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ISSUE 123



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### IN THE MEDIA

#### Report corrects perception of lawyers

Australia's legal profession prides itself on providing a voice for people in need, but it has rarely spoken up on its own behalf. A new report released articulates the contribution lawyers make to the community and addresses misconceptions regarding the profession. <https://www.lawcouncil.asn.au/media/media-releases/report-corrects-perception-of-lawyers>

#### Joint project to boost PS cyber security

Australian Public Service Agencies using ITC gateways are to have their security strengthened in a joint project involving the Digital Transformation Agency (DTA), the Australian Signals Directorate (ASD), and the Australian Cyber Security Centre (ACSC). <https://www.cyber.gov.au/acsc/view-all-content/media-releases/joint-statement-digital-transformation-agency-and-australian-signals-directorate-secure-internet-gateways-update>

#### OAIC: Observations following the joint statement on global privacy expectations of video teleconferencing companies

Moving forward, the joint signatories highlight this model of engagement as valuable and replicable in circumstances where emerging issues would benefit from open dialogue to help set out regulatory expectations, clarify understanding, identify good practice, and foster public trust in innovative technologies. <https://www.oaic.gov.au/updates/news-and-media/oaic-and-ico-conclude-joint-investigation-into-clearview-ai>

#### Australian company directors now required to create digital ID

Company directors will now be required to create an identification number through myGovID that stays with them for life as the government moves to crack down on illegal phoenixing. <https://www.itnews.com.au/news/australian-company-directors-now-required-to-create-digital-id-572029>

#### HRLC: Discriminatory voter ID laws an attack on voting rights and must not proceed

The Morrison government's proposed laws requiring people provide identification when voting will create new and unnecessary barriers that undermine the right to vote for Aboriginal and Torres Strait Islander people and people experiencing homelessness. <https://www.hrlc.org.au/news/2021/10/28/discriminatory-voter-id-laws-an-attack-on-voting-rights-and-must-not-proceed>

#### Child-friendly guide to help understand child sexual abuse

The Australian Human Rights Commission has worked with the National Office for Child Safety to develop a guide to help children and young people understand child sexual abuse, and how to seek help. The guide was launched to support Australia's first ever National Strategy to Prevent and Respond to Child Sexual Abuse. <https://humanrights.gov.au/about/news/child-friendly-guide-help-understand-child-sexual-abuse-0>

#### Litigation funding reforms introduced into Parliament

The Morrison Government has introduced legislation into Parliament to improve outcomes for litigation funding participants by promoting a fair and reasonable distribution of class action proceeds. <https://www.attorneygeneral.gov.au/media/media-releases/litigation-funding-reforms-introduced-parliament-27-october-2021>

#### Anti-racism framework open for comments

The Australian Human Rights Commission is calling for submissions to inform the development of a National Anti-Racism Framework. The AHRC's Concept Paper outlined proposed principles, strategies and outcomes that were to be further developed through scoping consultations and the submissions process. <https://humanrights.gov.au/our-work/race-discrimination/projects/national-anti-racism-framework>

### Higher penalties to help protect Australians' privacy

Higher penalties outlined in draft legislation released by the Australian Government will align privacy and consumer law penalties and help address serious privacy risks to the community, the Office of the Australian Information Commissioner (OAIC) said.

<https://www.oaic.gov.au/updates/news-and-media/higher-penalties-to-help-protect-australians-privacy>

### NSW

#### NSW Police wants platform to create "complete biometric profile" of crims

NSW Police is planning to replace its legacy PhotoTrac facial recognition system with an integrated platform capable of creating a "complete biometric profile of an offender". <https://www.itnews.com.au/news/nsw-police-wants-platform-to-create-complete-biometric-profile-of-crim-572319>

#### The enforcement of COVID-19 public health orders during lockdown

The vast majority of Sydney residents report that they strictly complied with COVID-19 public-health orders during the recent lockdown. Interestingly the study suggests that compliance was greater in LGAs of concern possibly because the COVID-19 risk was higher or possibly due to more enforcement. [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2021/mr-COVID-breaches-BB157.Easpx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2021/mr-COVID-breaches-BB157.Easpx)

#### PS whistleblowers to get better protection

All NSW Public Sector Agencies, Statutory Bodies and local Councils are to be affected by new whistleblower-protection laws, which have been welcomed in an assessment report from the NSW Ombudsman. Whistleblowers will be able to report wrongdoing directly to any integrity Agency. <https://www.ombo.nsw.gov.au/news-and-publications/news/major-overhaul-of-whistleblower-protection-laws-in-nsw>

#### Ombudsman flags PS hiring issues

The NSW Ombudsman has identified potential systemic issues in the public sector's use of both contingent labour and other contractors to effectively fill employment roles. [https://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0020/81515/Commonwealth-Ombudsman-submission-on-discussion-paper-Remote-Employment-and-Participation-February-2018.pdf](https://www.ombudsman.gov.au/__data/assets/pdf_file/0020/81515/Commonwealth-Ombudsman-submission-on-discussion-paper-Remote-Employment-and-Participation-February-2018.pdf)

## IN PRACTICE AND COURTS

### Attorney-General Appointments

[Appointment to the Federal Court of Australia](#)

29 October 2021 - Mr Scott Goodman SC has been appointed as a judge of the Federal Court of Australia and will commence on 11 November 2021.

### [National Anti-Racism Framework: AHRC Concept Paper](#)

AHRC is accepting submissions until 15 December on guiding principles for the Framework; outcomes the Framework should seek to achieve; issues the

Framework should engage with, including strategies for addressing these; and best practice examples of anti-racism initiatives.

### [Review of PBR Act and IPEA Act](#)

The statutory review will consider how the current legislative framework provides appropriate levels of accountability and transparency to the use of taxpayers' money. The Review will report by 31 December 2021. More information on the Review including the terms of reference can be found at: [www.finance.gov.au/publications/reviews/PBRAct2017andIPEAAct2017](http://www.finance.gov.au/publications/reviews/PBRAct2017andIPEAAct2017)

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

Department of Infrastructure, Transport, Regional Development and Communications 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.

### Law Council Submissions

28 October 2021— Law Council  
[Phase 3 of Australia's Digital Identity legislation](#)

### [COAG Legislation Amendment Bill 2021](#)

The Law Council made a [submission](#) to the Senate Finance and Public Administration Legislation Committee inquiry into the COAG Legislation Amendment Bill 2021, presently before the House of Representatives. <https://www.lawcouncil.asn.au/media/news/coag-legislation-amendment-bill-2021>

### [Security Legislation Amendment \(Critical Infrastructure\) Bill 2020](#)

The House of Representatives has passed the Security Legislation Amendment (Critical Infrastructure) Bill 2020 with extensive amendments, which implement bipartisan recommendations of the PJCIS that endorsed the majority of the Law Council's [submissions](#) to its inquiry.

The anticipated further PJCIS review of a second Bill (when introduced) will provide an opportunity for the Law Council to engage in further advocacy on these matters, which include the need for an independent authorisation process for governmental intervention powers, and immunities for the personnel of regulated entities in relation to acts done in compliance with obligations under the expanded regulatory regime <https://www.lawcouncil.asn.au/media/news/security-legislation-amendment-critical-infrastructure-bill-2020>

### [Law Council Update - 29 October 2021](#)

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.

### [AAT Bulletin - Issue No. 22/2021, 1 November 2021](#)

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

### **Legal and Constitutional Affairs Legislation Committee**

#### [The performance and integrity of Australia's administrative review system](#)

The deadline for submissions to this inquiry is 24 November 2021. Further detail about the scope of the inquiry is provided in the [terms of reference](#).

#### [The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing \(AML/CTF\) regime](#) Report by 2 December 2021.

#### [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

#### [Consultation on review of the Workplace Gender Equality Act 2012](#)

The Workplace Gender Equality Agency (WGEA) has invited feedback on a review of the law covering workplace gender equality in Australia, on an issued a consultation paper which covers the current legislation, enshrined in the Workplace Gender Equality Act 2012, as well as gender indicators and continuing employer reporting obligations. Submissions close on 24 November and further information can be accessed on the PM&C website at this PS News link.

### **NSW**

#### **JUDCOM Handbook for Judicial Officers**

Updated 29 October 2021

<https://www.judcom.nsw.gov.au/judicial-officers/>

#### [Sentencing Council: Review of fraud and fraud-related offences](#)

The Attorney General has asked us to review sentencing for fraud and fraud-related offences in New South Wales. We are currently accepting preliminary submissions on issues raised by the terms of reference. Preliminary submissions are due by 17 December 2021.

#### [Local Court Memo 24 on COVID-19](#)

01 November 2021 - COVID Court Procedure to 24 January 2022

This Memorandum replaces all other previous COVID-19 memorandum.

### **NSW Court of Appeal**

#### **NSW Court of Appeal Publications**

The NSW Court of Appeal has published its latest [NSWCA Decisions before the High Court as at 14 October 2021](#)

The NSW Court of Appeal has published its latest [Decisions of Interest](#) Bulletin on the Court of Appeal website. Learn more [here](#).

### [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 20 October 2021.

### **PUBLISHED – ARTICLES, PAPERS, REPORTS**

#### [Oversight of the use of covert, intrusive and coercive powers](#)

Commonwealth Ombudsman: 05 November 2021

One of the Ombudsman's functions is to perform compliance audits of certain Commonwealth, State and Territory law enforcement, integrity and regulatory agencies' use of covert, intrusive and coercive powers.

#### [Themes from the Australian National Audit Office's recent environmental audit coverage](#)

The ANAO, provided a country paper and acting Executive Director Corinne Horton, delivered a presentation to the 8th Asian Organization of Supreme Audit Institutions (ASOSAI) Seminar on Environmental Auditing virtually, on 25 October 2021. The country paper was titled Themes from the Australian National Audit Office's recent environmental audit coverage and the presentation was titled Audit Promoting Government Accountability for Environment.

#### [Annual Report 2020/21: Information and Privacy Commission NSW: 26 October 2021](#)

The IPC has published its Annual Report 2020/21 which documents its work and achievements throughout the 2020/21 reporting period.

#### [Breaches of COVID-19 public health orders in NSW](#)

Sara Rahman; BOSCAR Bureau Brief No. BB157: 27 October 2021. Public order offences - COVID-19, Fines, Public health orders.

#### [Investigation into the procurement of an acting executive director at the former NSW Department of Planning and Environment](#)

NSW Ombudsman: 26 October 2021

PSC Guidelines did not provide guidance on whether it was appropriate for contingent labour hire workers to use the title associated with a GSE Act role.

#### [NSW Special report by the NSW Ombudsman on the Public Interest Disclosures \(PID\) Bill 2021](#)

Ombudsman: 26 October 2021

The new Bill is a complete rewrite of its 1994 predecessor and responded to the 38 recommendations made by the 2017 Parliamentary Ombudsman Committee. The Bill is simpler and easier to navigate and contains fewer 'trip hazards' for would-be whistleblowers.

**CASES**[Davison v Commissioner of Police, NSW Police Force \[2021\] FCA 1324](#)

REPRESENTATIVE PROCEEDINGS – closed class representative proceeding brought on behalf of Indigenous Australians under s 46PO of Australian Human Rights Commission Act 1986 (Cth) – settlement approval application pursuant to s 33V of Federal Court of Australia Act 1976 (Cth) – whether proposed settlement sum and distribution scheme fair and reasonable and in interests of all group members – settlement approved.

PRACTICE AND PROCEDURE – application for non-publication orders over various documents including Settlement Deed – whether non-disclosure necessary to prevent prejudice to proper administration of justice – orders made.

Australian Human Rights Commission Act 1986 (Cth) ss 46P, 46PH(1B)(b), 46PO; Federal Court of Australia 1976 (Cth) ss 33V, 33ZB, 33ZF, 37AE, 37AF, 37AG; Racial Discrimination Act 1975 (Cth) ss 9, 11, 13, 18A, 18C, 18E.

[FlyBlue Management Pty Ltd v NSW Crown Lands Department \[2021\] NSWCATAD 322](#)

ADMINISTRATIVE LAW- freedom of information- government information public access-public interest considerations- Government Information (Public Access) Act 2009 (NSW).

[FBY v Secretary, NSW Ministry of Health \[2021\] NSWCATAD 319](#)

HUMAN RIGHTS – discrimination – whether power to dismiss complaint summarily under s 102 of the Anti-Discrimination Act 1977 should be exercised HUMAN RIGHTS – discrimination by qualifying body under s 49J of the Anti-Discrimination Act 1977.

[Else v Commissioner of Police, NSW Police Force \[2021\] NSWCATAD 317](#)

Administrative Law – government information – access application – legal professional privilege – waiver – conclusive presumption against disclosure.

[DVT v Commissioner of Police \[2021\] NSWCATAD 337](#)

ADMINISTRATIVE LAW- appeal against dismissal of application for adequate statement of reasons- whether tribunal has power to order an adequate statement of reasons from the administrator.

[Anglican Church Property Trust Diocese of Sydney v Camden Council \[2021\] NSWLEC 118](#)

JUDICIAL REVIEW: validity of condition of consent imposing developer contributions – relief – power to order a refund if condition invalid – discretion to order a refund if condition invalid – condition valid – no power to order refund. Anglican Church Property Trust Diocese of Sydney v Camden Council [2021] NSWLEC 118.

[Danis v Commissioner of Police, NSW Police Force \[2021\] NSWCATAD 311](#)

ADMINISTRATIVE LAW – Government Information (Public Access) – Grounds for refusing access – Balancing competing public interest factors for and against disclosure – Public interest considerations in favour of disclosure include personal factors of the application – public interest in enhancing Government accountability – whether disclosure of the information could reveal or substantiate an agency has engaged in misconduct or negligent, improper or unlawful conduct – Public interest considerations against disclosure include whether disclosure would prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions – whether information was given in confidence – whether disclosure of information provided in confidence would found an action against an agency for breach of confidence – whether personal information of an individual disclosed in family law proceedings had already been revealed – whether disclosure of information about a child would not be in the child's best interests to have the information disclosed.

[Davis v Minister for Health \[2021\] NSWCATAD 310](#)

ADMINISTRATIVE LAW – application for administrative review – jurisdiction of Tribunal – summary dismissal.

**LEGISLATION****Commonwealth****Bills**[Electoral Legislation Amendment \(Voter Integrity\) Bill 2021](#)

This Bill makes amendments to the Electoral Act and Referendum Act (the Acts) to require voters to present acceptable identification documentation prior to receiving a ballot paper at polling places, pre-poll locations, and mobile polling locations, as recommended by the JSCEM's reports into the conduct of the 2013, 2016 and 2019 elections.

[Electoral Legislation Amendment \(Contingency Measures\) Bill 2021](#)

The Bill amends the Electoral Act to provide the Electoral Commissioner with the power to modify limited provisions in the Electoral Act, an emergency declaration has been issued under a Commonwealth law; [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6812](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6812)

[Electoral Legislation Amendment \(Assurance of Senate Counting\) Bill 2021](#)

The Bill amends the Electoral Act to strengthen the integrity of Australia's electoral system by increasing the transparency and assurance of Senate counting, including independent assurances of the computer systems and processes used to capture and count votes.

### [National Disability Insurance Scheme Amendment \(Participant Service Guarantee and Other Measures\) Bill 2021](#)

The Bill 2021 (the Bill) will implement significant improvements for participants, their families and carers by reducing red tape, increasing flexibility and clarifying timeframes for decision-making by providing for the Participant Service Guarantee.

### [National Redress Scheme for Institutional Child Sexual Abuse Amendment \(Funders of Last Resort and Other Measures\) Bill 2021](#)

The Bill proposes to modify various aspects of the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) to increase access to the Scheme for survivors of institutional child sexual abuse and to support effective administration.

### [Unsolicited Political Communications Legislation Amendment Bill 2021](#)

The purpose of the Bill is to provide consumers with more control over the receiving of unsolicited electronic and telephone communication from political parties by addressing exemptions to laws that otherwise prohibit or limit telemarketing and spam communication.

### [Australian Federal Integrity Commission Bill 2021](#)

This bill establishes the Australian Federal Integrity Commission or 'AFIC' – which will 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.

### [Coal Prohibition \(Quit Coal\) Bill 2021](#)

This Bill will prohibit the mining, burning and the export and importation of thermal coal in Australia by: Phasing out the export of thermal coal by 2030; Prohibiting the mining or burning of coal after 1 January.

### [Commonwealth Electoral Amendment \(Disclosure of Political Donations\) Bill 2021](#)

The Bill amends the Commonwealth Electoral Act 1918 to require registered political parties, State branch of political parties, an individual political candidate, a group of political candidates, or associated entities to: disclose all (cumulative) donations received.

### [Commonwealth Electoral Amendment \(Stop the Lies\) Bill 2021](#)

This Bill amends the Commonwealth Electoral Act to prohibit misleading and deceptive political advertising during Federal elections. The Bill prohibits advertising that contains a statement of fact which is misleading or deceptive to a material extent or is likely to mislead or deceive to a material extent.

### [Privacy \(COVID Check-in Data\) Bill 2021](#)

This Bill will introduce a ban on using COVID-19 check-in data for enforcement related activity purposes by preventing Commonwealth, State or Territory authorities from using or providing COVID-19 check in data for law enforcement purposes.

### [Social Media \(Basic Expectations and Defamation\) Bill 2021](#)

The intent of the Bill is to enable the Minister to set basic expectations of a social media service provider regarding the hosting of defamatory material on social media platforms, and secondly to ensure that service providers are liable for defamatory material hosted on their platforms that is not removed in a reasonable timeframe.

### [Protecting Pensioners from the Cashless Debit Card Bill 2021](#)

The Bill will amend the Social Security (Administration) Act 1999 (the Act) to repeal law that allows the Government to compel social security recipients to use the Cashless Debit Card. This will end the Government's Cashless Debit Card program from 31 January 2022.

### [Aged Care Amendment \(Making Aged Care Fees Fairer\) Bill 2021](#)

The Bill newly provides an inclusive definition of costs for which approved providers may charge as 'administration and management' fees.

#### Acts

#### [Judges' Pensions Act 1968](#)

Act No. 151 of 1968 as amended

#### [Royal Commissions Act 1902](#)

Act No. 12 of 1902 as amended

#### [Broadcasting Legislation Amendment \(Broadcasting Reform\) Act 2017](#)

Act No. 113 of 2017 as amended

#### [Privacy Act 1988](#)

Act No. 119 of 1988 as amended

#### NSW

#### Bills assented to

#### [Better Regulation Legislation Amendment](#)

[\(Miscellaneous\) Act 2021 No 23](#) – Assented to 01 November 2021

[Local Government Amendment \(COVID-19–Elections Special Provisions\) Act 2021 No 24](#) – Assented to 01 November 2021

[Electric Vehicles \(Revenue Arrangements\) Act 2021 No 25](#) – Assented to 01 November 2021

[Water Industry Competition Amendment Act 2021 No 26](#) – Assented to 01 November 2021

[Coastal Management Amendment Act 2021 No 27](#) – Assented to 01 November 2021

### Regulations and other miscellaneous instruments

[Administrative Arrangements \(Administration of Acts—Amendment No 3\) Order 2021](#) (2021-646) — published LW 5 November 2021

[Administrative Arrangements \(Administrative Changes—Ministers and Public Service Agencies\) Order \(No 4\) 2021](#) (2021-647) — published LW 5 November 2021

[Firearms Amendment \(Exemptions and Compliance Requirements\) Regulation 2021](#) (2021-648) — published LW 5 November 2021

[Ageing and Disability Commissioner Amendment Regulation 2021](#) (2021-627) — published LW 29 October 2021

[Environmental Planning and Assessment Amendment \(Short-term Rental Accommodation\) Amendment Regulation \(No 2\) 2021](#) (2021-629) — published LW 29 October 2021

[Local Government \(Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings\) Amendment \(Displaced Persons\) Regulation 2021](#) (2021-631) — published LW 29 October 2021

[Public Holidays Amendment \(Grafton City\) Order 2021](#) (2021-626) — published LW 27 October 2021

### Environmental Planning Instruments

[State Environmental Planning Policy \(Affordable Rental Housing\) Amendment \(Short-term Rental Accommodation\) Amendment \(No 2\) 2021](#) (2021-642) — published LW 29 October 2021

## KEY CONTACTS

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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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