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Contents

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Editors' Note

Dear CLB readers

Wow - What a year 2022 has been!

Following an action-packed three editions in 2022, we bring you this final edition.

It is filled with insightful, cutting-edge analyses of legal developments in the media and technology spaces. Our friends over at **Allens** – **Michael Park**, **Isabelle Guyot**, **Gavin Smith** and the illustrious former editor of this esteemed publication, **Valeska Bloch** – cover the recent changes to the *Privacy Act*, which, among other things, dramatically increase the penalties for non-compliance. **Dr Michael Douglas** gives us his thoughts on defamation forum shopping in Australia (and did we mention Dr Michael is now a Dr? Congratulations!) Tech law gurus, **Luke Dale**, **Dan Kiley** and **Annabel Bramley** from **HWL Ebsworth** provide what may well be the best summary in circulation of the legal issues surrounding NFTs in Australia. And defamation specialists **Marlia Saunders** and **Isabelle Gwinner**, from **Thomson Geer**, discuss the developments in defamation law since the serious harm threshold was introduced.

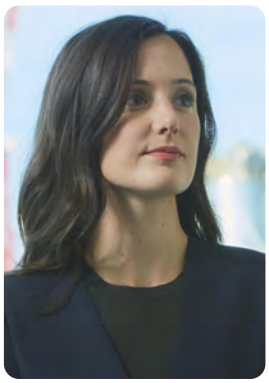
This edition also features interviews with industry leaders, in both the legal and the business sides of the media industry. We sit down with a very reluctant **Bruce Burke**, Australian media law legend and long-time friend of the CLB, to discuss his recent Press Freedom Award. Congratulations Bruce – what an incredible honour (to have won the award, not to have been granted this interview)! We also get to chat with global streaming thought-leader, **Angela Heckman** of Paramount. Angela is based in New York, and oversees the international distribution of Paramount's streaming services, including those in Australia.

We also report on some of the great events CAMLA has hosted in the last few months, and we publish the inaugural annual CAMLA Oration of Her Excellency the Honourable **Margaret Beazley AC KC**, the Governor of New South Wales and the former President of the New South Wales Court of Appeal. If you missed the seminar delivered by **Tom Blackburn SC**, **Alex Wilson** (RPC, London), **Gill Phillips** (Director of Editorial Legal Services for The Guardian) and **Marlia Saunders** (Thomson Geer), then you (should reassess your priorities in life and make better decisions next time, and) can read the summary in these pages. The event is also available to members via the CAMLA website. Also available online, and summarised within these pages, is the brilliant Whistleblower Protection 101 seminar, featuring **Kieran Pender** (Senior Lawyer, Human Rights Law Centre) and **Lesley Power** (CEO, Alliance for Journalists' Freedom), moderated by **Bel Rowe** (Bird & Bird). And we cover the speech delivered to CAMLA members by the Minister of Communications, the Hon. **Michelle Rowland MP**.

Our tireless President, **Bec Dunn**, and Young Lawyer Chair, **Calli Tsipidis**, provide their respective reports on the year that was.

And while we celebrate the wisdom of our contributors, the successes of our exhilarating events and the imminently arriving new year, we also mourn the enormous loss of one of our most beloved community members, **Sandy Dawson SC**.

Eli Fisher



Ashleigh Fehrenbach

Tragedies like these are difficult to express in words; and so we are immensely grateful to those in our community who knew Sandy best and were able to share their recollections of him. Sandy spent the early years of his illustrious career at Freehills, working on media and defamation matters for **Leanne Norman**. When Sandy was called to the Bar (where he read with Leanne's husband), Leanne and Sandy would continue to work together until his premature passing in late November 2022. Leanne and her partner **Marina Olsen** help us to remember Sandy as they do: "amazing to watch", "incredibly loyal", "utterly persuasive", having "a charisma that cannot be taught or learned", a "storyteller", "ethical without fault" and a consummate family man. **Lyndelle Barnett** similarly spent many years working alongside Sandy on countless pieces of litigation for the media industry. Lyndelle provides us generously with an intimate glimpse into what working with Sandy was like. Lyndelle's piece is worth reading (and re-reading) in full, but there's one paragraph that stands out to us:

> In his career that was cruelly cut short, Sandy achieved more than many could hope to achieve in a hundred lifetimes. Most of us could only dream of one case that changed the law or truly made an impact. It would not be an understatement to say that for Sandy that was the norm. He was determined to make it so. That alone is a remarkable feat. But the legacy Sandy leaves is so much more than his legal accomplishments. He will be fondly remembered by the profession as a generous and enthusiastic mentor, a formidable opponent, a kind and caring friend, a man of extraordinary wit and humour, and of course, an aficionado of impersonation.

As a media lawyer, and as a person, Sandy set a standard against which it would be folly to compare oneself. But there is something about these portraits of a brilliant man, heart-breaking though they unquestionably are, that might inspire us all for the new year.

And with that thought, we leave you, dear CLB readers, for another end of year break. Be well, be safe, and we'll see you in 2023 for what is already looking to be a fastmoving, dynamic and fascinating year for the media and tech law community.

Heartfelt thanks, as always, to **Cath Hill** and **Michael Ritchie** (MKR Productions) for their brilliant help in putting the CLB together in 2022, and to **Dom Keenan** (Allens) and **Jessica Norgard** (nbn), of the Young Lawyer Committee, for their assistance.

Eli & Ash

Privacy Act Changes Raise the Bar

Michael Park (Partner), **Isabelle Guyot** (Managing Associate), **Gavin Smith** (Partner), **Valeska Bloch** (Partner), Allens, comment on the recent changes to the Privacy Act, including the significant increase in penalties, that have just come into effect.

Introduction

A number of high profile data breaches and cyber attacks have occurred in the second half of 2022 —and more continue to come to light every day — leading many in the Government, media and community to ask what can be done to protect personal information.

The Government's immediate answer? Increase the penalties associated with serious breaches of the *Privacy Act 1988 (Cth)* (the **Act**) and provide the OAIC with enhanced enforcement and information gathering and sharing powers. The *Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022* (the **Amendment Act**), which came into effect on 13 December 2022, does exactly that.

This is only the first tranche of proposed comprehensive privacy reforms — those the Government, and presumably the Office of the Australian Information Commissioner (**OAIC**), consider the most important (and possibly the least controversial). We will need to wait for the outcome of the Attorney-General's broader review of the Act (expected to be completed this year) to see what other changes are on the horizon for 2023.

What's changed?

1. **Enhanced enforcement powers for the OAIC**

   Increase in penalties for serious or repeated interferences with privacy

The maximum penalty for *serious or repeated interferences with privacy* has increased to:

- for *individuals,* $2.5 million; and
- for *bodies corporate,* the greater of (a) $50 million; (b) three times the value of the benefit obtained attributable to the breach; or (c) if the Court cannot determine the value of the benefit, 30% of the adjusted turnover of the body corporate during the breach turnover period for the contravention.

These penalties do not apply to acts or practices that occurred prior to 13 December 2022.

The definition of 'adjusted turnover' is similar to the definition introduced into the ACL and takes into account the sum of the values of all the supplies that the body corporate and any related body corporate have made or are likely to make during the period, with specified exceptions.

Critically, the 'breach turnover period' could be very long in some circumstances — particularly where an issue is unknown and has not been detected for some time. For example, an undetected security vulnerability (eg a legacy system that was supposed to have been decommissioned five years ago but was not) could result in a five-year turnover period. Similarly, retention of records long past their valid retention period (in breach of APP 11.2) could mean the turnover period runs for the period those records have been held past their appropriate destruction date.

Although the penalties are high, similar penalties were just introduced to the *Australian Competition and Consumer Act 2010* (Cth) in respect of breaches of the ACL. Whilst there was some consideration by the Parliamentary Joint Committee on Human Rights that such a high penalty for individuals ($2.5 million) may be regarded as 'criminal' for the purposes of international human rights law (and thus require the breach to be demonstrated to the criminal standard of proof of beyond reasonable doubt), the penalty has been upheld.[1]

Key Takeaways

- The **maximum penalty for serious or repeated interferences with privacy for body corporates** has increased from $2.2 million to the greater of: (a) $50 million; (b) three times the value of the benefit obtained attributable to the breach; or (c) if the Court cannot determine the value of the benefit, 30% of the adjusted turnover of the body corporate during the breach turnover period for the contravention.
- The OAIC has **enhanced information gathering powers,** particularly in relation to data breaches, and will be able to **share information** publicly if it is in the public interest to do so, and with a broader range of entities, including enforcement bodies (both in Australia and overseas), alternative complaint bodies and state and territory authorities.
- Organisations that **carry on business in Australia are captured by the Act,** even if they do not collect or hold information in Australia. This will have very significant unintended consequences.
- Although most of the changes are not entirely unexpected, the new penalties are significant. They leapfrog the penalty increase touted by the previous Government since 2019, and mirror the recent increased penalties introduced for breaches of Australian Consumer Law (ACL). However, in light of the OAIC's traditional reticence to pursue pecuniary penalties under the existing provisions and without a significant increase in funding, the OAIC's ability to seek these penalties for all but the most egregious breaches of the Act may be limited. So, will the *threat* of such fines act as enough of a deterrent? Perhaps, although it could also have a chilling effect on organisations' disclosure of data breaches which may not strictly be required to be disclosed as part of the current regime.

1 20 OCT 2022: PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS: Human rights scrutiny report - Report 5 of 2022 (capitalmonitor.com.au)

The Federal Court may also provide compensation to individuals if a civil penalty order has been made for a breach of section 13G (serious or repeated interferences with privacy) —previously a breach of section 13G was excluded. This leaves organisations facing both compensation payments *and* significant penalties for breach.

Interestingly, the actual contravention in s13G remains the same — penalties can be applied where there has been a serious interference with the privacy *of an individual*, or where an organisation repeatedly does an act, or engages in a practice, that is an interference with the privacy *of one or more individuals*. This leaves open the currently unresolved issue of whether the penalty sum for a serious interference could apply on a multiplier basis, depending on the number of impacted individuals. It also leaves the question open as to what constitutes either a "serious" or "repeated" interference. Without statutory intervention, these issues will remain up to the Court to determine – potentially in the current *Facebook* proceedings, or as part of the broader Act reforms.

It is important to remember that the increased penalty regime does not apply to *all* data breaches. Just because an organisation has suffered a data breach does not always mean it has not complied with the Act. In the case of APP 11.1, it remains the case that the organisation must have failed to *take reasonable steps in the circumstances* to secure personal information, in order for there to be a breach of APP 11.1.

Expands the OAIC's declaration-making powers

The Act enables the OAIC to make declarations following the conclusion of an investigation (whether Commissioner-initiated or following a complaint). The Amendment Act broadens the potential scope of determinations the OAIC can make, including permitting the OAIC to make declarations that require the organisation to:

- prepare and publish or otherwise communicate a statement about the conduct; and
- engage, in consultation with the OAIC, a suitably qualified independent advisor to review the practices that were the subject of the investigation, steps taken to remediate the breach and any other matter relevant to the investigation, and provide a copy of the review to the OAIC.

The Amendment Act also permits the OAIC to publish the determination on its website.

In practice, these changes reflect existing practices of the OAIC — the OAIC has already made declarations requiring organisations to appoint independent reviewers as part of making determinations following OAIC investigations and has consistently published determinations on its website. These changes appear to close what the OAIC may see as a 'gap' in its legislative ability to undertake some of its existing enforcement practices.

Infringement notices for failure to provide information as required

The Amendment Act enables the OAIC to issue an infringement notice for failures to provide information as required by the Act. This shifts the current criminal offence to a civil penalty, allowing the OAIC to deal with minor instances of non-compliance without relying on criminal prosecution (or going to Court).

We expect the infringement notice regime to be expanded in the forthcoming reforms to also apply to other breaches. The lack of a broader infringement power has been a key differentiator between the OAIC and other regulators (like the Australian Communications and Media Authority (**ACMA**) and the ACCC) and has left the OAIC to pursue enforceable undertakings, determinations or pecuniary penalty proceedings in the Federal Court (a very resource-intensive process).

2. Expanded information gathering and sharing powers for the OAIC

A key theme of the remaining changes to the Act are tweaks enabling the OAIC to have broader (and better) oversight over organisations' procedures for handling data breaches and their activities when suffering a breach. This seems to 'close the gap' on a number of pain points for the OAIC in its response to and handling of recent high profile breaches by Optus and Medibank. These include:

- the power to conduct assessments of organisations' compliance with the Notifiable Data Breaches Scheme under the Act (**NDB Scheme**);
- the right to require information in relation to an actual or suspected eligible data breach; and
- the right to share information with other enforcement bodies and with the public.

We explain these further below.

Assessment rights

The Amendment Act gives the OAIC the power to conduct an assessment of an organisation on its ability to comply with the NDB Scheme, including the extent to which it has processes and procedures in place to assess suspected eligible data breaches and provide notice of eligible data breaches.

Again, this appears to close a gap in the OAIC's existing assessment powers — enabling the OAIC to pre-emptively test an organisation's compliance with the NDB Scheme.

Information gathering

The OAIC is also now able to require organisations to provide it with information, or answer questions, in relation to an actual or suspected eligible data breach — including an organisation's compliance with the NDB Scheme.

This appears to suggest the OAIC's existing powers under s 42 (preliminary inquiries), s 40(2) (commissioner-initiated investigations) and s 44 (power to obtain information relevant to an investigation) were not sufficient to enable the OAIC to make these types of requests.

It is likely the OAIC considers it important to be able to request information relating to a data breach outside of an obligation (or intention) to undertake an investigation — instead the OAIC may seek information to aid an organisation in complying with its obligations, or to enable the OAIC to respond to government and community questions.

The Government has also taken the opportunity to specify that a statement prepared by an organisation in response to an eligible data breach must identify the *particular kinds* of information that was the subject of the breach, rather than just the kinds of information. This potentially indicates that the OAIC has not been comfortable with the level of detail provided by organisations to date in response to eligible data breaches.

Information sharing

The OAIC also has enhanced information-sharing powers for information gathered through the Commissioner's information commissioner functions, freedom of information functions and privacy functions.

The Amendment Act provides the OAIC with the power to disclose information or documents with:

- an enforcement body;
- an alternative complaint body; and
- a state, territory or foreign regulator that has functions to protect the privacy of individuals.

The explicit information-sharing powers regarding foreign regulators continues the OAIC's focus on greater collaboration with equivalent foreign regulators given the increasing prevalence of cross-border data flows.

3. Extraterritorial application of the Act

The Amendment Act has removed the requirement that an organisation has to collect or hold personal information in Australia in order for the Act to apply to that organisation. There will be very significant unintended consequences of this change.

This change is not new. It had already been proposed in the exposure draft of the *Online Privacy Bill* and in the Attorney-General's Act review. It also follows various disputes over the extraterritorial application of the Act in the OAIC's current proceedings against Facebook Inc and Facebook Ireland Limited, which are established overseas — a case that may set a precedent for similar multinational organisations.

The intention of the change is to ensure that organisations which carry on business in Australia, but do not themselves directly collect or hold personal information in Australia, can nonetheless be caught by the Act. An example of this might be where a particular offshore entity which has business operations in Australia only handles personal information by virtue of it receiving that personal information from another group entity also located outside of Australia.

However, this will – on its face – have a very broad effect. For example, it could result in related foreign companies of Australian organisations which provide services (for example back office services) to Australian group companies being caught directly by the Act.

Even more broadly, it also results in the Act applying to *all* acts done or practices engaged in by overseas entities which carry on business in Australia, irrespective of whether the acts or practices relate to individuals located in Australia. In other words, a global organisation may be required to comply with the Act in respect of its entire global operations, including in relation to individuals located in other jurisdictions.

This creates a far broader scope of extra-territorial application than under legislation in other jurisdictions, including the GDPR in Europe, CCPA in California and PIPL in China.

The Government has indicated that the operation of the extraterritorial provisions will be considered as part of the broader review of the Act being undertaken by the Attorney-General's Department. This means that although the changes are effective now, it is possible that the broader review may then narrow the operation of the extraterritorial provisions.

We believe that the Act should require that the affected personal information has some direct link to Australia. For example, the EU GDPR applies extraterritorially outside the EU, but only in relation to personal data of data subjects in the EU and only when certain activities are involved. A similar limitation to ensure that the obligations apply only to personal information of individuals located in Australia should be included.

4. Ancillary changes

Finally, the Amendment Act also amends the *Australian Competition and Media Authority Act 2005* to enable ACMA to undertake greater information sharing and cooperation between government agencies — and although the rationale is to improve and aid responsiveness to cyber threats and data breaches, the information-sharing provisions are not limited to those areas.

The Amendment Act expands ACMA's existing rights to disclose information to specified federal agencies (like the ACCC and APRA) to any non-corporate federal entity if that information enables the authority to perform its functions.

Contributions & Comments

Contibutions and Comments are sought from the members and non-members of CAMLA, including features, articles, and case notes. Suggestions and comments on the content and format of the Communications Law Bulletin are also welcomed.

Contributions in electronic format and comments should be forwarded to the editors of the Communications Law Bulletin at: **clbeditors@gmail.com**

Serious Harm, Choice of Law and Federal Jurisdiction

Marlia Saunders (Partner) & **Isabelle Gwinner** (Graduate Lawyer), **Thomson Geer**, discuss the developments in defamation law since the serious harm threshold was introduced, and the impact that this area of law reform is having on the jurisdiction of courts in Australia to hear certain defamation claims.

Throughout 2022, courts have been analysing and applying the new provisions introduced into the Australian defamation law in 2021 (in each State and Territory apart from Western Australia and the Northern Territory).

The impact of the new 'serious harm' threshold has been a particular area of focus. Section 10A, adapted from s 1 of the *Defamation Act 2013* (UK), was enacted as a reform to discourage the bringing of cases likely to result in modest damages awards, where the costs were likely to be out of proportion to the damages.[1] It provides that an individual plaintiff or applicant in a defamation case must prove that the publication of defamatory matter has caused, or is likely to cause, serious harm to their reputation.

This article discusses three key issues arising from the introduction of a serious harm threshold into Australian defamation law:

(1) How the serious harm element has been interpreted by the courts;

(2) Whether the courts have power to cure non-compliance with the new concerns notice requirements, including the requirement to provide particulars of serious harm; and

(3) Whether the introduction of the serious harm element has altered the path to federal jurisdiction in pure defamation matters.

Interpretation of the serious harm element in Australia

The serious harm requirement has now received considerable judicial attention. Some of the key principles that have emerged are:

- There must be causation between the publication and the particulars of serious harm.[2] It is the matter, and not the imputation(s), that must be found to have caused or be likely to cause serious harm.[3]
- Serious harm requires fact-rich proof of harm which is actually or likely to be serious.[4]
- Relevant factors for a court to consider in determining serious harm include the meaning of the words, the extent of the publication, the nature of the recipients and their relationship with the plaintiff, and whether they believe the imputations.[5] For example, a matter that carries a grave imputation may not result in serious harm where the publication is to a small number of persons well acquainted with the plaintiff who are not disposed to believe it, and where any impact of the imputation on the plaintiff's reputation is transitory or ephemeral.
- Serious harm is not satisfied by injury to feelings, however great.[6]
- While evidence of damage to the plaintiff's reputation done by earlier publications of the same matter may be legally irrelevant to the question of serious harm (the *Dingle* rule), directly relevant background context (including other publications) may be relevant to the assessment of whether the serious harm test is met.[7] For example, where a plaintiff "points to some hostile remark or other adverse event in his life as evidence of harm to reputation caused by the publication complained of, and there are other possible causes of the remark or event, in the form of other publications to the same or similar effect", the *Dingle* rule has no bearing in determining causation.[8]
- The absence of any expression of concern about the publication until near the end of the limitation period, while far from conclusive, is not irrelevant to whether there has been or is likely to be serious harm. It is capable of supporting reasoning that the plaintiff was not particularly troubled by it, and did not perceive it to be occasioning ongoing harm.[9]

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1 See eg *Martin v Najem* [2022] NSWDC 479 at [66], citing *Newman v Whittington* [2022] NSWSC 249 at [30]-[46]; see also R*andell v McLachlain* [2022] NSWDC 506.

2 See *Martin v Najem* [2022] NSWDC 479 at [70].

3 See *M1 v R1* [2022] NSWDC 409 at [37], and also *Zimmerman v Perkiss* [2022] NSWDC 448 at [27].

4 *Martin v Najem* [2022] NSWDC 479 at [70].

5 *Rader v Haines* at [28(3)].

6 *Rader v Haines* [2022] NSWCA 198 (Rader v Haines) at [28(3)] and [29(3)].

7 *See Randell v McLachlain* [2022] NSWDC 506 at [83]-[83] and the authorities cited there.

8 *Banks v Cadwalladr* [2022] EWHC 1417 (QB) at [51(x) and (xi)], cited with approval in *Randell v McLachlain* [2022] NSWDC 506 [83]-[84].

9 *Rader v Haines* at [39]; *Randell v McLachlain* [2022] NSWDC 506 [18(e)].

Do the courts have power to cure defective concerns notices?

An issue that is arising in practice is whether the courts have power to cure non-compliance with sections 12A and 12B of the Defamation Act when proceedings have been commenced in purported reliance on a defective concerns notice. This is particularly arising where inadequate particulars of serious harm are included in a concerns notice.

In *M1 v R1* [2022] NSWDC 409, it was been held that the Court does not have power to cure certain non-compliance with the new concerns notice requirements. This is on the basis that the language of these provisions is of an "imperative" nature, in that s 12B(1) provides that proceedings cannot be commenced unless a concerns notice has been given and s 12A(1) provides that a concerns notice must meet specified criteria.

Gibson DCJ held in that case that a failure to particularise serious harm as required by s 12A(1)(a)(iv) means:

1. the concerns notice is rendered invalid and proceedings purportedly relying upon the defective concerns notice cannot be commenced; and

2. the Court has no power to cure this defect by making orders *nunc pro tunc* (at [23]-[25]) and the proceedings must be struck out without leave to amend being granted.

It will be interesting to see whether this position is adopted by other courts. In a non-defamation context, it has been held as a matter of statutory construction that provisions requiring certain steps to be taken before proceedings can be commenced (such as the requirement to obtain leave of the court) which are silent as to the consequences of non-compliance does not necessarily mean that the court does not have jurisdiction.[10]

However, it is clear for the time being that courts in defamation cases will be scrutinising concerns notices to ensure they comply with the mandatory requirements of the regime, and care should therefore be taken by practitioners when preparing concerns notices.

Impact of the 2021 amendments on federal jurisdiction in pure defamation matters

The introduction into defamation law of the serious harm element may have altered the path to federal jurisdiction in pure defamation matters.

Before the amendments came into effect in most Australian jurisdictions in 2021, the test for determining where the tort of defamation occurred and was therefore actionable was based on publication. In *Dow Jones & Company Inc v Gutnick* (2002) 210 CLR 575, Gleeson CJ, McHugh, Gummow and Hayne JJ stated (606-607 [44]):

> "... ordinarily, defamation is to be located at the place where the damage to reputation occurs. Ordinarily that will be where the material which is alleged to be defamatory is available in comprehensible form assuming, of course, that the person defamed has in that place a reputation which is thereby damaged. It is only when the material is in comprehensible form that the damage to reputation is done and it is damage to reputation which is the principal focus of defamation, not any quality of the defendant's conduct. In the case of material on the World Wide Web, it is not available in comprehensible form until downloaded on to the computer of a person who has used a web browser to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done. Ordinarily then, that will be the place where the tort of defamation is committed."

This test was subsequently applied to mean that matters published (in the sense of being read or downloaded) in the Territories were within the jurisdiction of the Federal Court under cross-vesting legislation.[11]

However, the introduction of the new serious element to the cause of action may have altered the test for where the tort is actionable. Arguably, it can no longer be said that damage to reputation occurs when material is read/downloaded by a third party, as the tort is not complete unless the serious harm element is satisfied.

This may mean that mere publication (whether actual or a non-colourable allegation of it) in the Territories is no longer sufficient to attract federal jurisdiction. An applicant may now need to be able to show that he or she has sustained serious harm within the meaning of s 10A in the Territories in order to attract federal jurisdiction.

The position is complicated by the fact that the Northern Territory has not yet enacted the 2021 amendments. In our view, except in limited circumstances, this will not provide a basis for an applicant to commence defamation proceedings in the Federal Court to avoid the 2021 amendments due to the operation of the choice of law provision in the Uniform Defamation Act, which provides that the substantive law applicable in the Australian jurisdictional area with the closest connection to the harm occasioned by the publication is to apply. The relevant factors for determining this include the place where the applicant was ordinarily resident at the time of publication, the extent of publication in each relevant State or Territory and the extent of harm sustained by the applicant in each State or Territory.

10 See *Phipps v Australian Leisure and Hospitality Group Ltd* [2007] 2 Qd R 555, 579 [79]; *Emanuele v Australian Securities Commission* (1997) 188 CLR 114, 138 (Toohey J); *Berowra Holdings Pty Ltd v Gordon* (2006) 225 CLR 364, 372 [18]-[20], 373 [23]; *South Johnstone Mill Ltd v Dennis* (2007) 163 FCR 343 at [50].

11 See s 9(3) *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth) read with s 4 *Jurisdiction of Courts (Cross-vesting) Act 1993* (ACT) or s 4 *Jurisdiction of Courts (Cross-vesting) Act 1987* (NT); see also *Crosby v Kelly* (2012) 203 FCR 451 and *Malecki v Macko* [2022] FCA 766 at [22] (Besanko J).

In circumstances where there is a national publication published primarily in NSW, the applicant is a resident of NSW and commences pure defamation proceedings in the NSW Registry[12] of the Federal Court, it is arguable that:

- a mere allegation of publication in the Territories may be insufficient to attract federal jurisdiction, as serious harm needs to be established in the Territories; and
- even if publication in the Northern Territory is being relied on to found federal jurisdiction, the law of NSW would be likely to apply given it is the jurisdiction with the closest connection to the harm occasioned, meaning the serious harm element cannot be avoided.

Plainly, the situation would be different if the proceeding were commenced in the Northern Territory Registry of the Federal Court and the applicant were a resident of that Territory.

In sum, the choice of law provision will (save for an applicant who suffers the greatest reputational harm in the Northern Territory) apply to import the serious harm requirement, even where publication in the Northern Territory is being relied on to found federal jurisdiction. This means it is likely that an applicant will need to be able to make a non-colourable assertion of both publication and serious harm in the Territories in order for a federal issue to arise in a pure defamation matter.

Conclusion

It's likely that throughout 2023 we will continue to see interesting decisions being handed down in relation to the 2021 amendments to the Uniform Defamation Acts.

12 This dictates which Defamation Act applies in the first instance: see ss 79(1), 79(1A)(b)(ii) and 80 *Judiciary Act 1903* (Cth).

Event Report: CAMLA Young Lawyers Whistleblower Protection 101 Seminar

On 24 November 2022, the CAMLA Young Lawyers Committee (**YLC**) concluded its annual series of 101 seminars with a topical event on whistleblower protection. Hosted by Banki Haddock Fiora in The Olive Rooms, two of Australia's foremost experts on whistleblower laws, **Kieran Pender** (Senior Lawyer at the Human Rights Law Centre and honorary lecturer at ANU) and **Lesley Power** (CEO of Alliance for Journalists' Freedom), generously shared their time and insights during a session moderated by YLC member **Belyndy Rowe** of Bird & Bird.

With several high-profile whistleblower cases recently in the news and in the courts, a renewed spotlight has been placed on the role that whistleblowers play in enhancing public accountability of institutions. Informed by that backdrop, a highly engaged audience attending both in-person and online heard from Kieran and Lesley on the existing landscape of whistleblower protections in Australia (including the *Public Interest Disclosure Act*, which covers federal public sector whistleblowers, and the patchwork of laws which cover private sector whistleblowers), key issues that have been observed in practice with the current laws and the potential for reform.

A key theme highlighted during the discussion is the difficulty that some whistleblowers face in accessing existing protections, leading to a reluctance to come forward for fear of harassment, losing employment or being prosecuted. This has led to some whistleblowers and journalists seeking to avoid the protections altogether, by using encrypted communications or relying on a parliamentarian's use of parliamentary privilege.

Some optimism was expressed for future reform, which might include an independent whistleblower protection authority with responsibility to oversee and enforce Australia's whistleblower laws, as well as a comprehensive approach to covering both public and private sector whistleblowers.

The YLC extends its thanks to Kieran and Lesley for making the final 101 seminar of 2022 an insightful and educational success. The session was recorded and is available for members to watch on the CAMLA website.

President's Report

by Rebecca Dunn

I have been the President for the Communications and Media Law Association Incorporated (ACN 66 435 886 177) (**CAMLA**) for the period 26 November 2021 to 8 December 2022. This report covers that period.

1. Overview

2022 has been an exciting year to be involved in media and communications law. The change of government has brought with it a renewed focus on reform, and we have also seen the continuation of the ongoing defamation law reform process and the release of further reports from the ACCC's Digital Platforms enquiry, which will also no doubt lead to new law. In court, there have been a range of major defamation cases, and we are all watching with keen interest to see how those play out.

This year has also seen us exit a 2-year period of uncertainty and lockdowns, and I think we have found renewed joy in connecting in person, while also taking with us some enhanced skills in terms of working, sharing and connecting remotely.

This is an exciting time for CAMLA. We have continued to deliver high quality content to our members, while also increasing our ambition, and I am pleased to set out in this report our achievements this year.

This is my first year as President, and my objective for this year has been to continue to ensure that CAMLA remains a vibrant, interesting and successful association for the benefit of media and communications lawyers. I think we have met and exceeded this objective this year.

CAMLA is a voluntary organisation. We succeed because we collectively make the effort to translate ideas into reality. We work together and bounce ideas off each other to conceive of and arrange relevant and interesting events. We produce a topical publication with outstanding content. We provide a forum for networking and sharing news. The more we each contribute, the more valuable CAMLA becomes as an association for us all.

CAMLA could not fulfil its objectives, or remain as relevant and vibrant as it is, without the support of the many people who have been involved in the last 12 months. I want to thank all of you for the energy and effort that you have given to CAMLA this year, and, on a personal note, the support that you have shown me in this role. Thank you.

2. CAMLA Members

I'll start with the most important people in CAMLA, namely all of the members of CAMLA.

We now have 466 current members. Our membership has continued to increase this year after an increase last year. This means CAMLA remains a relatively large association.

Around 12% of our members are students and new lawyers, around 23% are standard individual members, and the remaining 65% are individual members through corporate memberships.

We have some 34 firms and organisations who have corporate memberships. This includes a wide range of media companies, government agencies, law firms, industry associations, and content companies.

We work hard to ensure that members obtain value from their memberships, including by providing high-quality events and via the ever-evolving CLB. I will cover some of these below.

3. CAMLA Board

However, before I do so, I will mention the CAMLA Board. We have had 19 members of the Board over the 2022 calendar year. I thank you all very much for your energy and your thoughtful contributions, and for creating a really positive (and fun) Board culture. I would like to specifically mention the office bearers.

- First **Julie Cheeseman,** who took over this year as Treasurer and Public Officer.

  Julie, thank you so much for all your time and effort as Treasurer this year and as Public Officer (the legal face of CAMLA). We are all incredibly appreciative and I note in particular the diligence and care that you have devoted to the role, which has been very important to me personally, in my first year as President. Julie will continue as Treasurer and Public Officer in 2023.

- Second, **Ryan Grant** who took over as Secretary of CAMLA this year.

President's Report - Rebecca Dunn

Thank you, Ryan, for maintaining the CAMLA tradition of ensuring well-organised meetings with high quality minutes and records. Ryan has indicated that he is stepping down from the CAMLA Board this year after 10 years' involvement. You will be missed, and we are grateful to you for all you have brought to CAMLA over the last 10 years, including your invaluable contribution to the CAMLA Cup! Ryan will be succeeded as Secretary by Rebecca Lindhout.

- Next, the two CLB Editors, **Eli Fisher** and **Ashleigh Fehrenbach.** The content produced for the Communications Law Bulletin over the last 12 months has continued to be truly outstanding. I will come to that in due course. Both Eli and Ashleigh were part of the CAMLA executive team in 2020, 2021 and 2022.
- Finally **Martyn Taylor** and **Debra Richards,** who have been the two Vice Presidents of CAMLA for the last 12 months. Both of them have been extremely important touchstones and reference points for me, as I have found my feet in this role. I thank them for their wisdom and generosity in this regard. Martyn and Deb will continue as Vice Presidents in 2023.

I note that the office bearers for 2023 will be myself (President), Martyn Taylor and Debra Richards (Vice Presidents), Julie Cheeseman (Treasurer and Public Officer) and Rebecca Lindhout (Secretary).

4. CAMLA Young Lawyer's Committee

Next, I'd like to mention the CAMLA Young Lawyers Committee.

CAMLA Young Lawyers is an official sub-committee of CAMLA. In 2022, that sub-committee comprised 15 young lawyers who represented the interests of young lawyers working in, or who have an interest in, communications and media law in Australia.

The contribution of the Young Lawyers Committee over the last 12 months has been outstanding. I am continually impressed and very grateful for the time and effort of each of the members of the CAMLA Young Lawyers Committee and the very high quality of the contributions they have made. They bring a lot of energy, and new perspectives, to what we do and play a key role in involving and connecting the next generation of media and communications lawyers.

Many of the events held over the last 12 months have been organised by the CAMLA Young Lawyers Committee. They are also responsible for several innovations, including the CAMLA podcast.

We very much welcome the continued participation of the CAMLA Young Lawyers Committee in Board meetings and we again extend an invitation to the chair of the Young Lawyers Committee and two committee members to attend each CAMLA Board meeting during 2023.

I hope those current members who wish to continue will do so. The call for applications for membership of the new Committee for 2023 will be advertised soon. Please also encourage the young lawyers in your respective organisations to get involved.

I would like to give particular thanks to **Calli Tsipidis** for continuing to Chair the Young Lawyers Committee over the 2022 year, to **Belyndy Rowe** as Vice-Chair and **Nicola McLaughlin** as Secretary. Calli has also published a copy of her report as Chair in this edition of the Communications Law Bulletin – and I recommend you take a look at her incredible overview as to what the Young Lawyer's Committee has been doing over the last year.

I note that this is Calli's last year as Chair as she is stepping back from the Young Lawyers, and has become a member of the Board. Thank you Calli for the energy, efficiency and devotion you have brought to this role. We look forward to seeing what's next for the Young Lawyers in 2023.

5. CAMLA Events

That brings me to the CAMLA Events. I'll just provide a quick overview as the full details are in the Schedule to my report.

We have held 11 events this year:

- In March and April, a **Music and the Law** 101, 201 and 301 series developed by the Young Lawyers and hosted by Bird & Bird, Banki Haddock Fiora and Marque Lawyers respectively;
- In March, **Global Updates in Privacy Law,** hosted by Bird & Bird.
- In May, the **Young Lawyers Networking Event,** hosted by McCulloch Robertson.
- In May, a panel discussion about **Defamation on Digital Platforms,** hosted by Thomson Geer;
- In September, **UK Media Law Developments,** a webinar hosted by Thomson Geer.
- In November, a talk by the new Minister for Communications, **Michelle Rowland,** about the priorities for the new government, hosted by Gilbert + Tobin.
- In November, a **Whistleblower 101** hosted by Banki Haddock Fiora.

We have received highly positive feedback in relation to each of these events. Many thanks to all of you who were involved and to the firms which generously hosted. We had record attendances for many of these events.

Our use of webinars has meant we have been able to serve our interstate membership base, and even to create fantastic events with speakers from different jurisdictions, with the UK Media Law webinar being of particular note in this regard. Going forward, we are keen to continue to offer dual events that are both in person and online so we can continue to serve a wider community.

I want to also mention two further events.

First, we were able to get together again for the **CAMLA Cup,** and after many deferrals and cancellations over 2020 and 2021 it was wonderful to be able to continue the tradition of a fabulous night together. Thank you to **Cath, Deb** and **Ryan** for your very hard work on this event, ably supported by the Young Lawyers.

Secondly, we had the inaugural CAMLA Oration in November. This idea was conceived by **Eli Fisher** and **Ashleigh Fehrenbach,** and ably executed at an impressive event at the Australian Museum with a topical and entertaining speech about freedom of speech by the Governor of NSW, Margaret Beazley, the text of which is included in this edition. We hope that this becomes an important annual event on the CAMLA calendar, and I wanted to thank Eli and Ash for their vision and persistence. You have set a high bar for next year!

We have some opportunities in 2023 to hold some really great events, many of which are already being organised. The media and communications landscape in Australia continues to change rapidly and we will stay at the cutting edge in terms of putting together events which are informative and thought-provoking.

President's Report - Rebecca Dunn

6. Communications Law Bulletin

That brings me to the Communications Law Bulletin. In my view this has been another outstanding year for the CLB, and the editors have done an exceptional job in bringing to life vibrant, entertaining and informative issues of the CLB throughout the year.

Many thanks to **Eli** and **Ash** for their incredible efforts this year. Many thanks particularly to Ash for continuing as CLB Editor from her role as a Senior Associate in the IP & Technology team at Reynolds Porter Chamberlain in London.

I have included a detailed list of the content in the CLB in the Schedule to this report. The contributions are of a very high quality on many cutting-edge issues, including several fascinating interviews.

As I'm sure you'll agree, the content is interesting, relevant and insightful – and it is well worth the time to read.

Again, my sincere thanks to Eli Fisher and Ashleigh Fehrenbach. They have a difficult task in co-ordinating the CLB. They have both driven the CLB with huge energy and enthusiasm. The continued high quality of the CLB over the last 12 months is testimony to this. Many thanks to you both.

7. CAMLA Administration

I now turn to the CAMLA administration.

I want to say a few words about Cath Hill. Of course, our thanks to Cath Hill for her incredible effort over the course of the last 12 months in keeping us all organised as the administrative secretary.

CAMLA would not function without the efforts of Cath and she makes it a lot easier for those of us on the Board to ensure CAMLA and the events that we hold work smoothly.

It has been another difficult year on so many fronts and all of us are grateful to Cath for always being there to provide support. On a personal level, I am so grateful to Cath for her support to me in my first year as President. I know I have the full support of the CAMLA Board in conveying our deep thanks from the heart for all your work over the last 12 months, and indeed the last 11 years.

Cath has also indicated that this will be her last year with CAMLA. The announcement was met with gasps of actual horror. This reflects not just how essential Cath is to the operation of CAMLA, but how loved she is by us all. Of course, Cath is supremely capable, efficient and trustworthy, but the reason we are so grateful to you Cath (and will miss you so much) is because of who you are, and the generosity of spirit, sense of fun, and kindness you bring with you in everything you do. We all thank you so much, and are excited to see what the future holds for you.

8. Plans for the next 12 months

We are looking forward to an exciting 2023 in the media and communications law space. The new Labor government has already instituted changes to the law, with further reviews underway, as well as ongoing regulatory investigations that are of great significance to our sector. We will continue to be at the forefront of analysing and discussing these developments via seminars and the CLB.

For those of you involved in CAMLA - many thanks indeed from all of us and I look forward to working with you all over the next 12 months!

Rebecca Dunn
Partner, Gilbert + Tobin

President, Communications and Media Law Association Incorporated

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CAMLA EVENTS DURING 2022

(Please note that recordings of many of these events are available to members on the CAMLA Website.)

CAMLA YOUNG LAWYERS: MUSIC AND THE LAW 101

24 March 2022, WEBINAR hosted by Bird & Bird (RSVPs: 108)

CAMLA Young Lawyers held a three-part Music and the Law series starting with a Music and the Law 101 webinar where the panel discussed the fundamentals and complexities of music law.

Panel:

Chloe Martin-Nicolle, Director of Legal and Business Affairs, Sony Music Entertainment

Chris Chow, Founder and Managing Director, Creative Lawyers

Damian Rinaldi, Founder and Principal, Sonic Lawyers and Sonic Rights Management

CAMLA YOUNG LAWYERS: MUSIC AND THE LAW 201 – Collective Licensing

29 March 2022, WEBINAR & IN PERSON hosted by Banki Haddock Fiora (RSVPs: 69)

In the second seminar of the three-part music series, the expert panel unpacked the complexities of collective licensing and the role of collecting societies in the music industry.

Panel:

Kate Haddock, Partner, Banki Haddock Fiora

Chris Johnson, Director of Legal Services, APRA/AMCOS

Lynne Small, General Manager, PPCA/ARIA

GLOBAL UPDATES IN DATA AND PRIVACY

31 March 2022, WEBINAR hosted by Bird & Bird (RSVPs: 108)

This webinar considered some of the key developments in Australia and what else may be in store, through the lens of what is happening elsewhere in the world.

Topics included:

- The Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021;
- The Attorney-General's Department Privacy Act Review Discussion Paper;
- Developments in relation to defamation, including the Social Media (Anti-Trolling) Bill 2021;
- Recent and proposed amendments to the Security of Critical Infrastructure Act 2018 (Cth) including the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022.
- The proposal for an EU Data Act; and
- a global AdTech update.

Panel from Bird & Bird:

Francine Cunningham, Regulatory & Public Affairs Director
Alex Dixie, Partner, London –Head of AdTech Practice
Sophie Dawson, Partner
Joel Parsons, Senior Associate
James Hoy, Senior Associate
Emma Croft, Associate

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MUSIC AND THE LAW 301 – IS THE MUSIC INDUSTRY DUE FOR SOME DISRUPTION?

11 APRIL 2022, WEBINAR & IN PERSON hosted by Marque Lawyers (RSVPs: 58)

In the third seminar and webinar of three part music series our expert panel discussed some of the current issues that are facing the music industry, with the panelists asking the question: is the industry due for some disruption?

Our expert panel, including Australian singer-songwriter Jack River, covered a variety of topics, including a discussion of how the public health orders in each state and territory has affected musicians and events; the rise of NFT's in the music industry; royalty and contractual considerations now and into the future, and finally, a discussion of the "Beneath the Glass Ceiling" campaign, which is a campaign that provides a platform for disclosures of sexual harassment, assault and other unlawful conduct and has contributed to blowing the lid on the toxic culture in the Australian music industry.

Panel:
Holly Rankin aka Jack River

Michael Bradley, Marque Lawyers

Emma Johnsen, Marque Lawyers

CAMLA CUP TRIVIA NIGHT

12 MAY 2022, SKY PHOENIX (RSVPs: 250)

The CAMLA Cup trivia night made a comeback! Addisons took out the trophy this year.

CAMLA YOUNG LAWYERS NETWORKING EVENT

24 MAY 2022, WEBINAR AND IN PERSON, Hosted by McCullough Robertson (RSVPs: 65)

CAMLA Young Lawyers held their annual networking event for law students and young lawyers with an interest in media and communications. The event featured a panel discussion of lawyers working in the media and communications space who discussed their career paths, professional highlights and challenges, as well as provided practical tools for young lawyers and students when networking and seeking to progress their careers.

Panel:
Rebecca Lindhout, Special Counsel at McCullough Robertson Lawyers

Dan Roe, Senior Attorney, Original Production at The Walt Disney Company

Antonia Rosen, Legal Counsel at News Corp Australia

DEFAMATION ON DIGITAL PLATFORMS

26 MAY 2022, WEBINAR AND SEMINAR, Hosted by Thomson Geer (RSVPs: 128)

While we eagerly awaited the recommendations of the Defamation Working Party in relation to "Stage 2" of the defamation law reforms, and with the spectre of the Commonwealth government's Social Media (Anti-Trolling) Bill still discussed the various options for addressing defamation on digital platforms.

Panel:
Jake Blundell, Banki Haddock Fiora

Sue Chrysanthou SC, 153 Phillip Barristers

Matthew Lewis, Level 22 Chambers

David Rolph, University of Sydney

Marlia Saunders, Thomson Geer

Andrew Stewart, Baker McKenzie

UK MEDIA LAW DEVELOPMENTS

27 SEPTEMBER 2022, WEBINAR, Hosted by Thomson Geer (RSVPs: 96)

Three media law experts engaged in an online panel discussion about recent legal developments in the UK which may inform how the law develops in Australia, including in relation to privacy rights, the serious harm threshold and the public interest defence to defamation claims.

Panel:
Tom Blackburn SC, 5RB Chambers

Alex Wilson, Partner in RPC's Media team

Gill Phillips, Director of Editorial Legal Services for The Guardian

INAUGURAL CAMLA ORATION EVENING

8 NOVEMBER 2022, IN PERSON, Australian Museum (RSVPs: 66)

CAMLA hosted an inaugural oration evening with the **Governor of NSW, Her Excellency the Honourable Margaret Beazley AC KC:** "Freedom of Speech – to what end?"

MEDIA LAW: PRIORITIES FOR THE NEW GOVERNMENT

14 NOVEMBER 2022, IN PERSON AND WEBINAR. Hosted by Gilbert + Tobin (RSVPs: 170)

The Hon. Michelle Rowland MP, Federal Minister of Communications

A joint lunchtime seminar with the IIC and CAMLA

WHISTLEBLOWER PROTECTION 101 – CAMLA YOUNG LAWYERS

24 NOVEMBER 2022, IN PERSON AND WEBINAR. Hosted by Banki Haddock Fiora (RSVPs: 44)

Some high-profile 'whistleblower' cases have recently been in the news – and in the courts. Two of the country's foremost experts gave an overview of what has been happening and where things might go next.

Panel:
Kieran Pender, Senior Lawyer, Human Rights Law Centre and Honorary Lecturer at ANU

Lesley Power, CEO, Alliance for Journalists' Freedom

CLB DURING 2022

MARCH 2022 – Volume 41, Issue 1 – International Women's Day Edition

This edition contained a series of short interviews with around 40 leaders from a range of backgrounds and experiences across media, communications, IP, advertising, government, privacy, entertainment and tech.

The CAMLA industries in Australia are driven by the intelligence, advocacy, warmth, leadership and persistence of many incredible women – and we were pleased to be able to share a sample of that in this bulletin.

In this issue:

Angelene Falk
Ashleigh Fehrenbach
Shelley Scott
Beck Barnett
Bridget Fair GAICD
Calli Tsipidis
Charlotte Olsen
Deanne Weir
Georgia-Kate Schubert
Gina Cass-Gottlieb
Jennifer Dean
Gillian Clyde
Valeska Bloch
Ita Buttrose AC OBE
Judge Penelope Wass SC DCJ
Mel Scott
Karen Andersen
Michelle Caredes
Natalie Kalfus
Her Excellency the Honourable Margaret Beazley AC QC
Rachel Launders
Louisa Vickers
Sarah Gilkes
Shoshana Shields
Sophie Jackson
Sylvia Alcarraz
Anna Spies
Jane van Beelen
Anne-Marie Allgrove
Katherine Sessions
Julie Inman-Grant
Alison Kerr
Katherine Sainty
Judge Judith Gibson
Claire Roberts
Miriam Stiel
Catherine Hamilton-Jewell
Penelope Hobart

President's Report - Rebecca Dunn

CLB DURING 2022

JUNE 2022 – Volume 41, Issue 2

A New 'Single Up-to-date' Online Safety Act Regime
Alex Hutchens, Partner, McCullough Roberston, discusses the Online Safety Act coming into effect earlier this year.

First Consideration of the 'Serious Harm' Test in Australian Defamation Action
The Supreme Court of New South Wales became the first Australian court to consider the serious harm test for a defamation action in Newman v Whittington [2002] NSWSC 249 (Newman). **Georgie Austin, Zoë Burchill, Blake Pappas** and **Richard Leder,** (Corrs Chambers Westgarth) discuss its implications.

Profile: Timothy Webb, Partner, Clayton Utz
Ashleigh Fehrenbach, co-editor sits down with Tim to discuss his career and insights.

The High Court Considers: Does Google Search Publish Every Website on the Internet? Looking Forward to Google LLC v Defteros
Alex Tharby, Fabienne Sharbanee and **Mhairi Stewart,** media lawyers at Bennett + Co, consider the Google LLC v Defteros defamation litigation.

Massive Defamation Payout Awarded Over YouTube Videos – Will Google Appeal?
Marlia Saunders, Partner, Thomson Geer summarises the recent Federal Court decision in Barilaro v Google LLC [2022] FCA 650 (6 June 2022)

A New 'Marker' for Cyber Security Practices Implications of the RI Advice Group Decision
Alec Christie (Partner), **Avryl Lattin** (Partner), **Raeshell Staltare** (Special Counsel), **Christian Hofman** (Associate), **Alexia Psaltis** (Associate), Clyde & Co, comment on ASIC v RI Advice, the first case to address whether failing to manage cyber risk is a breach of financial services obligations and, possibly, directors' duties.

All Eyes on the Anti-Trolling Bill, But What About the Online Safety Act?
David Kim, Banki Haddock Fiora, comments on why the eSafety Commissioner's expanded remit is on a collision course with the world of defamation.

Therapeutic Goods Advertising Code Gets a Makeover
Jaimie Wolbers, Simone Mitchell, Jonathan Kelp (MinterEllison) discuss what the new Therapeutic Goods Advertising Code 2021 will mean for advertisers.

To Be or Not to Be. Who Can Be an Inventor?
Helen Macpherson (Baker McKenzie Sydney), **Tanvi Shah** (Baker McKenzie, London) and **Avi Toltzis** (Baker McKenzie, Chicago) discuss the Thaler litigation, and the questions it raises about the recognition of AI as an inventor under patent law.

Out of Sight But Not Out of Jurisdiction – Application of the Privacy Act 1988 (Cth) to Extra-Territorial Companies
Marlia Saunders & Jessie Nygh, Thomson Geer, discuss the recent findings of the Full Federal Court in Facebook Inc v the Australian Information Commissioner & what it means to 'carry on business' in Australia in the digital age.

Digital Platform Services Inquiry – March 2022 Interim Report
By Tara Taylor, McCullough Robertson

How to Treat an Angry Tweet – the Dutton v Bazzi Appeal
Kevin Lynch and Jade Tyrrell, Johnson Winter & Slattery, consider the Full Federal Court's decision in Peter Dutton's defamation proceedings

Source Confidentiality Under Siege: How Law Enforcement Powers Threaten Journalists' Ethical Obligations
Adam Lukacs, University of Queensland, in his CAMLA Essay Competition winning piece, comments on the legislative framework protecting the confidentiality of journalists' sources.

FIRST, DO NO HARM: The Serious Harm Threshold in Defamation Cases involving Physician-Review websites
Nadine Mattini, University of Sydney, in her piece that won the second prize in CAMLA's Essay Competition, writes about defamation cases involving physician-review websites and the harm that a negative review can have on a physician's reputation in light of the serious harm threshold.

OCTOBER 2022 – Volume 41, Issue 3 USA Special Edition

Regulating the Technology Giants – Trends in the United States and Implications for Australia
Dr Martyn Taylor (Partner), **Dietrich Marquardt** (Senior Associate) and **Maxine Richard** (Lawyer), Norton Rose Fulbright

The Use of Juries in Defamation Proceedings in America and Australia
Nathan Buck (Special Counsel) and **Jeremy Marel** (Senior Associate), Kennedys.

Fearless Girl Keeps Standing in Australia
Zeina Milicevic (Partner) **Jaimie Wolbers** (Senior Associate) and **Humyara Mahbub** (Lawyer), MinterEllison

Interview: Mary Huang
Belyndy Rowe, Senior Associate at Bird & Bird and CAMLA Young Lawyer Secretary, sits down with **Mary Huang,** Principal Corporate Counsel at Microsoft.
Currently based in Seattle, Mary is a product counsel for Microsoft Azure's global expansion engineering team.

Johnny Depp v Amber Heard
Sylvia Alcarraz (Managing Associate) and **Kathryn Murray** (Solicitor), Dentons

Songbird or Magpie? What Stone v Carey Says About the Rising Wave of Copyright Claims in the Music Industry
Laksha Prasad (Lawyer) and Emma Johnsen (Senior Associate), Marque Lawyers

Interview: Julian Keyzer
Australian lawyer **Julian Keyzer** is a Senior Vice President, Business & Legal Affairs at Fox Entertainment, now based in New York City, after 10 years of living in Los Angeles. **Marlia Saunders,** Partner (Media) at Thomson Geer, who worked with Julian at Blake Dawson (now Ashurst) until he moved stateside in 2009, spoke with him on Zoom about his new role and his experiences working in the entertainment industry in the U.S.

A Battle of the Books: Penguin Random House and Simon & Schuster Litigation
Jennifer Dean (Partner) and **Benjamin O'Mara** (Associate), Johnson, Winter & Slattery

Profile: Tom Griffin
CAMLA Young Lawyer **Anna Kretowicz** recently interviewed **Tom Griffin,** Associate General Counsel at Meta, to discuss working in-house at the company that arguably defines the zeitgeist of the 21st century.

Anna Kretowicz is a Judge's Associate and is reading for the Bachelor of Civil Law at Oxford University in 2022-23

The Future of NYT v Sullivan and the Enforceability of Australian Defamation Judgments Against US Publishers
Dan Lunniss (Lawyer), McCullough Robertson

In a World of Unlimited Imagination... How to Protect Your IP Rights in the Metaverse
Richard Hoad (Partner), Jones Day and **Emina Besirevic** (Lawyer), Clayton Utz

DECEMBER 2022 – Volume 41, Issue 4

Being this issue.

Alexander (Sandy) Tamerlane Sinclair Dawson SC

Lyndelle Barnett

"Remember...the Force will be with you, always."
- Obi-Wan Kenobi *(Star Wars: Episode IV - A New Hope)*

One of the many enduring memories I have of Sandy is him striding down Macquarie Street to Court, late, his long robes flowing behind him like Darth Vader's as he stalked the corridors of the Star Destroyer, with me trying to keep up behind him. Sandy relished the comparison, and took any available opportunity to impersonate Darth Vader, complete with a rendition of the Imperial March.

But there should be no doubt, if one were to compare Sandy's contribution to the legal profession and to media law in particular, he was fighting for the Rebel Alliance, and he was the most powerful Jedi we ever had the privilege to know.

Sandy Dawson SC, exhausted, immediately after the conclusion of the lengthy cross-examination of David Otto in *Otto v Nine Network*. Like all aspects of his life, whether it be his court craft or his relationships, Sandy gave it his all

In his career that was cruelly cut short, Sandy achieved more than many could hope to achieve in a hundred lifetimes. Most of us could only dream of one case that changed the law or truly made an impact. It would not be an understatement to say that for Sandy that was the norm. He was determined to make it so. That alone is a remarkable feat. But the legacy Sandy leaves is so much more than his legal accomplishments. He will be fondly remembered by the profession as a generous and enthusiastic mentor, a formidable opponent, a kind and caring friend, a man of extraordinary wit and humour, and of course, an aficionado of impersonation.

A search of judgments with Sandy's name listed as a representative returns approximately 350 results, which is impressive for a career at the bar just shy of 20 years, especially given it does not include the many unreported judgments from Sandy's almost weekly appearance in the Supreme Court defamation list. In addition to many successful cases based upon a justification defence, those judgments include leading cases in relation to key areas of defamation/media law such as:

- Contextual truth – such as *Fairfax Media Publications v Zeccola* [2015] NSWCA 329, a pivotal case where the Court of Appeal held that there was no requirement for a contextual imputation to "differ in kind" from a plaintiff's imputation;
- Honest opinion – such as *Harbour Radio Pty Ltd v Ahmed* [2015] NSWCA 290; *Tabbaa v Nine Network Australia Pty Ltd* [2019] NSWCA 69 and *Stead v Fairfax Media Publications Pty Ltd* (2021) 387 ALR 123;
- Qualified privilege – such as *Marshall v Megna* [2013] NSWCA 30; *Abou-Lokmeh v Harbour Radio Pty Ltd* [2016] NSWCA 228; *KSMC Holdings Pty Ltd t/as Hubba Bubba Childcare on Haig v Bowden* (2020) 101 NSWLR 729;
- Fair report / public document – such as *Feldman v Polaris Media Pty Ltd as Trustee of the Polaris Media Trust t/as The Australian Jewish News* [2020] NSWCA 56;
- Identification – such as *Palace Films Pty Ltd v Fairfax Media Publications Pty Ltd* [2012] NSWSC 1136;
- Section 126K journalist privilege – such as *Cowper v Fairfax Media Publications Pty Ltd; Cowper v Australian Broadcasting Corporation* [2016] NSWSC 1614; and
- Suppression/non-publication and take-down orders – such as *Rinehart v Welker* (2012) 83 NSWLR 347 and *Nationwide News Pty Ltd v Qaumi* (2016) 93 NSWLR 384.

The secret of Sandy's successes was often in his ability to think outside the box and reframe the argument. Faced with what appeared to be an insurmountable hurdle, Sandy would approach the problem from a different angle, leaving juniors to think "why didn't I think of that?!" Once he articulated an argument it always seemed so logical, such was the skill of his advocacy.

The success of Sandy's career can also be measured by the number of clients he kept out of Court. He was the go-to barrister for many notable and well-known complainants who were looking for assistance with reputation management, without having to litigate. In most cases he was able to promptly negotiate an apology or acceptable settlement achieving a just outcome for both parties. If the plaintiff decided to sue, there was no doubt that despite his relationship with the media, he was firmly in the plaintiff's corner and would fight for them with all of his might.

Sandy's devotion to the law of defamation can be measured by the amount of time he devoted to the 2020 reform of the *Defamation Act* 2005 (NSW), and the influence he had in that process. Sandy led the NSW Bar Association's response to the proposed reforms, and was an active member of the Attorney-General's Stakeholder committee. Sandy was a strong advocate for the amendments to section 26 and the introduction of the public interest defence in section 29A.

A focus only on Sandy's legal achievements would do a great disservice to his legacy. Sandy was an exceptional leader and mentor. He exemplified the Bar's open-door policy. There was rarely a conference without another member of the junior bar calling or coming in to see Sandy to get his advice about a matter. And he was always welcoming and

would give his advice freely, respectfully and wisely. His sage advice was given on all manner of topics: the law, strategy, cross-examination technique, which school to send a child to, the hottest new restaurants, whether one should purchase a new car or property, are much more. The answer to the last question was always an emphatic yes – no matter how irresponsible the decision may have seemed to the person seeking the advice, Sandy would instil a sense of confidence that the person were great and would be earning enough to cover the cost in no time! The advice would also be coupled with an excited request for the person to show him the car or property – two of Sandy's great loves. There was rarely a time when his computer did not have at least one tab open for a property and a car website, amongst the other thousand tabs and documents he always had open (and he wondered why his computer was always slow!)

The opportunity Sandy provided to members of the junior bar to learn from him was invaluable. He was generous with his time, and would usually involve his juniors in cross-examination and submission planning. He was very inclusive, and was genuinely interested in the views of his juniors and solicitors, and took them on board.

Watching Sandy in action in Court was a joy to behold. The Courtroom was his stage, and he was always the lead actor. He lived for cross-examination, and was a master at it. Sandy would talk about how he would approach cross-examination of key witnesses from the moment the brief came in, and often discussed what his first question would be. His versatility in adapting his cross-examination style to the particular witness was remarkable.

My first hearing as a barrister was a section 7A jury trial where I was junior counsel for the plaintiff, and Sandy appeared for the defendant *(Nu-tec v ABC)*. That was the first and last time I have been on the opposite side of Sandy in a case (an experience I never wanted to repeat!) Identification was in issue in relation to one of the plaintiffs. Our key witness who gave evidence in chief that when he watched the broadcast he thought of the plaintiff, Mr Robertson. Sandy rose to cross-examine. What followed was the politest conversation I have ever witnessed, and one might be forgiven for thinking Sandy and the witness were having tea in Buckingham Palace rather than sitting in the Supreme Court of New South Wales. The cross-examination proceeded with Sandy slowly, methodically, question by question, destroying aspects of the plaintiff's case. The cross-examination concluded:

Q. When you watched the program Mr Thomas you were watching it, I'm referring to both of them now, you were watching it because you expected at some point to see yourself didn't you?

A. I guess so yeah.

Q. It's a perfectly normal thing to do if you've been interviewed by a TV show to watch it to see what it looks like, correct?

A. Correct.

Q. I take it you don't give TV interviews all that often?

A. Once in a lifetime.

Q. And so you were, this is not a criticism of you in any way Mr Thomas, but you were pretty keen to see your moment on television as it was being broadcast, correct?

A. I don't think I took it that way really.

Sandy Dawson SC, Lyndelle Barnett, John-Paul Cashen and Stephen Coombs, celebrating victory in *Otto v Nine Network*

Q. You weren't going to miss it though were you?

A. No.

Q. And when you watched it I want to suggest to you that you weren't really thinking about Mr Robertson at all were you?

A. Not really, no.

The plaintiff then closed his case, and Sandy proceeded to make an application that Mr Robertson's case be withdrawn from the jury. Unsurprisingly, it was.

Even though Sandy and I were on opposite sides of that case, when we returned to chambers he made an effort to chat and make jokes with me so I understood that although we were opposed in Court, our friendship outside of the Courtroom remained unchanged.

Sandy's assertive cross-examination style was just as effective. He was known for long cross-examinations where questions would be repeated over and over until he got the answer he wanted, and whilst one may be forgiven for thinking "come on Sandy, move on!", he did usually get the admission he wanted, so one could not blame him for refusing to give up. The effectiveness of Sandy's cross-examinations was in large part due to his command of the detail: he worked meticulously to ensure he was across every single fact and every single document in the case. He was ready at every turn to take the witness on wherever they would try to go. It was also due to his ability to read the witness, and anticipate if the witness might be prepared to make an admission, or whether he/she would dig into a lie Sandy could trap them in.

For those who were fortunate enough to be Sandy's junior or be mentored by him, having the opportunity to learn from him was a blessing. The one aspect of Sandy's court craft that no junior could ever hope to (or should) emulate was his wit and humour in the Courtroom. No other counsel could ever possibly get away with what Sandy did. He prided himself on his ability to make the judge laugh, and judge's seemed to appreciate the humour he brought.

Sandy's flair in the Courtroom was matched by his fashion and style. He was always impeccably dressed, in the finest

suits with his trademark pocket squares, or a pressed shirt or Ralph Lauren Big Pony Polo, his hair perfect. The last time I saw Sandy he was in palliative care. I noticed that even at that point he was wearing a Ralph Lauren Polo and commented that it was good to see he was still well dressed. He quipped "Well we can't let standards drop now can we!"

His style was so unique that his favourite tailor sells a bar shirt called the "Dawson" which Sandy designed with an additional piece of cloth in the collar to prevent rubbing from collar studs. Items named after Sandy were not limited to his tailor and extended to food vendors around Phillip St who each had an order known as the "Sandy", such was their familiarity with Sandy's regular orders and their delight in having his as a client.

The kind and respectful way Sandy treated vendors around Phillip St, and the way that treatment was reciprocated was a testament to Sandy's wonderful heart. Everyone was "mate" or "pal" or called by an affectionate nickname. Sandy didn't care what anyone did or what their background was, everyone was treated with equal kindness and respect. The fact that Sandy and I were such close friends is a good indication of that. Our backgrounds could not have been more different: Sandy was raised in the Eastern suburbs, attended private school and went on to Sydney University and St Pauls College. I was the girl from a low-income family in the greater Western suburbs. But Sandy did not once, in the 12 years I worked as his junior, ever make me feel that I was any different or inferior to him.

That's not to say he didn't educate me on the finer aspects of life. At a recent visit to his home I was making the tea, and took some mugs down from the cupboard. He walked over, opened a different cupboard and said "we should have the tea in the fine China, shouldn't we?" He always knew how to make everything just that little bit more special.

If Sandy were not a barrister, I'm sure he would have been an actor or TV/radio talent. He was famous for his impersonations and never missed an opportunity to mimic the voiceover of a current affair program. Perhaps his most frequent impersonation was of the late Honourable Justice Henric Nicholas. I heard Sandy's impersonation of his Honour before I ever appeared before or met his Honour. I recall sitting in the back of the Court, head down, when his Honour came onto the bench and started speaking. My first thought was "OMG I can't believe how much his Honour sounds like Sandy!" Although Sandy's impersonations were mostly of members of the judiciary or other barristers, he did not discriminate. I am sure most of us have heard Sandy impersonate Darth Vader from one of his favourite scenes from *Return of the Jedi:* "You may dispense with the pleasantries commander". I must have heard Sandy describe that scene dozens of times, and I laughed every time. What I would give to hear it one more time.

Rest in peace our fearless Jedi Master. You will be missed more than you could ever know.

Meet the CAMLA Board for 2023!

CAMLA recently held its AGM and the following positions were filled on the CAMLA Board for 2023:

President: Rebecca Dunn

Vice-Presidents: Debra Richards & Martyn Taylor

Treasurer: Julie Cheeseman

Secretary: Rebecca Lindhout

Communications Law Bulletin Editors:
Eli Fisher & Ashleigh Fehrenbach

Sylvia Alcarraz
Chris Chow
Gillian Clyde
Jennifer Dean
Katherine Giles
Emma Johnsen
Nick Kraegen
Marina Olsen
Nick Perkins
Marlia Saunders
Katherine Sessions
Calli Tsipidis
Timothy Webb

Reflections on Working With the Inimitable Sandy Dawson SC

Marina Olsen in conversation with **Leanne Norman**, Partners, Banki Haddock Fiora

Many of us are grieving the loss of Sandy Dawson SC, who died on 28 November after a brave battle with brain cancer. It's hard to put into words the depth of his contribution to defamation law and the impact he had on the people with whom he worked, but I spoke with Leanne Norman, one of my partners at Banki Haddock Fiora, as we tried to capture what it was that made him so special, and that made *us* feel special for having had the opportunity to call him a friend and colleague.

Leanne worked with Sandy for most of his professional life, initially as his boss and then as his instructing solicitor. Sandy started working for Leanne as a solicitor at Freehills in 2000, having commenced his legal career at Minter Ellison in 1997. In 2003, Sandy decided to make the (surprising to no one) move to the bar. He then read with Leanne's husband, Alec Leopold, and another barrister. Leanne recalls that Sandy instantly transformed when he made the transition from solicitor to barrister. As a solicitor he had been "*perfectly adequate*" but not in his element. The transformation, she says, was "*amazing to watch*"; it was so clearly his natural home. It is a cliché, but an apt one in this case: he was born to be a barrister. "*He really shone in his oral presentation of a case and the way he could command a Court room and respond on his feet to arguments. His advocacy skills were superlative.*"

Leanne recalls Sandy appearing in the case brought by then-Treasurer Joe Hockey against Fairfax in 2014 and 2015, led by Matt Collins QC (as he was at the time). It was one of the first defamation cases run in the Federal Court and heralded the beginning of the shift towards that forum and away from the Supreme Court as the traditional home of large-scale defamation cases. The *Hockey* result was a good one for Fairfax, with Justice White finding that the imputations pleaded did not arise on the articles sued upon (although some were conveyed by a poster and two tweets). It was a highprofile case, which of course Sandy relished.

Sandy appeared unled on the argument on costs and injunctions, which Leanne recalls was a great success. Hockey had sought his costs in full, on an indemnity basis, and injunctions. The injunctions were refused, and Hockey was awarded only 15 percent of his costs on a party-party basis: "*Sandy was fantastic. That was the moment when I felt he'd taken that step up*" towards being a senior barrister, says Leanne. He was elevated to silk shortly afterwards, in 2016.

Much has been said of Sandy's "look", usually involving either a perfectly tailored suit with pocket square (formal) or a Polo Ralph Lauren t-shirt and chinos (casual). This uniform sometimes led those who didn't know him well to form certain assumptions. Leanne recalls a particular incident when Sandy was her employed solicitor, aged in his late twenties. She had sent him and another junior lawyer off to Silverwater prison to speak with a young inmate, a possible witness in a defamation case. Sandy's colleague arrived at the prison in jeans and a t-shirt. Sandy rocked up in a threepiece suit and a pocket square, hair immaculately coiffed. The inmate took one look at Sandy, walked straight out of the meeting room and refused to engage any further. The reality is, if he'd let Sandy sit down and talk to him, he almost certainly would have been won over. Sandy had a knack for relating to anyone.

Sandy Dawson SC, loving the limelight and surrounded by some of his "team" on the Elaine Stead case (from left to right: Joe Aston (AFR journalist), Larina Alick (Executive Counsel, Nine), Lyndelle Barnett (barrister), Marina Olsen (Partner, Banki Haddock Fiora and the author of this piece) and Jess Wotton (then solicitor, Banki Haddock Fiora). Picture: Jane Dempster/The Australian (reproduced with their kind permission).

Leanne also admired how Sandy would bring people along with him as his career continued to soar. If he liked a junior barrister, he would push hard to get them briefed on his cases. Once he'd decided that a chosen junior would do a great job, it was hard to say no to him. He was incredibly loyal, recognised star quality when he saw it and wanted the best for his clients. He supported the careers of so many excellent junior barristers and was a particularly strong supporter of women. Lyndelle Barnett, Declan Roche, Tim Senior, Matthew Lewis, Monique Cowden, Sophie Jeliba and Margaux Harris were just some of his lucky (and deserving) anointees.

Unlike Leanne, I only got to know Sandy professionally over the last five years (although I grew up next door to him and was friends with his late sister, Katrina). We first worked together in 2018 in Craig McLachlan's defamation case against Fairfax, the ABC and actress Christie Whelan Browne. He was briefed at short notice in an application to re-plead contextual imputations after Justice McCallum found the previous versions were liable to be struck out. Sandy's success on that argument would prove crucial to the outcome of the case years later. Tom Blackburn SC, our silk and Sandy's mentor, had started arguing the application but was called back to London before it could be finalised, and Sandy was brought on board to finish the job. He mastered the facts in a matter of days, strode into Court as if he'd been in the matter for months, delivered his arguments (not necessarily in the most concise way possible), and we were successful. I was star struck. I could see immediately what Leanne talks about: he was utterly persuasive, in command of all of the cases, and had a presence and charisma that cannot be taught or learned. He had come in to bat for us, his team (which is how he would always describe us), with every ounce

of his intellect and energy, leaving nothing on the field. I can honestly say, I never saw him have an "off" day in Court.

Sandy stayed in touch with Christie after the case, offering her support and boosting her spirits in what were very trying times. After his death, she tweeted: "*Sandy Dawson may have been known as one of the best defamation barristers - but I will remember him for being so kind to me and giving me hope in times of darkness*."

Last minute seemed to suit Sandy. Leanne remembers him running up to the Federal Court in Sydney on a Friday night before Bromwich J, to fight an injunction brought by Ben Roberts-Smith against Fairfax in 2018. With literally minutes to prepare, he was successful and the injunction was refused. He was later briefed as silk in the defamation proceedings, instructed by MinterEllison, and together with Lyndelle Barnett was responsible for the intense preparation required to pull together the truth defence that was ultimately run at trial.

Sandy's last trial before his diagnosis in February 2021 was Elaine Stead's defamation case against the *Australian Financial Review* and its Rear Window columnist, Joe Aston. The trial was heard in person before Justice Michael Lee in December 2020 but was streamed over Teams, attracting hundreds of eager viewers. Each day attracted media coverage, including of the Court room banter, and noted hilarious barbs issued by Aston's "*witty barrister*". There were jokes about some of his favourite topics: his Arnott's family heritage, shoes, wine and cheese (some, bizarrely, actually relevant to the matters in dispute). Joe commented to *The Australian* following Sandy's death that he "*instantly had a professional man crush on Sandy. He just had this capacity of vocabulary and the architecture of his arguments was like nothing I've ever come across*."

One of the best and most challenging aspects of defamation litigation is having to become an authority on topics about which you previously knew nothing. Sandy loved to educate himself on new subjects, including from witnesses whose expertise had been sought, whether it was venture capital investment (*Stead*), blockchain (*Green*), military rules of engagement (*Roberts-Smith*) or harness racing (Harness Racing NSW being a client). I recall sitting with Sandy in chambers with professors and others explaining to us the intricacies of their particular field of expertise, as he listened intently and engaged with them excitedly, asking just the right questions to get to the heart of the issue. After his diagnosis, experts with whom he'd worked would regularly check in on his condition.

Immediately prior to *Stead*, Sandy had been our silk in Jemma Green's case against the *AFR* and Aaron Patrick. The trial was run over video link due to COVID and WA's watertight borders. And so, our legal team of four moved our work into Sandy's family home, running the trial from his dining room. Lemon, lime and bitters were delivered in the afternoon by Sandy's eldest son, Jack, and we were fattened up with daily pastries. Audio visual trials, and the mute button, presented plenty of opportunities for Sandy's best mimicry and jokes, all with a piece of paper strategically placed over his mouth.

It was lovely to see him engage with his family. Prior to COVID, Sandy worked like no one I've seen before but also had a hard rule that he left the office at 6pm to get home for dinner with his family. He was a total night owl, and when we were deep in trial preparation, you would generally expect a flurry of emails between midnight and 1am (still with his trade mark quips and multiple exclamation marks). He tried his best to meet his duties to both his family and his clients, but as we all know too well, that can be incredibly hard.

Leanne describes Sandy as "*charismatic*" and "*a storyteller*" in every facet of his life. He "*won people over*" with his powers of persuasion, his energy, his determination and his authenticity. The first time I saw him at a social event, he was encircled by 10 enthralled partygoers, held captive as he retold one of his old favourite courtroom anecdotes. From his cocktail party stories, to his delivery of a case theory, he always had an overarching sense of narrative, of the story he wanted to tell and the picture he wanted to paint.

Working with Sandy was intense but fun. His clever texts and emails, punctuated with puns and exclamation marks, had us in stitches and in awe of his intellectual and verbal acrobatics. Conferences might start late because he wanted to relay (and we wanted to hear) hilarious anecdotes or observations, but when the time came to get to work, he was laser focused. He was tactical and thoughtful. Sitting in chambers for hours with Sandy going forensically through every line of a pleading, an affidavit or a subpoena was tiring and intense but it certainly made you feel intellectually alive.

Sandy was a fascinating mix of calm and frenetic. In the Court room, you would only see the former (even if he was a few minutes late to the bar table). Pocket square perfectly sculpted and matched, thick hair spectacularly coiffed (it was so perfect a witness once asked him in conference whether he was wearing a wig), and a fan of the pin-striped suit, he could have been teleported from a different era. He had a particular penchant for shoes. I would always quickly check that my heels were up to scratch in the elevator up to his chambers for a conference. Flat shoes were entirely out of the question.

He may have been a Harvey Specter wannabe when it came to his look, but unlike Harvey he was ethical without fault. He was kind, thoughtful, encouraging and warm. If you ever had a Court win, a work promotion or some other good news, he'd be the first to text. He was deeply respected not just by his instructing solicitors, his juniors and his clients, but also by opposing counsel. And he was certainly a judges' favourite.

Sandy was the silk of choice for many media companies, perhaps most notably Fairfax, for whom he appeared in at least 20 cases. He also acted for what is now Nine Radio (Ray Hadley being a regular client), Nine TV, Channel 7, the ABC, and appeared for plaintiffs including Emma Husar against Buzzfeed and Erin Molan against the Daily Mail (both ultimately successful). Media clients were drawn to his dogged defence of the principles of open justice, of the right to express views on all manner of issues across the spectrum of offensiveness, and the absolute importance of protecting journalism in this country. He was a media junkie himself.

His enormous contribution to the law is almost impossible to quantify, although the list of judgments in cases where Sandy appeared (some of which are included in Lyndelle Barnett's piece also published in this edition of the bulletin) reads like the index to a defamation textbook. Of course, there were many more cases that were not publicly reported upon, perhaps because of Sandy's equally impressive skills in negotiating settlements for clients.

So many effusive and touching words have been said and written since Sandy's death. Many people have commented that they've never heard of someone referred to with such glowing admiration and affection. The truth is, those words hardly scratch the surface. He will be so deeply missed by many in our industry, both professionally and personally.

All of our thoughts are with his incredible wife, Alex, his parents Sandy and Jane, his brother Angus and his beautiful kids Jack, Freya, Holly and Henry.

Angela Heckman

Senior Vice President, Streaming Distribution & Business Development at Paramount International

Angela Heckman, Senior Vice President at Paramount, is based in New York, where she looks after the company's international distribution and business development for its streaming products, such as Paramount+, and Pluto TV. Angela has central oversight of new and existing streaming partnerships including with MVPDs, connected devices and global app platforms, while overseeing the company's business development efforts to ensure that Paramount delivers on its global streaming expansion strategy.

Part of Angela's role, in that respect, was overseeing the successful rollout of Australia's newest premium subscription video-on-demand service, Paramount+. Before moving into the international side of Paramount's business, Angela was the Senior Vice President of Digital Partnerships, where she led distribution and partnerships for the group's US digital businesses, including streaming services, mobile and connected TV apps, transactional video and emerging products.

Angela sits down with **Eli Fisher,** co-editor, to discuss current trends in the global media industry, the future of content delivery and how the Australian market compares to other territories.

ELI FISHER: Angela, thank you so much for speaking to us. We're really excited to chat about what trends you're seeing globally and how the Australian market compares to the other territories with which you're dealing. But first, can you tell us a bit about your career and how you came to your current role?

ANGELA HECKMAN: I joined the company back in 2011, when the company was just starting to explore how to reach audiences on mobile devices. My first job was on the International (ie, non-US) Digital Business Development team where I worked to launch branded video apps for MTV, Nickelodeon and Comedy Central, as well as mobile games for Nickelodeon franchises such as "Dora the Explorer" and "SpongeBob SquarePants". At the time, this was an entirely new business area, so I spent a lot of time planning for the future, with smart phones, tablets and connected TVs soon to become the go-to devices for people looking to watch our content and engage with our brands. That has become a bit of a throughline in my career: identifying ways for the company to take advantage of new digital platforms.

From International Digital Business Development, I moved to our Domestic business where I began managing Nickelodeon mobile games and took on additional digital businesses as they evolved to become increasingly important revenue drivers and platforms for engagement. When I left the Domestic Digital team in 2020, I was leading digital partnerships for all our brands across all digital lines of business. I took my current role, overseeing international Streaming Distribution & Business Development for Paramount, excited about the opportunity to focus more specifically on our Streaming business with Paramount+ and Pluto TV, and to drive that business forward in markets poised for growth.

ELI: Can you tell us about your role and what a normal day in the life of Angela Heckman looks like?

ANGELA: Well, I have two young sons, who are four and one-and-a-half years old, so a normal day at home begins early, and in chaos, as I run around trying to get the boys fed, dressed and out the door. This provides some great perspective as I begin my workday.

Throughout the day, I spend a lot of my time working one-on-one with our local teams as they identify new distribution opportunities for Paramount+ and Pluto TV, as well as deepen our relationships with existing partners. This includes reviewing terms for new deals, prioritising projects with our product and operations teams, and discussing new prospects for promotion and visibility with our partners.

Recently, we announced a multi-year distribution deal in the UK with Virgin Media. Kicking off in 2023, this partnership will truly help us continue to unlock the power of Paramount's content, widening our distribution of both our SVOD and FAST services in the region.

Additionally, through a new partnership with Orange, the leading internet provider and telco in France, Orange TV subscribers with a TV4 or UHD set-up box can now subscribe to Paramount+ (which debuted in France on December 1) from their Orange UI in France. This strategic partnership not only allows us the opportunity to access new audiences, but also accelerate subscriber growth in this new market.

As we prepared for the French launch, followed shortly by the December 8 debut in Germany, Switzerland and Austria, I also spent a great deal of time meeting with members of both our central HQ team and our local teams to track progress and provide updates for launch.

ELI: Paramount+ is continuing to expand around the world, with the service to become available in 45 markets by the end of this year. On the free streaming side, Pluto TV is also expanding its footprint, now with a presence in 30+ markets and Canada to launch in December. With the

rapid expansion of Paramount's paid and free streaming services, along with many other streamers available for consumers around the world, what is your viewpoint of streaming as it pertains to the future of TV consumption?

ANGELA: Streaming IS the future of TV consumption, and our offerings across both paid and ad-supported streaming allow us to target audiences looking for both premium entertainment and easy to access, free content. Because of this Paramount, as well as other media companies, have shifted how we think about our fan bases. Rather than assuming people first interact with our shows and IP based on linear TV schedules, we need to think about how we build and maintain franchises and audiences with SVOD. We've invested significantly in our streaming businesses because of this clear shift, and it's exciting to be on the front lines of defining how we compete and succeed.

ELI: What are the biggest challenges that the streaming industry faces, and what are the possibilities that most excite you?

ANGELA: I spent the majority of my career focused on digital businesses in the US. Since joining our International team, I've learned the importance of having a deep understanding of each of our existing and potential markets. With Paramount+ in more than 45 markets, and Pluto TV available in over 30 countries and territories, as you mentioned earlier, I face the exciting challenge of creating the right processes to ensure we are building one global brand with cohesive strategies, while maintaining flexibility in regard to individual market dynamics, competitors and opportunities.

This will be particularly important for Paramount's global streaming organization going forward, as we work across some of the world's largest SVOD markets to move beyond launch mode and manage the business for sustainable growth.

From a distribution perspective, this means continuing to focus on our global platform partners that allow us to take advantage of their deep, multi-market distribution footprints. It also means focusing in on regional and local MVPDs and telcos who can broaden our reach in particular markets while offering us exciting resources and capabilities to build the Paramount+ and Pluto TV brands.

ELI: Paramount+ and Pluto TV are different in nature to the other streaming services in the market. How are they different, and do those differences distinguish them from the market trends that you're referring to?

ANGELA: Fundamentally, we have a different approach from the legacy streamers. We have a differentiated playbook with Paramount+ and Pluto TV as part of our strong portfolio of direct-to-consumer, broadcast video-on-demand, ad-based video-on-demand, free ad-supported streaming TV, pay channels and free to air networks, all of which have an established base of viewers. From our broad collection of engaging content to our incredible distribution partnerships, we create an easy and exciting viewing experiences for audiences of all ages around the world.

ELI: What impact do you consider the COVID pandemic to have had on the global streaming business, both in the pandemic's darkest days of 2020-1, and in the long term?

ANGELA: There's no question that the COVID-19 pandemic accelerated the global interest in, and adoption of, streaming services. It was a period in which we all clearly saw the advantages of having thousands of hours of escapist content easily available.

COVID-related restrictions also created a unique opportunity for us to become a more nimble and resourceful team, as we first launched Paramount+ in March 2021 (with the launch in Australia taking place some months later, in August 2021), while continuing to expand Pluto TV into several new markets remotely, across multiple time zones, with colleagues we had never met in person.

With each market launch, we immediately found strong audiences that we've continued to build upon, even as more options for peoples' time – travel, sports, live entertainment – have opened back up. One thing that sets Paramount+ apart, which was particularly important during the pandemic, is our powerful slate of content fit for the entire household. In Australia, for example, we have fantastic local scripted and reality shows, international hits, movies, kids' content and live sports. This variety was not only an important selling point when entire families were at home together, but it continues to be an important feature, as subscribers take a more critical look at the services they have and the value they're getting from them. Just this last quarter, our global direct-to-consumer subscribers rose to nearly 67M, with the addition of 4.6M Paramount+ subscribers. Pluto TV has also extended its lead as the #1 FAST service, with 72M monthly active users.

ELI: And lastly, any great recommendations for what to watch next?

ANGELA: Having heard Sylvester Stallone talk about his experience shooting "Tulsa King", I'm really looking forward to finishing the new series! I should also note that with young kids in the house, PAW Patrol is a constant favourite.

Eli Fisher

Event Report: The Inaugral CAMLA Oration

Calli Tsipidis (Legal Counsel, Foxtel Group) & **Erin Mifsud** (Lawyer, E-Safety Commissioner)

On Tuesday 8 November, CAMLA had the privilege of hosting a keynote address from Her Excellency, the Honourable Margaret Beazley AC KC, entitled "Freedom of Speech: To What End?" at the Harborside Terrace Room at the Australian Museum. Martyn Taylor (CAMLA Vice President) and Ashleigh Fehrenbach (CLB Editor) provided a short introduction, and noted that, with Elon Musk's recent takeover of Twitter, a keynote address exploring freedom of speech was indeed timely.

With the full moon rising over spectacular views of the Sydney CBD in the background, Her Excellency commenced official proceedings by reflecting on freedom of speech as a topic which lies at the heart of communications, media and the law. The French Revolution might be considered as a major steppingstone for freedom of speech in the modern era (though Her Excellency acknowledged that the 21st century layman would likely know more about the Marquis de La Fayette from *Hamilton* than anywhere else).

Freedom of speech is, at its core, a simple principle with universally recognised parameters. Her Excellency identified that these parameters have shifted over time and need continued review as political and social contexts change, however the historical and structural core of freedom of speech remains: to represent minorities against strong-willed government desires. With that in mind, Her Excellency posed some compelling questions: should speech be regulated? If so, how? Is allowing genuine free speech paving the path to anarchy? In answering this question, Her Excellency quoted and then expounded on the Declaration of the Rights of Man and of the Citizen, set proclaimed on 26 August 1789:

> *The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom...*

Her Excellency then completed the declaration that has propelled the subsequent history of the freedom of speech:

> *Every citizen may, accordingly, speak, write, and print with freedom but shall be responsible for such abuses of this freedom as shall be defined by law.*

Her Excellency turned to reflect on the Australian legal position, including the implied constitutional right of freedom of speech and the role of defamation. Section 18C of the Racial Discrimination Act was also discussed – including advocacy movements to delete the words 'offend' and 'insult', on the basis they place an unreasonable limitation on freedom of speech.

Whilst allowing free speech is potentially less dangerous than supressing it, Her Excellency acknowledged that unlimited free speech has the potential for serious harm, particularly where it becomes 'hate speech'. This becomes more complex in areas such as academia which go hand in hand with free discourse. Her Excellency acknowledged the importance of education, awareness, funding for civil rights and other advocacy opportunities in minimising potential harm.

When reflecting on freedom of speech, Her Excellency challenged us to consider more broadly, "what do we want in society"? As thought leaders and policymakers, Her Excellency made a compelling argument: that the 'right' to free speech goes beyond a mere matter of interest. It is fundamental to an understanding of what we require from our democracy.

CAMLA would like to extend a sincere thanks to Her Excellency, the Honourable Margaret Beazley AC KC for lending us her invaluable time and insights, and to Eli Fisher and Ashleigh Fehrenbach for organising this special event.

The text of Her Excellency's speech is included with this edition of the Communications Law Bulletin.

Select Aspects of Forum Shopping in Australian Defamation Litigation

Dr Michael Douglas comments on forum shopping in Australian defamation litigation and, in particular, the interplay between the new concerns notice regime and Federal Court defamation hearings.*

This event has been branded as 'current perspectives' on defamation law and defamation law reform. My presentation will consider a phenomenon of the contemporary practice of defamation litigation in Australia, which has been impacted by recent legislative change to the Defamation Acts of most Australian jurisdictions.

I am speaking to forum shopping in Australian defamation litigation.

This is a big topic. You could write 100,000 words on it. And I have.[1] So this evening I will speak to only select aspects of the subject.

Forum shopping

For the uninitiated, 'forum shopping' means to commence litigation in one place rather than another in circumstances where more than one court would have jurisdiction—that is, 'authority to decide'—over the underlying dispute.

The term is commonly associated with my favourite discipline: the conflict of laws, also known as 'private international law'.

And it is often framed as a bad thing. That is, a person who goes forum shopping commits some sort of sin by choosing to sue in one place rather than another, often to maximise their prospects of success by exploiting advantages available in their chosen forum but not an alternative forum.

This orthodox view depends on the principle that like cases ought to be treated alike, and the proposition that cross-border disputes have a single 'natural' home.

But when a dispute concerns communication, and particularly communication on the internet, there may be no single natural forum with which the dispute has a connection. When it comes to defamation disputes, the undesirability of forum shopping is far from clear.

Who cares?

Why should we care about this? Well, as regards defo litigation in Australia, forum shopping has become a real thing.

For about a decade, the Federal Court has recognised what some have called a pure defamation jurisdiction. These days, in many cases of Australia-wide publication, a plaintiff can choose to sue in the Federal Court of Australia rather than the traditional forum of a defamation dispute, a State Supreme Court.

Many plaintiffs are choosing to sue in the Federal Court to avoid State courts' dispositions to juries; a point I will touch on further.

But there is another kind of intra-Australian defamation forum shopping with which a Western Australian audience should be particularly familiar.

In 2020, the Council of Attorneys-General agreed to implement changes to the Model Defamation Provisions underlying the Defamation Acts of the States and Territories. The changes have been implemented in most of Australia, bolstering defences, changing limitation periods, and requiring a plaintiff to establish that they have suffered serious harm, among other things.

Those changes are not in force in WA or the NT. This creates an opening for a clever litigant defamed around Australia, who may seek to invoke WA law to avoid aspects of the new legislation that do not assist their case.

With that stratagem in mind, I turn to an aspect of the conflict of laws as it relates to Aussie defamation litigation: choice of law.

The applicable law for defamation litigation in WA

Australian courts can and sometimes do apply foreign law to a matter which has connections to systems of law other than the local law area. This phenomenon is sometimes called 'choice of law'. For technical reasons, it is better understood as 'identifying the applicable law'.

20 years ago, in the seminal case, *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575, the High Court of Australia clarified that the law of the place of the wrong should apply to a cross-border defamation dispute. But how do you identify the 'wrong' for defamation? Well, considering the multiple publication rule, there is a discrete cause of action for each download of an online publication. If an online piece is downloaded in multiple jurisdictions, each could be its own wrong with its own applicable law. A plaintiff can avoid the mess by just limiting their pleading to publications occurring locally, and so only the local law would apply.

The *Gutnick* approach to choice of law was ousted by statute. Section 11 of the *Defamation Act 2005* (WA) (and equivalents in other Aussie jurisdictions) provides that the law of the jurisdiction with which the harm occasioned by the publication has its closest connection applies, at least with respect to publications around Australia.

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* Senior Lecturer at UWA Law School and Consultant at Bennett, Perth. This text is the speech of a presentation delivered on 7 December 2022 titled *'Current Perspectives on Defamation and Defamation Law Reform', featuring Professor David Rolph and Sue Chrysanthou SC, hosted by Bennett and the UWA Private and Commercial Law Research Cluster*. It is light on citations. For a more rigorous analysis with citation of primary sources, see the thesis cited below.

1. My PhD thesis, 'Forum Shopping in Australian Defamation Litigation' (The University of Sydney, 2022), may be viewed online: <https://ses.library.usyd.edu.au/handle/2123/29430>.

So say you have a defamatory publication in a national newspaper that defames a federal member for a WA seat. How does section 11 apply? You would look at where the thing has been published; presumably more in NSW and Vic than in WA. That greater scope of publication would correlate to greater damage. But the politician's centre of interests would presumably be in WA. I reckon there is a decent case that WA defamation law is the applicable law, even if the person commences their case over east, and even if they sue on all publications occurring in Australia.

Conversely, say a federal member in a Victorian seat has been defamed in a national newspaper. Could they commence litigation in WA to avoid the amended Victorian law? Well, the WA court would still apply s 11, and so they may be bound by Victorian law even in a WA court.

What if that Victorian politician commenced in WA, but only sued upon the reads and downloads of the article that occurred in WA? The text of s 11 is somewhat ambiguous, but there is a decent case that the reputation of the Victorian *in Western Australia* is the interest underlying the claim framed in that way. If that is right, then the plaintiff could engineer the applicable law of their choosing by engaging a Perth firm and then being careful and clever with pleading.

Faced with this kind of cunning, a court or a defendant may seek to have the matter transferred from the WASC to the VSC on the basis that 'the interests of justice' mandate a transfer pursuant to the Cross-Vesting Acts. I would argue, however, that there is nothing plainly unjust about a person suing in the forum of the place of publication, which according to *Gutnick* is the forum in which that person's reputation has been damaged.

The applicable law for defamation litigation in the Federal Court of Australia

In the Federal Court, the identification of the applicable law is complicated by the federal character of the Court's jurisdiction.

Although we have a single common law in Australia, statutes and procedural laws differ between constituent parts of the federation. Generally, according to machinery in the *Judiciary Act 1903* (Cth), the Federal Court will apply the statute law in force in the jurisdiction in which it is sitting, subject to applicable choice-of-law rules and statutory direction to the contrary.

Why do we care about this technical trickiness? Well, there is a very practical benefit to the machinery of the Judiciary Act.

Section 79(1A)(b)(ii) effectively provides that the laws of the State or Territory in which the Federal Court sits shall apply in the Federal Court, except as otherwise provided by Commonwealth law.

Now consider that the Defamation Acts of the States are State law. They contain a provision concerning juries. Generally, under the Defamation Acts, a party who wants a jury is likely to get one. The situation varies a little around the Federation but that is the gist.

Well, the Federal Court does not have the same fondness for juries. Provisions in the *Federal Court of Australia Act 1976* (Cth) are reinforced by practice and procedure which favours efficiency, the combined effect of which is that a defamation jury is very unlikely under federal law.

So in one of Chau Chak Wing's defo cases (*Wing v Fairfax Media Publications Pty Ltd* (2017) 255 FCR 61), the Full Court of the Federal Court of Australia determined that the State Defamation Act's position on juries was not the applicable law in the Federal Court.

For example, say you have a client who may be expected to face some difficulties in front of a jury. Like a bloke accused of being sleazy at the height of the #MeToo era. Forum shopping in the Federal Court may be a sound strategy.

This aspect of 'Federal Court Forum Shopping' is well known. There is another worth touching upon which could prove equally powerful.

It concerns the impact of the 2021 Amendments to many of Australia's Defamation Acts to matters in the Federal Court's federal jurisdiction.

Those amendments do not just consider matters of substance. A significant—and in my view, deeply flawed—aspect of the new provisions is the requirement that aggrieved persons engage in a concerns notice dispute resolution procedure prior to commencing defamation litigation. ADR is all well and good, especially as regards defamation disputes, but the practical effect of these amendments is that a person may have to wait more than a month from the point of publication before they can get an originating process issued. At least, that's the case over east.

One of the reasons why this procedure is undesirable is that it seemingly prevents a person from having a 'snap writ' issued to urgently prevent spread of defamatory matter on the grapevine. It may still be possible to seek *quia timet* relief for a cause of action not yet possible to be sued upon (see, eg, *Ajaka v Nine Network Pty Ltd* [2022] NSWSC 632), even if the prospects of success are very unlikely. But having an originating process issued quickly may persuade a publisher to lay down their weapons quickly without bothering a duty judge. In my view, this aspect of the 2021 Amendments undermines a key purpose of the Defamation Acts: to facilitate efficient non-judicial resolution of defamation disputes.

Turning to the forum shopping point. Recall that State law does not apply in federal jurisdiction where federal law provides otherwise.

I would argue that the 2021 concerns notice amendments are inconsistent with two federal laws: first, the *Civil Dispute Resolution Act 2011* (Cth), and second, the *Federal Court Rules 2011* (Cth). The latter is most important. Part 25 provides an 'offers to settle' regime that differs from the concerns notice dance of the 2021 Amendments. It is at least arguable that the new approach to concerns notices, which requires an aggrieved person to wait before commencing litigation, does not apply to actions commenced in the Federal Court of Australia.

This kind of reasoning has some tangential support in authority. Justice Lee has considered in recent cases that the Federal Court's law on costs would ousts the provision in the State and Territory Defamation Acts concerning costs (see *Palmer v McGowan* [2022] FCA 927, [41]).

My sense is that the Federal Court will be willing to defer to the language of the Judiciary Act to prefer federal procedural laws that, in the Court's opinion, best serve the overriding purpose of civil practice and procedure. The nonsensical concerns notice machinery of the 2021 Amendments are ripe for ousting in federal jurisdiction.

Event Report: UK Media Law developments

Anna Glen (CAMLA Young Lawyers representative)

On 27 September 2022, CAMLA hosted an event to explore recent legal developments in the UK which may inform how the law develops in Australia in relation to privacy rights, the serious harm threshold and the public interest defence to defamation claims.

We were spoilt with an expert panel of international guests comprising of **Tom Blackburn SC** (5RB chambers in London and Banco chambers in Sydney), **Alex Wilson** (partner in RPC's Media team), and **Gill Phillips** (Director of Editorial Legal Services for The Guardian). The seminar was hosted remotely by Thomson Geer and chaired by **Marlia Saunders**, partner at Thomson Geer.

Privacy

Alex kicked off the seminar on the topic of privacy with a discussion of a recent decision of the UK Supreme Court, *Bloomberg LP v ZXC* [2022] UKSC 5, which concerned a person's right to privacy in the context of an investigation.

Alex, who acted for Bloomberg in the appeal proceedings, explained the effect of the decision is that, in general, a person under criminal investigation has a reasonable expectation of privacy up until the point of being charged. This is because the fact of an investigation will of itself carry some stigma that could cause reputational damage. It is unclear whether this decision could apply to non-criminal investigations.

The decision is sure to send chills down any media lawyer's spine as the reputational dimension of the decision clearly cuts across defamation law and allows plaintiffs to further protect their reputation under the guise of privacy law.

Describing the decision as somewhat 'terrifying' from an Australian perspective (given Australia does not have recognised tort of privacy under common law or statute), Marlia commented that the decision appears to undermine the presumption of innocence and could result in self-censorship by the media.

Public interest defence

The panel then moved on to the UK experience of the public interest defence and how this may inform how the defence will be considered in Australia, having only been introduced in July last year.

Unfortunately, there was little optimism on the panel for the defence. The lack of enthusiasm came from the fact the courts in the UK have imposed a very high evidentiary standard of proving 'reasonable belief' in the public interest of the story. It will not be sufficient for a journalist or editor of a story to simply get in the witness box and assert they considered the story to be in the public interest.

To that end, both Gill and Alex emphasised the need to have *contemporaneous* evidence of reasonable belief in the public interest of the story. Alex recommended preparing proofs of evidence quickly after proceedings are commenced and Gill advised that including what the public interest is in the story itself can also be useful.

In light of such developments in the UK, Tom was sceptical about whether the new public interest defence will make any difference at all in Australia, especially given Australian courts have historically 'equated reasonableness with perfection' with respect to the qualified privilege defence.

Serious harm

Tom led the discussion on serious harm and set out three key points about what is clear about serious harm.

First, the determination of serious harm is highly fact rich and often involves substantial evidentiary dispute. Alex said this has meant that in the UK serious harm is rarely considered as a preliminary issue and is generally heard at trial. This is bolstered by the fact that, in England, it is within the discretion of the court as to whether a separate trial will be granted with respect to serious harm. In what Tom described as a 'curious' divergence from the UK approach, section 10A(5) the Australian legislation allows parties to request a determination on serious harm which must be considered as soon as practicable unless there are special circumstances.

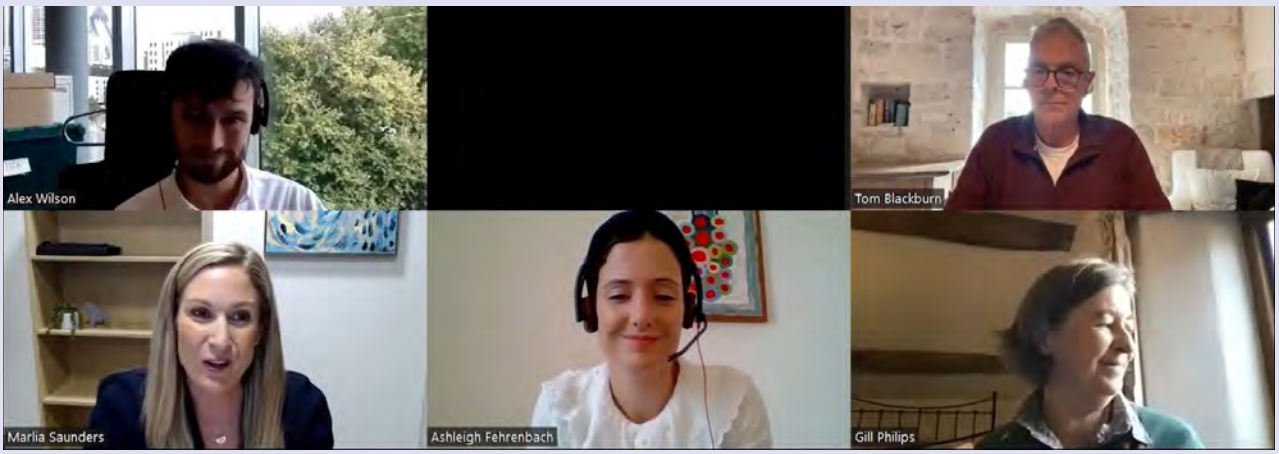
Second, opportunities to appeal decisions on serious harm in the UK have been very limited and that is likely also to be the case in Australia.

Third, the quantity (i.e. the number of people that receive the defamatory publication) can be just as important as the quality of the defamatory sting. Tom mentioned the case of *Rebekah Vardy v Coleen Rooney* [2022] EWHC 2017 between two footballers' wives, popularly known as the 'Wagatha Christie' trial, where the 'earth shattering' imputation (insert sarcasm) was arguably not very serious but was shared to almost one million Instagram followers and a similar number on Facebook and Twitter. In that case, serious harm was ultimately conceded.

Tom also provided some interesting observations on *Lachaux v Independent Print Ltd* [2019] UKSC 27 and said there could be scope for creative interpretation to depart from *Lachaux* in Australia in terms of when a defamatory publication occurs.

For those who were unable to attend, the full seminar is available in the member downloads on the CAMLA website.

On behalf of CAMLA, the CAMLA Young Lawyers Committee would like to extend its thanks to **Thomson Geer** and **Marlia Saunders** for running this international event and to our esteemed guests for their insights on an ever-changing area of the law.



CAMLA Young Lawyers Committee | 2022 Chair Report

Calli Tsipidis

Another lap around the sun, and another year kicking goals. It is my pleasure to recap what was an outstanding 2022 for the CAMA Young Lawyers Committee.

2022 EVENTS

Music and the Law Series

The CAMLA Young Lawyers Committee kicked off 2022 with an ambitious goal – to host a 3-part webinar and seminar series. Over three sessions, we were joined by music industry experts, taking a deep dive into how the law interacts with our favourite tunes.

Chloe Martin-Nicolle (Sony Music Entertainment), **Chris Chow** (Creative Lawyers) and **Damian Rinaldi** (Sonic Lawyers & Sonic Rights Management) took us through the fundamentals in the '101' session, and **Kate Haddock** (Banki Haddock Fiora), **Chris Johnson** (APRA AMCOS) and **Lynne Small** (PPCA/ARIA) unpacked the complexities of collective licensing and the role of collecting societies in our '201' session. We concluded the series with very special guest Holly Rankin (aka Jack River) discussing the challenges facing the industry and the need for disruption, with particular focus on the Beneath the Glass Ceiling campaign, alongside Michael Bradley and Emma Johnsen of Marque Lawyers.

I would like to extend a sincere thanks to our fantastic guests across the series, and to our host firms, **Bird & Bird, Banki Haddock Fiora** and **Marque Lawyers.**

Networking Event

Casting our minds back to May, the CAMLA Young Lawyers Committee set off on planning the hotly anticipated Networking Event. 2022 was the third consecutive year that the Networking Event sold-out – over 70 eager attendees joined us in person, with another handful tuning in online.

Rebecca Lindhout (McCullough Robertson and 2022 CAMLA Board member), **Dan Roe** (The Walt Disney Company) and **Antonia Rosen** (News Corp Australia) discussed their career paths, professional highlights and challenges, and provided sound advice for the audience, who were a mix of students and young legal professionals.

Thank you again to the panel and to **McCullough Robertson** for hosting us.

Whistleblower Protection 101

The final event on the CAMLA Young Lawyers 2022 calendar was the Whistleblower Protection 101 seminar, taking place at The Olive Rooms, at **Banki Haddock Fiora.** Attendees were fortunate to be joined by the knowledgeable and passionate **Kieran Pender** (Human Rights Law Centre) and **Lesley Power** (Alliance for Journalists' Freedom), who took us through a comprehensive review of the current whistleblower landscape in Australia, international challenges, recent movements and a practical take on the day-to-day issues faced by whistleblowers and their advisors.

Thank you again to our panel for an engaging session, and to **Marina Olsen,** The Olive Rooms and Banki Haddock Fiora for hosting us.

In early 2022, the CAMLA Young Lawyers Committee made a commitment to retain a mixture of in-person and virtual events, to allow attendees from all Australian States and Territories, non-CBD regions, and even some special international guests to tune in. I am proud to report that each CAMLA Young Lawyers event for 2022 was made available online, and we received consistent positive feedback in relation to this.

Podcast

The CAMLA Podcast has continued to grow, with some exciting innovations to be announced to CAMLA members over the coming months. Several episodes were recorded throughout the year, and we hope some new releases will become available to listen to by Christmas 2022. A big thank you to our guests and contributors for your time and insights.

I would like to thank our fabulous hosts and coordinators, **Belyndy Rowe** (Bird & Bird) and **Justin Kardi** (Clayton Utz), as well as **Anna Kretowicz** (BCL Candidate, Oxford University) and **Jess Millner** (Minter Ellison) for their dedication and hard work in continuing to develop this project.

Communications Law Bulletin

The Young Lawyers were, again, very grateful to have again had the opportunity to participate in the International Women's Day Edition. Thank you to **Eli Fisher** and **Ashleigh Fehrenbach** for allowing us the wonderful opportunity to contribute to this publication. I'd also like to extend a thank you to the CLB liaisons from the CAMLA Young Lawyers Committee – **Dominic Keenan** (Allens) and **Jessica Norgard** (nbn co) – for their fantastic work coordinating the Young Lawyer contributions to the Communications Law Bulletin throughout 2022.

I am grateful to have had the opportunity to work alongside a passionate and hardworking group. I would like to extend my

sincere thanks to the 2022 Committee for their outstanding efforts and enthusiasm:

Anna Glen (ABC)

Anna Kretowicz (BCL Candidate, Oxford University)

Belyndy Rowe (Bird & Bird)

Claire Roberts (Eleven Wentworth)

Dominic Keenan (Allens)

Erin Mifsud (e-Safety Commissioner)

Imogen Loxton (Ashurst)

Isabella Boag-Taylor (RPC)

Jess Millner (Minter Ellison)

Jessica Norgard (nbn co)

Justin Kardi (Clayton Utz)

Madeleine James (Corrs Chambers Westgarth)

Nicola McLaughlin (nbn co)

Tess Mierendorff (Herbert Smith Freehills)

I would like to give particular thanks to our Vice Chair **Belyndy Rowe,** who was an integral member of the CAMLA Young Lawyers Committee throughout 2022. We would not have had the successes we had without Belyndy's enthusiasm, sacrifices and diligence. I would also like to extend thanks to our 2022 Secretary **Nicola McLaughlin,** who not only managed our meeting minutes and records but who was an integral member of the Young Lawyers Committee 'brains trust', along with Belyndy.

On behalf of the Young Lawyers Committee, we sincerely thank 2022 CAMLA President **Rebecca Dunn,** the CAMLA Board and Executive who have provided us with immense support, and placed unwavering trust in our abilities, instincts and decision-making throughout the year. I would also like to call out the wonderful **Cath Hill** for all of her incredible work, and the support she has continued to provide to the CAMLA Young Lawyers. The success of CAMLA, and in particular the Young Lawyers Committee, is very much thanks to Cath and her contributions to all of our initiatives.

On a personal note, it has been a privilege to lead the CAMLA Young Lawyers Committee again in 2022. Whilst my time as Chair (2020, 2021 and 2022) has been entirely unpredictable, there has been one constant – the diligence and passion of the Young Lawyers. It is with great pride that I sign off on my tenure as Chair – knowing that I leave the Young Lawyers in the most capable of hands.

I encourage any young lawyer with an interest in communications and media law to submit their interest in joining the 2023 CAMLA Young Lawyers Committee, or, if you aren't already a member, sign up today.

Happy holidays to all!

Calli Tsipidis
Chair, CAMLA Young Lawyers Committee 2022
Legal Counsel, Foxtel Group (FOX SPORTS Australia, Kayo Sports, BINGE, Flash & Foxtel)

CAMLA
COMMUNICATIONS AND MEDIA LAW ASSOCIATION

YOUNG LAWYERS

2023

CALL FOR COMMITTEE MEMBERS

APPLICATIONS NOW OPEN!

CAMLA YOUNG LAWYERS COMMITTEE 2023

DEADLINE 20 JANUARY 2023

The Communications and Media Law Association's (CAMLA) Young Lawyers Committee is calling for expressions of interest to join them in 2023.

The CAMLA Young Lawyers Committee is an official sub-committee of CAMLA of up to 15 young lawyers who represent the interests of young lawyers working or interested in communications and media law in Australia.

The CAMLA Young Lawyers Committee also assists the CAMLA Board in fulfilling its objectives.

The CAMLA Young Lawyers Committee aims to be representative of all sectors of communications and media law including private practice, in-house, the Bar, government/ regulatory, academia and persons with a genuine interest in the area, including students.

The committee is 'hands-on' and voluntary, and all members are called on to participate and contribute actively. Committee members are asked to attend monthly meetings and to participate in organising events, contribute to the Communications Law Bulletin, CAMLA Podcast and assist with other CAMLA and CAMLA Young Lawyers projects and initiatives.

CAMLA Young Lawyers is based in Sydney, however we encourage and welcome applications and contributions from interstate members.

If you would like to nominate to become a 2023 CAMLA Young Lawyers Committee member, please send us a brief CV and explanation as to why you would like to be part of CAMLA Young Lawyers for 2023.

Please email your expression of interest to contact@camla.org.au with your name and organisation in the subject line by Friday 20th January 2023.

You must be an existing member of CAMLA to apply (or arrange your membership through the CAMLA website: **www.camla.org.au** prior to submitting your application).

Successful applicants will be notified by email.

Bruce Burke

Partner, Banki Haddock Fiora and 2022 Press Freedom Award recipient

Eli Fisher, co-editor, sits down with **Bruce Burke,** Media Law Partner at Banki Haddock Fiora and recipient of the 2022 Press Freedom Award to chat about the Award and press freedom.

ELI FISHER: Bruce, I know you're hating this already and we haven't even gotten started. I'm going to open the proceedings with an introduction for our readers, and then ask some questions. Bruce Burke has more than 40 years' experience in advising media companies in defamation, contempt and related areas. He represents clients nationally in the Supreme Courts, Courts of Appeal and the High Court, and is (and has been for decades) regularly regarded as a leading media lawyer in Australia by various industry publications and his peers. Now, for our readers, let me be completely upfront. I am not an impartial interviewer (not that my editorial standards have ever been particularly renowned). In fact, I am a very partial interviewer. One who is beaming from ear to ear, because an old friend (my first boss actually!) has just been awarded the 2022 Press Freedom Award and acknowledged for having dedicated many decades to that most paramount of human rights. So forgive me if I'm excited by this; but I am. And on behalf of the wider CAMLA community, Bruce, we all are delighted for you. Congratulations!

Bruce, as I mentioned earlier when you were rolling your eyes, you've been a leading media and defamation lawyer for the bulk of your career which now spans over four decades. You have advised the majority of media companies in Australia, and run some of the most high-profile and influential media law cases in this country, during that time. Tell me, what does the Award mean to you at this point in your career?

BRUCE BURKE: It has certainly been a surprise to me how important it is generally and to me in particular. I understand from what was said at the presentation that the award is not given every year and that only one lawyer has previously received it. I was also surprised by the number of people who had actually nominated me and some of the very kind things they had said, which were read out at the presentation. It was very humbling because I have always sought a low profile and the reaction of people has been surprising to me.

ELI: The Australian Press Council, in announcing the award, noted (correctly, if I may say so!) that you are "an outstanding media lawyer and individual who has dedicated his career to protecting the rights of media organisations to publish and broadcast important works of journalism, without fear or favour. As the many supporters of Bruce's nomination for this award told us, his manner, dedication, energy, and insight into the dilemmas faced by publishers have been critical to their ability to publish their stories, even in the face of powerful opponents. He is an extremely worthy recipient of the 2022 Press Freedom Award." Can you tell us which stories, over the course of your decades of practice, stick in your mind as stories that were important to be published, which you helped clear?

BRUCE: I would prefer not to. I have often been called upon to help get a story out that many know of in the media but nobody is game to publish. I will mention only one briefly which related to Kerry Packer. He was something of a curate's egg, good in parts and admirable in certain ways. However he was very quick to use the law if he didn't like something that was published about him. I was given the facts with a plea to make it safe to publish. I requested and obtained a copy of a court report from the US and constructed what I hoped would be a great story but with a perfect section 24(3) defence under the 1974 NSW Defamation Act. After my client published it, the story went everywhere for a couple of days but Mr Packer very wisely made no comment and did nothing so the story died a quick natural death rather than became front page news for the next year or so. He probably had very good legal advice.

There have been many cases and quite a few were well-known at the time but the one I remember best is probably the case known as The Westpac Letters Case. A then young barrister, Stephen Rares, (now an experienced Federal Court judge) and I represented the *Sydney Morning Herald*, *The Age* and the *Canberra Times* when Westpac threw a phalanx of senior counsel and lawyers at us trying to maintain an injunction to prevent publication of some advice letters given to Westpac by its lawyers. The advice was that a subsidiary entity had effectively cheated customers on foreign exchange transactions. Westpac obtained an injunction which we fought to overturn in the face of a very determined judge who was not prepared to do so. Ultimately the matter was raised in several parliaments and Westpac was forced to produce the letters and they became public. We managed a practical win although the chance of winning before our esteemed judge was seemingly negligible. Numerous victims were then able to obtain some recompense.

ELI: Of course for all the stories that you helped bring to the public there would have been important stories that were never able to be published. What are some of the biggest shackles on the media industry in Australia today? What can be done to better promote free speech?

BRUCE: It is a hard question because inevitably there will be mistakes made by the media from time to time. These are mostly genuine mistakes as real scoundrels do their deliberately false muck-raking on the internet. The biggest problem is that the media so often knows the truth but cannot prove it to the Briginshaw test standard. This is a perfect example of a High Court case in a divorce matter in 1938 making it impossible almost a century later for the truth to be safely told in many instances. The perverse consequence is that the public is either never told or a totally undeserving person gets a windfall decision even if he might be a well-known notorious criminal. Perhaps the recently introduced serious harm test will improve the situation and I applaud some of the recent judgments that have recognised the potentially far-reaching consequences of that amendment. However the problem remains that any adherence to the Briginshaw test makes the publishing of serious matters (without the media having the capacity of the police to investigate and collect evidence) a very dangerous proposition. It allows many crooks to either avoid exposure or to reward them if someone publishes and defences fail.

ELI: Do you sometimes worry about too much freedom of speech in this country? Is the media less responsible, overall, than it traditionally was?

BRUCE: This is a significant problem of our new world. One particular US President comes to mind. I don't believe that the media is less responsible. On the contrary,

despite the loss of many extremely talented journalists for multiple reasons, there is a high standard of general integrity amongst current journalists in my experience. What has changed is the capacity of media companies to support their journalists to the extent that is necessary if they are sued. The costs are going up constantly and the rivers of gold have been usurped by a few digital multinational entities. This is a tough time for the media. If we are talking about non-media publishers, we are looking at an entirely different problem. Any ratbag can be a "publisher" and conspiracy theorists can often amass quite a following by putting rubbish online. I applaud those politicians who look beyond their own self-interest and seek to make it easier for media publishers to tell and defend the truth. More can be done but heaven only knows how best to deal with an online impecunious monster plaguing society with bile and rubbish and sometimes suing anybody who responds to his/her rubbish.

ELI: As you mentioned earlier, the defamation law has recently been reformed, with the intention of rebalancing it to better protect news publishers and investigative journalism. Which reforms are already making a difference on the frontline? You referred earlier to the serious harm test.

BRUCE: In the UK, they had a large downturn in defamation actions after the serious harm test was introduced. I am told that things have been returning to "normal" in recent times. From the perspective of society I think that that is a bad thing. The work and brainpower that goes into fighting claims against an undeserving defamation plaintiff can be astronomical. I often think when weighing up the amount of money and intellectual brilliance that go into defamation cases, that if we could channel that into cancer research we could cure it. Judges, court resources, barristers, solicitors, researchers – what a cavalcade of talent that might only be deciding whether someone is a liar or is not what he or she asserts. The serious harm test here has caused a lot of people to think twice before issuing proceedings and with good reason. Similarly, the one publication provision is eminently sensible and avoids the near impossibility of the media defending something that went online years ago when journalists, notes and sources may have now disappeared or died.

Eli: And which reforms are being discussed in this second round, which you and your clients are looking forward to?

BRUCE: There have been numerous submissions made but it is probably premature to predict what changes might result. I will not provide my wishlist as I would be headed for disappointment. In particular I would take the money off the table unless special damage could be proven. That would bring a whole new perspective to defamation matters and avoid the multiple actions brought with the sole purpose of obtaining a "commercial settlement". However the approach of judges is important and in that regard I have seen decisions by judges recently such as Justice Sackar in the Supreme Court and Judge Gibson in the District Court (each with vast experience in defamation matters and an encyclopaedic knowledge of the area) that have been both profound and encouraging.

ELI: Bruce, over your career, you've raised and mentored some wonderful media lawyers. Some of your former employees include brilliant barristers and solicitors, even a High Court judge. You're still going strong, Bruce, but at this stage in your career, it must give you lots of satisfaction to look around the media law community and see your professional offspring flourish as they have.

BRUCE: They have all made it through their own hard work and I have just been privileged to come across and assist so many people over the decades. There is a tendency for people, as they age, to consider that the next generations are not as good, clever and/or polite as their own generation. If that were true, I have led a charmed life because I continue to come across brilliant, hard-working people. I don't think that I have ever disliked any young person who worked with me and can only hope that I have assisted them along the way. I am very proud of those people and of their achievements although I can't claim to be responsible for that. A catalyst perhaps but I get a great feeling seeing people succeed.

ELI: Bruce, I know you were very close with Sandy Dawson SC. You worked closely with him on countless cases defending media organisations and journalists. Do you have some thoughts you'd like to share about Sandy and what he and his loss mean to you?

BRUCE: It is often said that "Only the good die young". That may not be correct but in Sandy's case he was exceptional and he died far too young. I am very fortunate to have nurtured some people at the bar in the sense that I entrusted some leading counsel with their first defamation cases and their first jury trials. I was lucky enough to never be let down. Sandy's special abilities encompassed being able to deal with anyone. He became great mates with Ray Hadley – at first appearance an unlikely duo. However Ray is like an iceberg. So much of his talent is under the surface. He sounds like the bloke next door but he is highly intelligent and one of the hardest workers you could possibly imagine. Sandy saw that in him and when I entrusted some of Ray's matters to Sandy he saw the bigger picture rather than the caricature in which Ray might sometimes be portrayed. Sandy was undoubtedly an exceptional talent and an exceptional human being. My former secretary of 18 years (and a very good judge of character) phoned me from overseas upon hearing of Sandy's death. She was a fantastic person but sometimes secretaries or PAs are treated poorly by high flyers. Her words were "Sandy was always so nice to deal with." You can't buy that respect. You have to earn it and Sandy always did. We all have to move on in these circumstances but his passing will leave sadness and a big hole in the hearts and minds of many.

ELI: Thanks Bruce. Lastly, share some wisdom with us. The mic is yours. What's the key to a long, satisfying, successful career in media law?

BRUCE: I think I was fortunate to grow up in a family that simply helped other people constantly. No-one was allowed to be alone on Christmas Day. If someone needed somewhere to stay, my parents would always make room. I suppose that a certain ethic was instilled as a result. Also I had the good fortune to include psychology in some of my undergraduate studies and I spent a lot of time studying politics and particularly local politics and resident action groups when they were something new for one of my postgraduate degrees. The psychology taught me to try to see things from the perspective of the other side. The nitty gritty of local politics taught me that despite some earlier thoughts in that regard it was not for me. I have therefore tried to help people as much as I can and have remained away from politics where you can never please everybody.

It just struck me that one of the reasons for my longevity in the law is that I refuse to treat it as a business in the terms the management gurus espouse. To me it has always been a profession rather than a business and if that is a 1950s attitude then so be it. Respect for the lawyers I knew as a child and young person was what directed me to the profession. Lawyers were largely respected in that era.

I keep working because I am lucky enough to work with and for some fantastic people. I doubt I would be much good at anything else so I try to stay useful. I genuinely like to help people and have had fantastic people to deal with throughout my career. I regard myself as being very lucky.

ELI: Thanks Bruce, and again, congratulations! What a thing!

Eli Fisher

What the NFT?

Luke Dale (Partner), **Daniel Kiley** (Partner) and **Annabel Bramley** (Law Graduate), HWL Ebsworth Lawyers, discuss a range of legal issues surrounding non-fungible tokens.

The pandemic has brought many things to the forefront of popular culture: face masks, air fryers, and more recently, NFTs. If the third example has you scratching your head, you're not alone. 'NFTs' (short for non-fungible tokens) were one of the most popular Google search terms in 2021. "Why," you ask? Because in some circumstances, they're bringing in their owners serious money and incentivising a new wave of creativity for artists from all walks of life.

Let's take a closer look.

What is an Nft?

An NFT is a cryptographic tool that acts as a certificate of authenticity for 'scarce' goods.[1] As mentioned, NFT stands for 'non-fungible token'. The 'non-fungible' component reflects the fact that NFTs cannot be transferred on a 'like for like' basis. The specific details of the NFT – for example, its creation date, creator, the assets linked to it, and consumer demand – determine its worth. This is in contrast, for example, with fungible items like money or cryptocurrencies like Bitcoin – if A and B both had a Bitcoin and swapped them, they would still each have a Bitcoin of the same worth.

These 'tokens' can be used to represent a myriad of different underlying assets. Broadly however, NFTs can be defined into two categories:

- Digital certificates linked to entirely digital assets (such as GIFs[2], digital art[3], and social media posts[4]); and
- Digital certificates linked to physical assets.[5]

Connecting the dots, really anything has the possibility of being tokenised.

Here are some of our favourites:

- **This Changed Everything' by Sir Tim Berners-Lee** (an NFT documenting the creation of the world wide web);[6]
- **Furniture NFTs by Andres Resigner** (an NFT you could utilise in open worlds like Decentraland or Minecraft);[7] and
- **'Saccade' by Flume and Jonathans Zawada** (an NFT we could watch for hours).[8]

Still a Bit Confused?

You can think about NFTs in the same way you might think about fine art. Irrespective of their visual appeal, it is generally not the *actual* art contained within the work that is valuable (sorry Picasso, apologies Monet). Instead, the history and grandeur surrounding the work (including the chain of ownership) is where the value lies. By purchasing an NFT, you are essentially afforded the 'bragging rights' to an original or limited version of something that you can verify through a digital record, perhaps akin to an original signed by the artist rather than a later mass-produced copy.

NFTs can also be likened to trading/collector cards. A card featuring a photograph of Michael Jordan has very little inherent utility, and that same photograph of Michael Jordan might even appear in other contexts, for example on posters or in magazines. But if the trading card is sufficiently rare, there may be value in being able to say that you possess it.

Okay, But How are NFTs Created?

Stick with us, we're going to get technical for a minute.

Cryptocurrencies like Bitcoin introduced a new form of technology known as a 'blockchain'. A blockchain is a way of cryptographically maintaining a decentralised, immutable (fixed) ledger. It is used in cryptocurrencies to create a trusted system for exchanging 'money' without a central bank or other party controlling the system, while maintaining distributed public records of all transactions. Subsequent developments have seen blockchains expanded for use in broader contexts, including NFTs.

NFTs are created using 'smart contracts' on a blockchain which keep track of the ownership of tokens as they are transferred between parties. Smart contracts are unlike traditional contracts, and probably aren't actually contracts in a legal sense. Instead they are written in computer code and contain pre-defined terms and conditions. Upon recognising that these have been met, a smart contract automatically executes its rules.

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1 We'll talk more about the concept of scarcity a bit later on.

2 https://twitter.com/tacobell/status/1368807880434982912.

3 https://www.abc.net.au/news/science/2021-03-06/nft-crypto-digital-art-could-be-bonanza-for-artists/13220228.

4 https://v.cent.co/tweet/20.

5 https://thenextweb.com/news/nike-blockchain-sneakers-cryptokick-patent.

6 https://www.sothebys.com/en/digital-catalogues/this-changed-everything.

7 https://superrare.com/artwork-v2/cross-pollination-30544.

8 https://foundation.app/@flumezawada/foundation/3162.

When a new NFT is created (or 'minted' as it is known amongst the tech community) this data is encrypted into a 'block' of transactions which is cryptographically linked to previous transaction blocks, thereby extending the 'chain' of information on the blockchain. Any attempt to vary a transaction will break the chain. Unlike a physical ledger though, blockchains are publicly viewable. This is what NFT advocates assert as the asset's greatest protection against copying or duplication – its chronological existence on a public blockchain makes ownership irrefutable, and the cryptographic techniques involved make it easy to identify when someone (or something) has attempted to upset the status quo.

This All Sounds Fine, But Why are NFTs a Big Deal?

When we said NFTs are bringing in big money for their creators, we meant it. Even if you're new to NFTs, you're at least likely to have heard of Beeple. No, this isn't the some new social media platform the kids are on. Rather, Beeple (whose real name is Mike Winkelman) is a visual artist who managed to sell his NFT, 'Everydays: The First 5000 days' for a cool USD70 million, earning him the title of '*one of the three most valuable artists alive today*'.[9] However, even this huge sum was recently overtaken by artist 'Mysterious Pak', who recently sold their NFT 'The Merge' for USD91.8 million.[10]

While there is no guarantee that minting an NFT will gain you this level of financial success, the NFT realm has opened up an entirely new revenue stream for those willing to tap into it. This is welcome news for those in the arts, who similarly to those in the hospitality and tourism industries, have been some of the hardest hit by the pandemic. American rock band 'Kings of Leon' were the first band to release an album as an NFT,[11] producing two other tokens alongside this which offer '*live show perks like front-row seats for life*' *and* '*exclusive audio-visual art*'. Here we can see how NFTs can help to bridge the gap created by COVID (ie the inability to perform or go on tour). Artists can continue to engage their audiences and monetise these endeavours.[12]

Now you may remember us putting quotations around the word 'scarce' in our description of NFTs. While the digital certificate component of an NFT certainly guarantees ownership of the asset, it's the NFT creator who gets to decide the level of scarcity attached to it. In many respects, the scarcity is entirely artificial – an NFT attached to a digital artwork does very little to prevent that work from being replicated ad infinitum. Other NFTs do offer some level of genuine exclusivity or functionality for the holder. Coachella, for example, have recently minted 10 NFTs allowing their holders lifetime tickets to the festival.[13] This veers off slightly from how NFTs are generally held out (as a one-of-a-kind investment opportunity), and evidences that NFTs are not necessarily limited to use as a 'status symbol' – they can hold functionality too.

And artists are not only gaining the initial windfall of funds from selling NFTs, but also potentially benefiting repeatedly via re-sale royalties. The smart contracts used to create NFTs often have standardised royalty provisions coded into them, meaning that when an NFT is resold the original creator receives anywhere from 2.5 to 10% of the purchase price. Unlike traditional sales of a famous painting, say, where, except where the *Resale Royalty Right for Visual Artists Act 2009* (Cth) applies, artists seldom directly benefit from rising prices on subsequent sales, NFTs allow them to share in those gains with the associated smart contract doing all the heavy lifting.

Big thinkers are even suggesting that NFTs, smart contracts and the blockchain might just be start of a broader revolution. Where in the mid-to-late '00s the explosion of social media and other interactive websites was lauded as 'Web 2.0', some are suggesting that NFT-style tokens will underpin 'Web3'. Others go further again, seeing the potential for an entirely tokenised economy, where smart contracts trade assets and commodities, and consumers can see the history of goods they purchase via immutable blockchain records.

NFTs are even already being deployed as part of 'metaverses', like Tennis Australia's recent Australian Open metaverse.[14] Here, participants could travel around Melbourne Park as they would if they were at the real event, play online games, watch matches, and purchase various NFTs (such as clothing for their avatars) to enhanced their online experience.

Between artists seeking new avenues for their work, speculators seeing potential investment gains, and technologists envisaging broader applications, there are certainly a lot of people excited about NFTs.

I'm Sold! How Can I Own an NFT?

Notice the use of 'a' rather than 'the' prior to references to 'blockchain'? Unsurprisingly for an internet-based activity, NFTs don't just exist on one blockchain. While Ethereum is generally the most popular blockchain platform for NFTs and smart contracts in general, there are other competing technologies, as well as a myriad of different 'marketplace' websites that simply the process of transacting, with some of the most popular being OpenSea and Nifty Gateway. Buying or selling NFTs will typically require using the cryptocurrency associated with the underlying blockchain.

9 https://www.theverge.com/2021/3/11/22325054/beeple-christies-nft-sale-cost-everydays-69-million.

10 https://www.barrons.com/articles/paks-nft-artwork-the-merge-sells-for-91-8-million-01638918205.

11 https://www.rollingstone.com/pro/news/kings-of-leon-when-you-see-yourself-album-nft-crypto-1135192/.

12 Previously, virtual engagement was limited to social media posting, which can only create revenue for an artist in certain circumstances (i.e through ad sponsorships).

13 https://www.theverge.com/2022/2/1/22912255/coachella-lifetime-passes-nfts.

14 https://forkast.news/australian-open-launches-metaverse-participation/.

Otherwise, anyone (again, in theory) can create an NFT. All that is required are internet access and a digital wallet, used to store cryptocurrencies and NFTs and interact with the blockchain. While at a technical level the NFT minting process involves deploying a smart contract to the blockchain, most of the process can be streamlined via an NFT marketplace.[15]

NFTs can only be owned by one person or entity at a time and are indivisible, meaning that they cannot be divided or replaced. However, NFTs are transferrable. This is how they are sold on, with those sales being how they acquire their value. When an NFT is minted, initial ownership is assigned through the associated smart contract, with provisions generally coded into the smart contract allowing its owner to assign it to a future purchaser.

If you are not minting your own NFTs, but are looking to buy, then the steps for getting your hands on an NFT are usually quite similar to our online shopping analogy. You peruse an NFT marketplace until you find a token of interest, purchase this from its owner using your NFT-compatible cryptocurrencies, and that NFT will then be associated with your digital wallet. If you are more adventurous, you could even transact directly on the blockchain to transfer ownership of an NFT with another willing user, without the use of a marketplace. Either way, once the transaction has been recorded, anyone who looks that NFT up on the blockchain will see your wallet as the owner.

This All Sounds Seemingly Straightforward, Are There any Issues Associated with NFTs?

Being such uncharted territory, a number of legal concerns surround NFTs. Let's take a look at some of the main ones.

Decentralised and Unregulated(ish)

An aspect of NFTs raising hairs is its decentralised nature, the effects of which are twofold.

First, the value of NFTs derive from the perceptions of the buyer (which are invariably influenced by the broader market). While some NFTs may be linked to physical assets with some inherent value, the vast majority are intangible artworks whose value is driven only by their popularity. As such, your entire NFT portfolio is at the mercy of popular culture, making the assets incredibly risky to invest in. One day your NFT could be worth $1 million, the next, $0, without any explanation available as to why.

Second, there is as yet very little Australian legislation that specifically governs NFTs, but they are not immune from more general laws which might apply. For example, Australian contract and consumer frameworks *can* apply to the minting, issuing and sale processes of NFTs if such transactions occur in Australia (i.e. between an Australian seller and buyer). The extent to which these existing frameworks are enlivened depends on the representations made in respect of each specific NFT, and any other rights that might be attached to them through separate legal agreements.

When purchasing NFTs from *outside* of Australia, which is highly possible given the boundless scope of the internet, this 'legal grey area' is amplified. Much like Australia, most other countries are similarly still catching up with the intensified interest in NFTs, meaning that legislation specifically relating to the cryptoassets is largely non-existent. This is similarly true for NFT-related case law, equally in its infancy due to the limited existence of NFTs. While such laws and related disputes will inevitably emerge, the additional challenge of international NFT trade is knowing when and if the laws of different jurisdictions apply.

Even if relevant regulation did exist, it could prove difficult to enforce. By design, dealings with NFTs are self-executing, and the immutability of the blockchain makes them difficult (if not impossible) to roll back. Australia's unfair contract term regime, for example, makes terms in certain standard form contracts unenforceable if found to be unfair by a Court. However, a smart contract will automatically fulfil any such terms without regard for, or recourse to, those laws. This point has been acutely felt by some NFT owners who lose their tokens as a result of fraud, with the rigidity of the blockchain leaving no recourse to traditional legal remedies, and marketplace operators attempting to fill the gap as discussed further below.

Smart Contracts and NFT Marketplaces

The smart contracts used to mint NFTs are typically very mechanical, without legal terms, such as licensing conditions. Where any such licence is required or any other express terms are desired, a separate legal agreement will be necessary. Despite the arrival of smart contracts removing the need for intermediaries, this omission can actually complicate and intensify the risk of NFT trading, especially for those lacking in legal 'know-how'.

This is similarly the case for the trading platforms used to create, sell and purchase NFTs. These marketplaces can differ in relation to their terms of service, meaning that different obligations may apply to you as a user of an NFT platform depending on which site you use. For example, OpenSea seeks a 'world-wide, non-exclusive, sublicensable, royalty-free licence to use, copy, modify and display' any content submitted on its platform, though this licence does not necessarily extend to the NFT holder. However, NBA Top Shot (a curated marketplace solely for NFTs relating to the NBA), provides NFT users with a limited licence for personal or non-commercial use.

Copyright and NFT Ownership

NFTs are frequently being used to provide some sort of exclusive 'ownership' rights over an artistic work. But the laws of most countries around the world already provide a system for owning artistic works – copyright. How do these interact?

Under the Australian *Copyright Act*, an artist (or the artist's employer) automatically receives copyright in their original

15 Noting that not all marketplaces support general public NFT creation. If you were looking to mint NFTs, this would also be the point where the relevant marketplace would provide instructions on how to put whatever asset you had up for sale.

artistic works. That copyright remains with that owner, unless and until assigned in writing (per section 196(3)). The owner of a work has certain exclusive rights in respect of that work, including the right to reproduce it, and the ability to license others to exercise those same rights.

Simply put, the minting of an NFT does not magically change this position.

If a smart contract or a separate legal agreement contains some express element which satisfies the legal requirements for assignment of copyright, then the sale of an NFT could in theory also see copyright transferred. Otherwise, even though they will be indisputably linked to the relevant digital token, NFT owners are generally only purchasing the right to use the original work in a limited way, meaning that in actuality, they cannot download, share, re-create or print copies of the work without the permission of the copyright owner. These acts remain the rights of the copyright owner and her or his licensees. This can be a difficult concept to grasp given the way in which 'ownership' of NFTs is discussed. One recent example saw a group purchase an NFT linked to a book of Dune artwork. Shortly after purchasing this token, the group announced their intention to produce a television programme based on the book linked to their token, only to discover that it did not automatically convey such rights to do so.[16]

Even without grand plans for television programmes or other big projects, many NFT owners have the potential to be unintentionally infringing copyright, for example in cases where they want to share an image of their NFT to their social media page, which would be a reproduction of that artwork. In addition, only the copyright owner would be in a position to legally prevent someone else from reproducing the artwork, limiting the NFT holder's ability to ensure the 'exclusivity' of the NFT.

Some NFT projects have attempted to address these issues with express licensing provisions. The proprietors of the popular 'Bored Ape Yacht Club', for example, have express licensing terms which provide the NFT holder with an '*unlimited, worldwide license to use, copy, and display the purchased Art for the purpose of creating derivative works based upon the Art*'.[17] This licence is not conveyed directly by the NFT, but instead is granted via those separate contractual terms to the relevant NFT holder. Using these permissions, one Bored Ape owner plans on featuring their character in a music project produced by Timbaland.[18]

Unless the creator of an NFT expressly assigns copyright or some form of exclusive licence to the holder, they remain able to deal with the underlying copyright work as they see fit. Perhaps most concerningly, there is no reason why that copyright holder couldn't mint another NFT for the same work, diluting the exclusivity and value of the first.

Controversy has also been quick to arise when users ignore traditional intellectual property rights, and mint NFTs purporting to represent works that they do not own. The ABC has recently reported, for example, on complaints by musicians about an NFT marketplace which had been selling tokens corresponding with songs, allegedly without any permissions from artists or labels.[19]

We have even seen high-profile lawsuits disputing who has the right to mint an NFT based on a particular work. Quentin Tarantino had proposed to mint a collection of NFTs featuring digitised images of his handwritten script for *Pulp Fiction*. The studio behind the film, Miramax, filed a lawsuit alleging that it owned the relevant copyright, and that use of the *Pulp Fiction* branding also constituted trade mark infringement and would be likely to confuse consumers.[20] That lawsuit will likely turn significantly on interpreting the provisions of Tarantino's original contract with Miramax in respect of the film, agreed decades before anything remotely like NFTs would have been contemplated by the parties.

Ultimately, NFTs for digital assets are held out as a way to introduce scarcity for what would otherwise be infinitely replicable items. In that sense, this is not dissimilar to intellectual property rights that exist at law, which give proprietary rights over intangible reproducible works. Some have suggested that NFT-style tokenised ownership schemes could replace traditional systems of intellectual property rights.[21] The owner of a work may be able to effectively grant licences, for example, by issuing cryptographically signed tokens that only permit the user to deal with the work in a particular manner – for example, a film studio issues tokens that effectively amount to a movie rental, allowing the movie to be watched during a particular time period. Those restrictions and licensing conditions would be enforced automatically by the technology, rather than being able to be enforced by Courts as a matter of law. However, any such system would still ultimately seem to need to fall back to traditional legal structures to enforce rights against any misappropriation of works, and would lack much of the nuance of copyright law in dealing with matters like remix and modification, and fair dealings with works.

Moral Rights

Moral rights accompany copyright, similarly arising automatically and vesting in the creator of a work. However, in contrast to copyright, moral rights cannot be transferred, meaning that they remain with the creator of a work. These moral rights impose obligations on anyone dealing with works to properly credit original creators, as well as use the work in a non-derogatory manner or way that puts the reputation of the original creator into disrepute. Accordingly, even if an NFT holder has appropriate copyright permissions to use the referenced work, they will

16 https://www.esquire.com/entertainment/books/a38815538/dune-crypto-nft-sale-mistake-explained/.

17 https://boredapeyachtclub.com/#/terms.

18 https://www.ledgerinsights.com/timbaland-launches-music-label-based-on-bored-ape-nfts/.

19 https://www.abc.net.au/triplej/news/hitpiece-explainer--artists-outraged-at-website-allegedly-selli/13739470.

still need to ensure that they do not subject that work to any treatment contrary to the artist's moral rights.

There is even a possible scenario where the legitimate owner of a copyright work (not being its original artist) mints an NFT of that work, and the artist subsequently alleges that doing so infringed their moral rights by failing to provide credit, or even attempting to claim that the process itself is a derogatory treatment of their work. Such a series of events would certainly pose very new questions for any Court asked to consider it!

Privacy

As previously discussed, blockchain technologies involve shared, decentralised ledgers, effectively leaving a publicly verifiable chain of ownership via an individual or entity's digital wallet URL. Despite being championed as advantageous for its user-accountability, this equally raises concern in terms of privacy. If A knows B's digital wallet address, then A can also observe B's NFT transaction history. Although digital wallets don't have to be created using personal details, 'Know Your Customer' rules in anti-money laundering legislation have started to limit that ability, even absent which your dealings on the blockchain produce a unique pseudonymous digital 'footprint'.

Money Laundering

The traditional art market has long presented opportunities for money laundering. Per an article from the International Monetary Fund's *Finance & Development* magazine:

"Art is a very attractive vehicle to launder money," says Peter D. Hardy... "It can be hidden or smuggled, transactions often are private, and prices can be subjective and manipulated—and extremely high."[22]

While the blockchain drags NFT transactions out into the open, it replaces traditional currencies and banking systems with unregulated pseudonymous cryptocurrencies, and is free of any of the physical constraints which might slow down dealings with tangible assets, leaving great scope for money laundering. And the fact that sales are public introduces new means to artificially pump values by transferring between wallets at inflated prices – when an NFT sells anonymously at some record high price, there is always scope for scepticism as to whether that transaction was actually a true arm's length reflection of value.

Anti-money laundering legislation has already given AUSTRAC some oversight over how fiat currency enters and exits the cryptocurrency ecosystem, but the purely digital transactions in respect of NFTs are hard for authorities to track.

Linking Token to Asset

While the blockchain provides indisputable proof as to who holds a particular token, there can be more ambiguity when translating that token to the underlying asset.

For NFTs which relate to physical assets, there is an inherent difficulty in translating from the digital to physical. There are many proposals for blockchain-based, tokenised systems which track the provenance of physical goods, like farm-to-plate systems for tracking produce. Such a system might be able to indisputably show that meat from a cow on a particular farm has taken a journey via various suppliers, but how do you know that it correlates with the steak on your plate?

For digital assets, these kinds of questions should be able to go away, but current implementations of many NFTs are surprisingly weak in this regard.

Because storing large amounts of data on a blockchain is typically both cost- and computationally-prohibitive, most NFT implementations today do not store the digital asset itself on the chain. Instead, the token on the blockchain will merely record an owner against a URL linking to the relevant asset. An NFT of an artwork, for example, would involve storing a JPG or PNG of that image on a normal webserver, with the NFT effectively containing a hyperlink to the URL of that image. This creates a great degree of uncertainty, especially as time goes on – files on servers could change, a server could malfunction, or the associated domain name could lapse or otherwise change hands, for example. This has recently been seen following the collapse of FTX, with records of NFTs minted on this platform remaining alive on the blockchain, but the linked images at the FTX.us domain name no longer functioning after that domain name was repurposed for bankruptcy proceedings.[23]

As technical readers will already understand, a URL can potentially even return different results for different people. This was recently exploited by Moxie Marlinspike to prove a point about NFTs – he minted an NFT pointing to a URL he controlled, and had that URL return different images depending on who accessed it.[24] This caused the NFT to show one image on the OpenSea marketplace, a different image on the Rariable marketplace, and an image of a poop emoji in any other context (including a purchaser's wallet).

There are already varieties of NFTs which address these issues, such as by adding a 'hash' of the artwork to the NFT as a kind of authenticating fingerprint. However, many of the big money NFTs on the marketplace today could prove far less permanent than their owners might hope.

Gatekeepers

The manner in which the NFT market appears to be converging on a small number of large marketplaces also begins to put those marketplaces into a gatekeeper role, notwithstanding that blockchain systems are lauded as having no central authorities.

Given the ledger's role as a canonical, immutable record of NFT creation and ownership, no party can later amend

20 https://www.theverge.com/2021/11/17/22787216/miramax-pulp-fiction-quentin-tarantino-nft-lawsuit.

21 https://news.verida.io/nfts-are-copyright-for-web3-37d57a54b1f8.

22 https://www.imf.org/Publications/fandd/issues/2019/09/the-art-of-money-laundering-and-washing-illicit-cash-mashberg.

or correct that record. If someone were to mint an NFT of a copyright image they did not own, no amount of legal threats could remove that NFT from the ledger. If a user is hacked or defrauded, and loses their token, no one has authority to reverse that transaction.

This puts marketplaces in awkward situations – they can't sit idly by while knock-off NFTs circulate and fraudsters sell their stolen wares, but they don't have any authority or ability to properly address the situation.

Instead, one of the few mechanisms these marketplaces have available to them is to de-list or block sales of the offending NFTs via their websites. This is usually a relatively poor remedy, as the underlying NFT continues to exist and be able to be traded (just not via that marketplace), and it rarely addresses the underlying issue – the fraudster will still have stolen, and the victim lost, the misappropriated NFT.

To the extent that such a remedy does at least prove effective in blunting further trade in the token, it tends to undermine a core selling conceit of the NFT system as a whole – that the ledger is canonical, immutable and indisputable, and that it is not subject to centralised regulation.

Environmental Concerns

The blockchain technologies used by NFTs typically rely on a concept known as 'proof of work'. In short, the work involved in verifying each block of transactions involves an artificially inflated volume of computer processing power, such that it is impracticable for any bad actor to later attempt to amend the chain given the sheer amount of computing that would be required in order to do so.

All this computing work uses a lot of electricity, which is likely to involve significant carbon emissions.

One of the main blockchain systems used for NFTs is Ethereum, which relied on a proof of work mechanism until September 2022. For an NFT on the Ethereum blockchain, each transaction was estimated in early 2022 to use around 244kWh of power, roughly equivalent to the amount of electricity needed to power the average US household for more than 8 days, and the annual power consumption of the Ethereum network as whole was estimated to be roughly comparable to the power consumption of the Netherlands. Following the adoption of an alternative 'proof of stake' mechanism, the energy efficiency of the Ethereum network has improved dramatically, with the power consumption of a single transaction dropping by multiple orders of magnitude, now estimated at around 0.02kWh.[25]

Some artists are declining to release NFTs on the basis of these environmental concerns, while others are conspicuously avoiding using proof of work systems because of those issues. Doja Cat, for example, is quoted as saying of her NFTs released on a more energy efficient system: 'I don't know that much about NFTs... But what I do know is that they can be bad for the environment and cost a fortune. Mine won't.'[26]

So, What are the Takeaways?

NFTs are certainly causing a splash, providing new revenue streams and opportunities for artists, a promising new asset class for investors, and a whole bunch of interesting concepts which have the potential to upend previous norms of business, the arts and law. As an area where big money and emerging tech collide, interesting legal questions are arising but lawmakers are on the back foot, and anyone engaged in this space needs to keep their wits about them. Remaining vigilant to the nuances of NFT marketplaces, and having good cybersecurity practices, are crucial to avoiding financial misfortune.

NFTs haven't created a new Intellectual Property regime. However, they are intersecting with existing legal frameworks in ever-evolving ways. Although moving your curser straight to the 'I accept' button is often the most tempting and time-saving option in the online sphere, in the case of NFTs, we would suggest pausing to take a closer look.

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23 https://cointelegraph.com/news/nfts-minted-on-ftx-break-highlighting-web2-hosting-flaws.

24 https://moxie.org/2022/01/07/web3-first-impressions.html.

25 https://digiconomist.net/ethereum-energy-consumption.

26 https://www.coindesk.com/business/2021/09/08/doja-cat-releases-nft-collection-with-oneof-marketplace/.

Event Report: "Media Law: Priorities for the New Government"

A lunchtime seminar with The Hon. Michelle Rowland MP - 14 November 2022

Belyndy Rowe

In November the Hon. Michelle Rowland MP presented a lunchtime seminar on *Media Law: Priorities for the New Government.* The event was jointly hosted by CAMLA, the International Institute of Communications, and Gilbert & Tobin.

Minister Rowland commenced by recounting the remarkable revolution of our media and communications sector over the past few decades, where we have seen everything from Project Blue Sky to Twitter's Blue Tick. Minister Rowland's central message was that whatever your political persuasion, when it comes to media reform, Australia can and should do better. Both in levelling the playing field for industry, and in supporting citizen and consumer interests.

In Australia we seem to have a consensus that our laws need to be updated for the digital era. We have identified the issues many times over. Yet, as Minster Rowland commented, our regulatory framework has not been modernised and remains stuck in the analogue era.

Reform objectives

Minster Rowland took the opportunity to outline her reform objectives. These include:

- a level playing field - one in which Australian media outlets can thrive, while maintaining Australia's reputation as a desirable place to invest and grow new businesses;
- all Australians having equitable access to media services and content, regardless of their financial position or their location.
- consistently regulating services that make available content, and to achieve policy objectives such as media that respects community standards, and reflects our cultural identity, with the flexibility to accommodate new and emerging services and technologies; and

Australians having access to a vibrant and diverse range of news media, as well as relevant local media, where no one voice dominates political and social debates.

Reform Roadmap

To achieve these objectives, Minster Rowland set out her Reform Roadmap. The roadmap involves several workstreams set out in immediate, medium-term, and long-term priorities.

Immediate priorities will focus on these three areas.

Prominence

The implementation of a legislative framework to support the prominence of local television services on smart TVs. The government will seek to introduce a legislative prominence framework to ensure local TV services can easily be found on connected TV platforms.

Prominence refers to how easy it is to find particular services within the interface of a smart TV. This reform aims to address the first of media reform objectives - the importance of supporting a level playing field for Australian media businesses.

The Minister has asked a broad range of stakeholders to consider the issues and contribute to the initial design work for the new prominence framework. This includes TV broadcasters, television and set top box manufacturers, operating system providers, streaming services, telecommunications operators, and consumer representative groups.

Consolidation of a prominence proposal will commence late in 2022. Later, the government will also consider prominence issues for radio.

Anti-siphoning scheme and list

The government intends to review the anti-siphoning scheme. The anti-siphoning scheme aims to give free-to-air broadcasters an initial opportunity to buy the television rights to major events included on the anti-siphoning list.

Reform of these laws and regulations is aimed at ensuring all Australian have equitable access to media services and content.

Minister Rowland said events of national importance and cultural significance need to remain free of charge. However, the current scheme is a regulatory mechanism developed 30 years ago, and it is timely to assess whether it remains fit for purpose.

Australian content on streaming services

Australians increasingly consume and stream content. However, unlike free to air commercial broadcasting services, and subscription television, these streaming services have no requirements to invest in or make Australian content available.

This aim addresses the media reform objective to regulate services consistently and accommodate new and emerging services and technologies.

Part of this will be consultation to inform the development of a new, national cultural policy of the Minister for the Arts. The Government will develop a news media assistance program (NEWS MAP) to support the news media sector.

The anticipated timeframe for these priority reforms is 2023.

In the medium-term, Minister Rowland intends to address reform tasks commenced but not yet delivered, including classification, advertising restrictions, consumer safeguards and protections as well as progress on media literacy.

In the longer term, Minister Rowland said work will be undertaken around the future of television, building upon work now underway to obtain the information needed to make choices relating to broadcasting technologies, including spectrum planning and consumer impacts.

Engagement with reforms

Minister Rowland invited stakeholders to share their views with the Minister's office and Department. Industry stakeholders have already been engaging on the issues on which they would like to see progress, and constructive input is appreciated.

CAMLA, the International Institute of Communications, and Gilbert & Tobin extend their sincere thanks to Minister Rowland for sharing her vision and enthusiasm for the ongoing reform and improvement of our sector.

About CAMLA

The Communications and Media Law Association Incorporated (CAMLA) brings together a wide range of people interested in law and policy relating to communications and the media. CAMLA includes lawyers, journalists, broadcasters, members of the telecommunications industry, politicians, publishers, academics and public servants.

Issues of interest to CAMLA members include:

- Defamation
- Contempt
- Broadcasting
- Privacy
- Copyright
- Censorship
- Advertising
- Film Law
- Information Technology
- Telecommunications
- Freedom of Information
- The Internet & Online Services

In order to debate and discuss these issues CAMLA organises a range of seminars featuring speakers prominent in communications and media law policy.

Speakers have included Ministers, Attorneys-General, members and staff of communications regulatory authorities, senior public servants, executives in the communications industry, lawyers specialising in media and communications law, and overseas experts.

CAMLA provides a useful way to establish informal contacts with other people working in the business of communications and media. It is strongly independent, and includes people with diverse political and professional connections. To join CAMLA, or to subscribe to the Communications Law Bulletin, complete the form below and forward it to CAMLA.

Disclaimer

The Communications Law Bulletin is the journal of the Communications and Media Law Association which is an independent organisation which acts as a forum for debate and discussion and welcomes the widest range of views. The views expressed in the Communications Law Bulletin and at CAMLA functions are personal views of the respective authors or speakers. They are not intended to be relied upon as, or to take the place of, legal advice.

For Further Information:

Visit the CAMLA website at: **www.camla.org.au** for information about CAMLA, CAMLA seminars and events, competitions and the Communications Law Bulletin.

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