

AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY

*Professional Development and Networking for the
In-House Legal Community*

CANBERRA

Thursday, 4 March 2021

hwlebsworth.com.au

PROGRAM

TIME	SESSION	PRESENTER
8:30 - 8:55	Registration and refreshments	
8:55 - 9:00	Welcome and opening remarks	Michael Palfrey , Partner
	Session 1	
	Ethics panel discussion	Elizabeth Carroll , President, ACT Law Society
9:00 - 10:00	Join George Marques, Bede Gahan, Vanessa Flowers, and special participant ACT Law Society President Elizabeth Carroll for a discussion on ethical obligations of solicitors on a topical situation. <i>CPD Core Area 1 legal ethics and professional responsibility</i>	George Marques , Partner Bede Gahan , Partner Vanessa Flowers , Special Counsel
	Session 2	
	Administrative law: goodbye 2020, and things to look forward to in 2021	Michael Palfrey , Partner Will Sharpe , Partner
10:00 - 11:00	2020 witnessed several royal commissions, challenges to lockdown laws, and the biggest civil penalty in Australian history. What will the landscape of administrative law look like in 2021? The composition of the High Court is changing and upcoming cases will consider procedural fairness, the requirement to give reasons, and apprehended bias. 2021 is also likely to see the Commonwealth Integrity Commission Bill 2020 presented to Parliament, and a potentially wide-ranging review of the Privacy Act 1988 is underway. Join Partners Michael Palfrey and Will Sharpe as they farewell 2020 and offer some guidance on the year ahead. <i>CPD Core Area 4 substantive law and procedural law</i>	
11:00 - 11:30	Morning tea and networking break	
	Session 3	
	Automated decision-making and administrative law	Sophie Lloyd , Special Counsel Hailey Musgrove , Senior Associate
11:30 - 12:30	In this session we discuss the administrative law issues raised by the increased use of automation and machine learning in government decision-making, drawing from examples in Australia and overseas. We will consider the source of power for computer-assisted processes, different applications of the technology and, most importantly, whether decision-making should be automated and the risks and limitations of doing so. <i>CPD Core Area 4 substantive law and procedural law</i>	
	Session 4	
	Negotiating on behalf of the Commonwealth	Marko Misko , Partner Rachel Bannikoff , Special Counsel
12:30 - 13:30	Marko and Rachel will cover: <ul style="list-style-type: none">• preparing a Contract Negotiation Directive;• how the Public Service Act 1999, the APS Values and Code of Conduct impact your negotiations;• the effect of representations and other statements made in negotiations;• maintaining confidentiality and rights under the contract during negotiations;• impact of the PGPA Act and CPRs (how negotiations support decision-making and the overall value for money objective); and• other general considerations which can drive successful negotiation outcomes (for both contracts and claims). <i>CPD Core Area 3 Professional skills</i>	
13:30 - 14:30	Networking lunch	
	Session 5	
	When contracts go wrong - tips for avoiding and managing contract disputes	Rebecca Jaffe , Partner Toby Mittelman , Partner
14:30 - 15:30	With the benefit of experience from both commercial and disputes lawyers, this session will explore what can be done before approaching the market during the tender process, (including contract negotiations), and during the contract term to minimise the risk of disputes. Despite those efforts, disputes can still arise. The session will also explore strategies to effectively manage and resolve disputes when they arise. <i>CPD Core Area 4 substantive law and procedural law</i>	
	Session 6	
	Vaccination or termination: can an employer require their workers to be vaccinated?	Bede Gahan , Partner
15:30 - 16:30	Bede will discuss whether: <ul style="list-style-type: none">• employers can mandate that employees receive the COVID-19 vaccination;• considerations for mandating or encouraging employees to be vaccinated; and• guidance for dealing with situations when employees refuse to be vaccinated, including disciplinary action, stigma and conscientious objectors. <i>CPD Core Area 2 practice management and business skills OR CPD Core Area 4 substantive law and procedural law</i>	
16:30 - 18:00	Networking drinks	



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WELCOME

Welcome to **HWL Ebsworth's 2021 Australian Government In-House Counsel Day**. We are delighted that you could attend.

Today's program was carefully selected to ensure a broad coverage of legal areas and topics, covering issues that you may face on a day to day basis.

We start the day with **George Marques, Bede Gahan, Vanessa Flowers**, and special participant, ACT Law Society President **Elizabeth Carroll** discussing ethical obligations of solicitors on a topical situation. **Michael Palfrey** and **Will Sharpe** take a look back at the administrative law landscape of 2020, and offer some guidance on the year ahead. **Sophie Lloyd** and **Hailey Musgrove** delve into administrative law issues raised by the increased use of automation and machine learning in government decision making. **Marko Misko** and **Rachel Bannikoff** discuss negotiating for the Commonwealth and considerations which can drive successful negotiation outcomes. After lunch, **Rebecca Jaffe** and **Toby Mittelman** will offer tips on avoiding and managing contract disputes; and we end the day with **Bede Gahan** providing insight into whether employers can require their workers to be vaccinated.

Our speakers are leaders in their respective fields, with our team dedicating their careers to assisting the Australian Government to deliver its policy objectives. Our presentations will provide a high level discussion on each area, however we encourage you to continue the dialogue after the event, with our team available to expand on any topic that is of interest to you.

HWL Ebsworth is immensely proud of our appointment to every Australian Government legal services panel arrangement, including all areas of law and all practice areas of the Whole of Australian Government Legal Services Panel and Legal Support Services Panel, the ACCC/AER Competition and Consumer Law Panel and the ATO Tax Technical Panel. We are grateful for the opportunity our Panel appointments provides us to assist a wide range of Commonwealth Entities, in a wide range of practice areas. We are energised and excited to work with you, and encourage you to view our contact cards located in this booklet.

We hope you enjoy our In-House Counsel Day, and we look forward to working with you in 2021.

Regards

Michael Palfrey and George Marques
Joint Group Leaders, Australian Government Group

ABOUT HWL EBSWORTH

HWL Ebsworth is Australia's only commercial law firm with fully staffed offices located in every State and Territory.

All of our office resources and IT systems utilise a single integrated technology platform, and all firm data is held in Australia on its own infrastructure. This means that we offer a platform to service the Australian Government nationally, providing a consistent level of high quality service imbued with HWL Ebsworth values and expertise, regardless of location.

HWL Ebsworth is the only firm appointed to all Australian Government Legal Services Panel arrangements, as well as many Entity Bundling Arrangements. We have the proven expertise to assist the Australian Government with all of its legal needs.

HWL Ebsworth is the largest legal partnership in Australia. The firm comprises 1,356 staff nationally, including 256 partners, 557 solicitors, 220 graduates and paralegals and 332 support staff. While our approach is for small agile teams, ensuring appropriately leveraged resources to deliver efficiencies and value for money, the size and breadth of HWL Ebsworth allows us to expand our resources rapidly as and when required.

HWL Ebsworth offers highly competitive rates compared with law firms of a similar size. We pride ourselves on delivering the highest quality legal services at a highly competitive rate. We can offer this by focusing internally on careful cost control. We do not spend money on any area that would not benefit the client, and all internal expenditure is limited to only the items that are required for the success of our practices. Our focus and goal as a national firm is to help our Government clients achieve their objectives, in a way that delivers the greatest value for money.

HWL Ebsworth takes pride in developing the next generation of Australian Government lawyers. Our team has deep sector specialisation with most of our lawyers focusing their career on working solely with Commonwealth clients. Many of our team members have experience working in high levels of government departments or as advisers to government. This means that our lawyers are mentored by highly experienced senior team members who have a deep understanding of the environment in which the Commonwealth operates, including their relationship and accountability to Parliament, Ministers, Parliamentary Secretaries and the public.

HWL Ebsworth's team is approachable, friendly, and easy to work with, technically excellent, and we thrive on helping our Australian Government clients achieve their objectives. Our firm values include a focus on relationships, high professional standards, quality, proactivity, courage, honesty, and effectiveness in life, good health and work life balance. We recruit staff who align with our values, which means that we retain staff and have a consistent team offering.

HWL Ebsworth's national capability includes expertise in key practice areas, including:

- Aged Care and Retirement Living;
- Airports;
- Banking and Finance;
- Commercial Contracting;
- Competition and Consumer;
- Construction and Infrastructure
- Corporate Governance;
- Energy and Resources;
- Environment and Planning;
- Equity Capital Markets
- Financial Services Regulatory;
- Foreign Investment;
- Government (Commonwealth, State and Local);
- Information Technology and IP;
- Insolvency and Security Enforcement;
- Insurance;
- Intellectual Property;
- Litigation and Dispute Resolution;
- Media and Telecommunications;
- Mergers and Acquisitions
- Property;
- Retail and Franchising;
- Taxation;
- Transport (including Aviation, Maritime, Rail and Road);
- Wills and Estate Planning; and
- Workplace Relations and Safety.



MEET OUR PRESENTERS



ELIZABETH CARROLL

Chief Legal Counsel IP Australia | President ACT Law Society

As Chief Legal Counsel at IP Australia, Elizabeth enjoys contributing to Australian innovation by providing strategic legal advice to the agency. Over the past twelve years, she has led the legal teams of three Commonwealth agencies including as General Counsel and Executive Director of Legal and Compliance at the Australian Pesticides and Veterinary Medicines Authority, and Principal Lawyer at the Murray-Darling Basin Authority. Prior to moving inhouse, she worked for ten years in private practice.

Elizabeth is President of the ACT Law Society, was first elected to Council in 2017 and was elected Vice President in 2018 and 2019. She received the ACT Law Society's Government Law Award in 2016. In 2020, Elizabeth was named General Counsel of the Year in the Lawyers Weekly Women in Law Awards and Government Lawyer of the Year in the Lawyers Weekly Corporate Counsel Awards.



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Bede is recognised as a leading Canberra-based employment lawyer, with a deep understanding of the human resources function and how people issues become legal issues.

For over a decade, Bede has assisted Commonwealth employers achieve great results in relation to their most complex employment matters. Clients know that Bede will bring to each matter, not only an up-to-date knowledge of the law, but also a unique passion for the way in which his advice can help improve the workplace, help managers demonstrate strong leadership and solve difficult issues with practical solutions.

Bede is recognised as a leading Canberra-based employment lawyer by Doyle's Guide and *Best Lawyers*TM.

MEET OUR PRESENTERS



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Rebecca is a Regulatory and Litigation specialist. She has extensive experience handling large corporate disputes and litigation in state and federal superior courts, regulatory investigations and alternative dispute resolution.

Her clients range from small businesses to large corporations and public or governmental bodies. Rebecca has significant experience acting for Commonwealth Government clients. This experience spans the initial investigation phase and the processing and synthesis of large document set through eDocument platforms, up to and including the conduct of Federal Court Proceedings.

Further as an experienced negotiator, Rebecca regularly represents clients in both pre-litigation and court orders mediations.



GEORGE MARQUES

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George has over 30 years' experience in a broad range of commercial law, including commercial property, procurement and contracting, corporations law and probity and corporate governance. He specialises in advising on complex, sensitive and bespoke transactions for public and private companies, Commonwealth and State governments and not for profits.

George is highly regarded for his ability to provide pragmatic, commercially focused legal advice to senior stakeholders within clients.

George has been named in *Best Lawyers*TM for Commercial Law and Mergers and Acquisitions. Additionally, George has twice been named "Lawyer of the Year" for Canberra Commercial Law by *Best Lawyers*TM. George is Secretary of the ACT Law Society.

MEET OUR PRESENTERS



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Marko is consistently rated one of Australia's pre-eminent government, infrastructure and project lawyers. He has nearly 30 years' experience across the full spectrum of infrastructure sectors including: defence; transport (road, rail, ports, airports); social infrastructure (health, education, justice, sporting stadia, cultural facilities, international foreign aid); energy and natural resources (including wind, solar and tidal); housing; utilities; property development (commercial, retail, industrial); and services outsourcings. This was confirmed by WWL Thought Leaders Global Elite 2019, which rated Marko as one of only two global elite Australian government contract lawyers.

Marko acts for both the public and private sectors, including: government agencies; infrastructure owners; utilities; developers; financiers; project sponsors; contractors and consultants. His practice focuses on a cradle-to-grave approach including strategic project structuring advice, contractual risk allocation, innovative market engagement and procurement, tender evaluation and contract negotiation, collaborative contracting workshops, project management advisory and dispute avoidance techniques.



TOBY MITTELMAN

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Toby has over 15 years' experience working with public sector clients on major procurement, construction and infrastructure projects.

Toby regularly advises Commonwealth Government clients on all stages of procurement processes, including development of procurement strategies and contracting models, interactive tender processes (including market sounding, offer definition and improvement and risk mitigation activities), risk allocation and liability risk assessments, performance management frameworks, intellectual property and probity matters.

Toby is recognised in *Best Lawyers™* for Government and the IFLR 1000 as a Notable Practitioner for Infrastructure Development. He is valued by clients for his pragmatic and commercial approach.

MEET OUR PRESENTERS



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Michael is the Joint Leader of the Australian Government Group and trusted legal adviser to the Commonwealth for 20 years. His broad administrative law experience includes the provision of statutory interpretation and information law advice as well as assistance with legislative development. He also conducts investigations on behalf of the Commonwealth. Michael's administrative law practice involves advising Commonwealth regulators in sectors such as aged care, therapeutic goods, agricultural and veterinary products, motor vehicles and clean energy. This involves advice on the nature and scope of the regulators' powers, assistance with the drafting of decisions and advice and representation in compliance matters. Michael's practice extends to information law which involves regularly conducting Privacy Impact Assessments and advising Commonwealth clients on other privacy concerns and Freedom of Information requests.

Michael also has a strong litigation practice. He is a skilled advocate having represented and appeared for a range of Commonwealth clients over many years in merits and judicial review proceedings, as well as representing the Commonwealth in commercial claims brought against it. His litigation experience includes managing, for many years, a high volume litigation practice for the Department of Home Affairs in AAT, Federal Circuit Court and Federal Court proceedings, as well as representing the Department of Health, for a period of 20 years, in merits and judicial review proceedings involving challenges to aged care decisions. Additionally, Michael represents a range of clients in large scale merits review and judicial review matters, including for the Departments of Defence, Industry, Infrastructure, Health, Environment and Agriculture.



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Will advises on government and regulatory matters, and has a deep understanding of public and administrative law. During his career, Will has worked as an in-house and external legal adviser to government agencies. He is known for delivering clear advice, practical solutions and strong representation.

Will assists government and non-government clients in relation to government decisions, statutory interpretation, legislative development, and information law, as well as representing clients in judicial review litigation in the Federal Circuit Court and Federal Court, and in merits review proceedings in the Administrative Appeals Tribunal. He has acted across a wide range of subject matters areas, including immigration, environment, health, disability, social security, defence, Indigenous affairs, climate change, freedom of information, and privacy.

Will has been named in *Best Lawyers™* for Government Practice.

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Rachel advises on government commercial transactions, specialising in information and communications technology contracts. She has worked at multiple Commonwealth Departments including the Department of Finance and Defence and understands the needs of in-house legal advisers and project teams.

Rachel believes in the importance of legal advice that supports value for money in all government transactions, vibrant and productive working relationships with industry and high standards of probity.

She has advised on a broad range of complex projects and strategic Commonwealth contracting issues including risk allocation, indemnities, insurance, performance based contracting, IP, privacy and regulatory compliance issues.



VANESSA FLOWERS

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Vanessa brings with her over 10 years' experience acting for Australian Government agencies and private clients in relation to probity and procurement matters, litigation, the energy sector, commercial contracting and corporate matters effecting transactional work. Vanessa started her legal career as a Tipstaff to the Honourable Justice Hislop in the Supreme Court of NSW.

Vanessa has been seconded to various Australian Government agencies in their Commercial, Privacy and FOI teams.

MEET OUR PRESENTERS



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Sophie specialises in administrative law, judicial and merits review, commissions of inquiry and statutory interpretation. She regularly acts for government bodies in litigation before various courts and tribunals, including as solicitor advocate, and advises on matters involving complex legislation, highly sensitive material and far-reaching policy implications.

Sophie is admitted to practice in both NSW and England and Wales, having worked in London for a government department and the Public and Regulatory team of a private law firm. In 2014 Sophie was the Associate to Justice Perram of the Federal Court of Australia. She also holds a Master of Laws from the University of Cambridge.



HAILEY MUSGROVE

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Hailey is an administrative lawyer with nearly ten years' experience advising state and federal government agencies. Hailey represents government parties in litigation before the Administrative Appeals Tribunal and the federal courts. Hailey has previously completed secondments to the National Disability Insurance Agency, Canberra, the Department of Agriculture, Canberra, the Department of Home Affairs, Canberra and the Department of Human Services, Sydney.

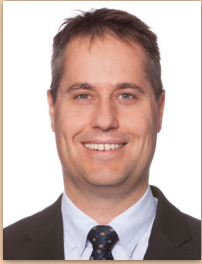
Hailey has experience working as a legal officer in two commissions of inquiry: the Queensland Child Protection Commission of Inquiry, Brisbane and the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. In 2017 Hailey completed a Masters of Laws with a certificate of specialisation in public law at the University of California, Berkeley Law.



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DISCLAIMER

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CANBERRA

Thursday, 4 March 2021

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