

AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY

Thursday 4 March 2021

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

**Administrative law: goodbye 2020, and things to look
forward to in 2021**

Presenters: Michael Palfrey, Partner and Will Sharpe, Partner

Overview

- Significant administrative law cases of 2020
- Other developments in 2020
- The year ahead in 2021
- Other developments on the horizon

Significant administrative law cases of 2020

- Challenges to lockdown laws
 - *Baker v Commissioner of the Australian Border Force* [2020] FCA 836
 - *Palmer v Western Australia* [2021] HCA 5
 - *Gerner v Victoria* [2020] HCA 48

Significant administrative law cases of 2020

- The palace letters were released
 - *Hocking v Director General of the National Archives of Australia* [2020] HCA 1
- The ‘aliens’ power
 - *Love v Commonwealth* [2020] HCA 3
- Validity of search warrants
 - *Smethurst v Commissioner of Police* [2020] HCA 14

Significant administrative law cases last year

- Legal unreasonableness and the assessment of ‘demeanour’
 - *ABT17 v Minister for Immigration and Border Protection* [2020] HCA 34
- The effect of fraud on a decision-maker
 - *Minister for Home Affairs v DUA16* [2020] HCA 46
- Mifeasance in public office – the case of Brett Cattle
 - *Brett Cattle Company Pty Ltd v Minister for Agriculture* [2020] FCA 732

Other developments in 2020

- Royal Commissions and inquiries
 - Royal Commission into National Natural Disaster Arrangements (**Bushfire Royal Commission**)
 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Disability Royal Commission**)
 - Crown Casino
- The biggest civil penalty in Australian history for breaches of anti-money laundering legislation
- Personal lawsuit against a federal judge
 - *Stradford v Stradford* [2019] FamCAFC 25

The year ahead in 2021

- High Court appointments
 - Retirement of Nettle J on 1 Dec 2020
 - Bell J to retire on 7 March 2021
 - Justice Steward appointed from Federal Court in Dec 2020 to replace Nettle J
 - Justice Jacqueline Gleeson will be appointed from the Federal Court in March 2021 to replace Bell J

Significant High Court cases to be determined in 2021

- The 'materiality' test and jurisdictional error
 - *MZAPC v Minister for Immigration and Border Protection*
- Statutory construction – was Ms Moorcroft 'removed' from Australia?
 - *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft*

Other developments on the horizon

- Exposure draft of the 'Federal ICAC' Bill released
 - Law Enforcement division
 - Public Sector division
- Privacy and data in 2021
 - Review into the *Privacy Act 1988* will consider:
 - Scope and application
 - Protection of personal information
 - Direct rights of action
 - Statutory tort
 - Enforcement powers and mechanisms

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