(No 2\) 2021](#) (2021-527) — published LW 10 September 2021

Regulations and other miscellaneous instruments

[Private Health Facilities Amendment \(COVID-19 Prescribed Period\) Regulation \(No 2\) 2021](#) (2021-506) — published LW 3 September 2021

[Residential Apartment Buildings \(Compliance and Enforcement Powers\) Amendment \(Miscellaneous\) Regulation 2021](#) (2021-510) — published LW 3 September 2021

[Residential Apartment Buildings \(Compliance and Enforcement Powers\) Amendment \(Miscellaneous\) Regulation 2021](#) (2021-510) — published LW 3 September 2021

[Residential Apartment Buildings \(Compliance and Enforcement Powers\) Amendment \(Miscellaneous\) Regulation 2021](#) (2021-510) — published LW 3 September 2021

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## HELP DESK SERVICES

Thomson Geer is delighted to offer access to NSW Government to its Legal Help Desk on our usual terms of engagement and as set out below.

### Scope

We are pleased to be able to work collaboratively with NSW Government to offer the following services (at no charge):

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- the opportunity to ‘brainstorm’ or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
- advice regarding potential transactions – up to 30 minute

### Thomson Geer is:

- appointed to Sub Panels 1-6 of the NSW Government Legal Services Panel; and
- particularly recommended for the following areas of law:

Sub Panel 1: Construction	Sub Panel 2: Commercial	Sub Panel 3: Planning, Property and Environmental	Sub Panel 4: Employment, Work Health and Safety	Sub Panel 5: Government Regulatory and Administrative Law	Sub Panel 6: Litigation and Inquiries
(a) Construction b) Major infrastructure projects c) PPPs and associated transactions d) Construction related dispute resolution and arbitration	(a) Commercial and contractual matters c) Intellectual Property d) Information Technology	(a) Complex property advice, transactions and accreditation b) Routine property advice and transactions c) Planning, environmental, heritage and natural resources e) Crown land and local government	(a) Employment and industrial relations e) Discrimination	a) Administrative law, statutory interpretation and governance advice	b) General litigation, dispute resolution and debt recovery

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