

AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY 2023

Professional Development and Networking for the In-House
Legal Community

**Session 1 - Integrity in the Commonwealth:
The National Anti-Corruption Commission (NACC) – what
you need to know and what you need to do to prepare**

Presented by Kristina Mihalic, Partner

Thursday, 9 March 2023

INTEGRITY IN THE COMMONWEALTH



THE EXISTING GOVERNANCE LANDSCAPE: MULTI-AGENCY INTEGRITY APPROACH

- Australian Commission for Law Enforcement Integrity.
- Australian Federal Police.
- Attorney-General's Department.
- Department of Defence, ASGVA.
- Australian Human Rights Commission.
- Australian National Audit Office.
- Australian Public Service Commission.
- Cth Ombudsman.
- Department of Finance.
- Independent Parliamentary Expense Authority.
- Merit Protection Commissioner.
- Office of the Australian Information Commissioner.
- Cth Director of Public Prosecutions.
- Specialist Governance Bodies and Inspectors-General.

CURRENT STATE AND TERRITORY ANTI-CORRUPTION COMMISSIONS

JURISDICTION	EST.	ANTI-CORRUPTION AGENCY
NSW	1988	Independent Commission Against Corruption
VIC	2012	Independent Broad based Anti-Corruption Commission
QLD	2014	Crime and Corruption Commission
SA	2013	Independent Commission Against Corruption
WA	2004	Corruption and Crime Commission
TAS	2010	Integrity Commission
ACT	2019	Integrity Commission
NT	2018	Office of the Independent Commissioner Against Corruption
		Source: Bills Digest No. 35 2022-23

WHAT IS THE NACC AND WHAT IS ITS PURPOSE?

- Independent agency headed by the National Anti-Corruption Commissioner along with up to three Deputy Commissioners.
- Legislative purpose statement:
 - To facilitate the detection of corrupt conduct;
 - To investigate serious or systemic corruption issues;
 - To refer evidence of criminal conduct for investigation by the AFP of the CDPP; and
 - To undertake education and prevention activities and provide advice on corruption risks and vulnerabilities across Government.

HOW IS THE JURISDICTION OF THE NACC DEFINED, BOTH IN RESPECT OF THE SUBSTANTIVE ISSUES IT IS MANDATED TO PURSUE AND THE INDIVIDUALS IT IS EMPOWERED TO OVERSEE?

‘serious’ or ‘systemic’ ‘corrupt conduct’ by ‘public officials’, including:

- Commonwealth ministers;
- public servants;
- statutory office holders;
- Commonwealth entities and companies;
- parliamentarians and their staff; and
- government contractors.

WHAT IS THE IMPROPRIETY AGAINST WHICH THE NACC IS DIRECTED?

- 'corrupt conduct'- s8.
- 'corruption issue' - s9.
- 'serious'.
- 'systemic'.
- corrupt conduct that predates commencement of the Act.



WHAT POWERS DOES THE NACC HAVE TO ACHIEVE ITS OBJECTIVES?

- Retrospectivity.
- Ability to receive complaints and referrals from any source, including the public.
- Provision for mandatory referrals to the NACC.
- Investigate on own motion.
- Invasive investigation powers.

INVESTIGATIVE AND ANCILLARY POWERS

- Private hearings unless 'exceptional circumstances' exist and in public interest.
- Safeguards and whistleblower protections.
- Publication of reports and findings.
- Powers to refer conduct.

HOW IS THE NACC INTEGRATED WITH THE EXISTING MANDATES, POWERS AND INSTITUTIONAL COUNTERPARTS?

- The ACLEI will transition to become part of the NACC.
- There is potential for the NACC to operate as a clearing house for all Commonwealth corruption complaints.
- Ability for NACC to refer corruption issues to Commonwealth or State agency or investigate a corruption issue jointly.
- Mandatory referrals to NACC by Commonwealth government and intelligence agencies regarding corrupt conduct of their staff.
- Other than mandatory referrals, the NACC Act does not impinge upon the operation of the PGPA Act, PID Act and the Australian Public Service Code of Conduct.

HOW WILL THE INTEGRITY OF THE NACC BE MAINTAINED?

Inspector of
the NACC

Parliamentary
Joint
Committee on
the NACC

Commonwealth
Ombudsman

NACC
Commissioner

Deputy
Commissioner

Deputy
Commissioner

Deputy
Commissioner

HOW TO PREPARE FOR THE NACC

- Risk assessment and review of controls in light of assessment (noting retrospective reach of NACC).
- Raising awareness of NACC.
- Anti-corruption training.
- Review of policies and procedures and development of new policies and procedures to account for NACC processes.
- Review of anti-bribery and corruption contractual clauses.

CONTACT DETAILS



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AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY 2023

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Session 2 - Class Actions: Where to now?

Presented by Craig Powell, Partner and Claire Mallon, Special Counsel

Thursday, 9 March 2023

INTRODUCTION

- Class actions are the 'growth' litigation area for the next decade and beyond.
- The categories of available class actions continues to expand.
- The financial rewards for class members, litigation funders and applicant class action law firms is in a state of flux.

THE PLAN FOR TODAY:

1. Fundamentals of the class action process.
2. The class, the funder and the lawyer.
3. Looking to the future.
4. Questions?

CLASS ACTION PROCEDURE

A key part of the decision-making process of plaintiffs' lawyers in a potential class action is deciding on jurisdiction.



COMMENCING PROCEEDINGS

- In the Supreme Court of Victoria, parties are required to file a group proceeding summary statement and funding information summary statement in addition to the writ to commence proceedings.

Federal Court

- Originating application (Form 19).
- Statement of claim (Form 17).
- Affidavit (Form 59).

Supreme Court of NSW

- Statement of Claim in accordance with usual requirements of Part 6, Division 4 of the *Uniform Civil Procedure Rules 2005* (NSW).

Supreme Court of Victoria

- Writ in accordance with section 33H of the *Supreme Court Act 1986* (Vic).
- Group proceeding summary statement.
- Funding information summary statement.

CASE MANAGEMENT & DISCLOSURE OF COSTS AND LITIGATION FUNDING AGREEMENTS

- In each jurisdiction, the Practice Notes contemplate the occurrence of an **initial case management conference** and **subsequent conferences where necessary**, depending on the complexity of the matter.
- In the **Federal Court** and **Supreme Court of Victoria**, there are separate disclosure obligations on parties in relation to the disclosure regarding costs agreements and litigation funding agreements.
- In the **Supreme Court of NSW**, parties are only required to disclose any agreement by which a litigation funder is to pay or contribute to the costs of the proceedings, any security for costs, or any adverse costs order to the parties.

ADR, OPTING OUT, INITIAL TRIAL AND SETTLEMENT

- Each jurisdiction provides for the referral of the proceeding to mediation at a time that is to be determined by the parties.
- In all jurisdictions, parties are required to prepare opt out notices, which cannot be sent out without the direct order or direction of the Court.
- In the Federal Court and Supreme Court of Victoria, proceedings may be split to first determine common issues together with non-common issues regarding liability. In the Supreme Court of NSW, the Practice Note only provides for the determination of common questions between the parties at the initial trial.
- In the Federal Court and Supreme Court of Victoria, parties are required to obtain settlement approval from the Court. In the Supreme Court of NSW, it is not explicit that the Court is required to give approval to the settlement.

CONFIDENTIALITY, COMPETING PROCEEDINGS, COMMUNICATING WITH CLASS MEMBERS

- In all three jurisdictions there is a general reluctance to make suppression orders due to the primary objective of upholding the principle of open justice.
- Where there are competing, parallel proceedings filed in a State court and a Federal court, the respective State courts and the Federal Court have agreed Protocols for dealing with the competing proceedings. In each case, Class Action Representative Judges are appointed by the Chief Justices of the respective jurisdictions and a joint case management hearing is convened.
- Although the NSW Practice Note does not specifically detail procedures relating to communication between respondent's lawyers and class members, the Practice Notes in the other jurisdictions provide that communication with class members are to be in line with protocols ordered by the Court.

FUNDING AND COSTS



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- The major distinction in funding between the three jurisdictions is section 33ZDA of the *Supreme Court Act 1986 (Vic)* which allows for a group costs order.

PLAINTIFFS' TEAM

- The three categories of persons typically involved in running a class action are:
 1. Lawyers;
 2. Litigation funders; and
 3. Representative applicants.



LAWYERS & CONTINGENCY FEES

- Currently, except for Victoria, lawyers in all other Australian states and territories are prohibited from entering into a contingency fee arrangement.
- Lawyers in all states are still entitled to enter into conditional billing arrangement and sometime permitted an uplift of 25%.



2020 LEGISLATIVE AMENDMENTS IN VICTORIA

- **If satisfied** that it is appropriate or necessary to ensure justice is done in the proceedings, the Court **can make an order that the legal costs** payable to a law practice representing the plaintiff and group members **be calculated as a percentage** of the amount of any award or settlement that may be recovered in the proceedings.
- **Group Costs Orders** have been made ranging **between 27.5%** including GST **and 40%** including GST.
- However, the Victorian regime is **not without significant risk** to law firms. Where group costs orders are made, under the Victorian regime:
 - the law practice representing the plaintiff and group members is liable to pay any costs payable to the defendant in the proceeding; and
 - the law practice representing the plaintiff and group members must give any security for the costs of the defendant in the proceeding that the Court may order the plaintiff to give.

LITIGATION FUNDERS

- **Third party litigation funders** have now been part of our legal landscape since the decision in *Campbells Cash and Carry Pty Ltd v Fostiff Pty Ltd* (2006) 229 CLR 386.
- Typically, a litigation funder **pays the costs of litigation and accepts the risk of paying** the defendant or respondent's costs and in return (if successful) takes a share of the proceeds.
- **Litigation funders take 20 – 40 % as commission** depending on the size of the claim and the stage at which the proceedings are resolved or determined.



RECENT DEVELOPMENTS IN LITIGATION FUNDING

- *LCM Funding Pty Ltd v Stanwell Corporation Limited* [2022] FCAFC 103.
- “The characterisation of litigation funding arrangements as **managed investment schemes** is a case of placing a square peg into a round hole. It can only be done if one adopts an approach to statutory construction which atomises s 9 of the Corporations Act 2001 (Cth) (Act) into component parts, and then individually parses each component literally, while paying insufficient attention to both context and purpose”.
- Corporations Amendment (Litigation Funding) Regulations 2022 (Cth).
- ASIC’s response.

LEGISLATIVE RESPONSE – CORPORATIONS REGULATIONS

- The government passed the *Corporations Amendment (Litigation Funding) Regulations 2022*, which came into effect on 10 December 2022:
 - With express exemptions for litigation funding schemes from the Managed Investment Scheme regime contained in Chapter 5C of the *Corporations Act 2001*.
 - Exempting litigation funding schemes from Australian Financial Services License (**AFSL**) requirements, product disclosure regime and anti-hawking provisions contained within the *Corporations Act 2001*.
 - The regulations recognise litigation fundings industry was never intended to be characterised or dealt with within the MIS and AFSL regimes.

LEGISLATIVE RESPONSE – ASIC

- On 19 December 2022, ASIC announced several amendments to existing legislative instruments that provided relief which was not covered by the *Corporations Amendment (Litigation Funding) Regulations 2022 (Cth)* including:
 - The extension of the *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* to 31 January 2026.
 - The extension of the *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* until 31 January 2026.
- ASIC has also revoked the now redundant relief for registered litigation funding schemes in *ASIC Corporations (Disclosure in Dollars) instrument 2016/767* and *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787*.

REPRESENTATIVE APPLICANTS – CLOSED OR OPEN CLASS

- In Australia, we have an “opt-out” model with the effect that all potential claimants fall within the definition of the class become members notwithstanding that they may be aware of it or not.
- Litigation funders, more often than not, prefer a closed class. Closed classes can also encourage settlements as the defendant or respondents can better assess their risk.
- An issue for third party funders in open class action is that they are required to get a common fund order. A common fund order, if made by the Court, means that all members of an open class to contribute to the funder’s commission out of any settlement or judgment.
- The High Court in *BMW Australia Ltd v Brewster & Anor* determined that the Courts do not have the power to order a common fund order early in the proceedings pursuant to section 37ZF of the *Federal Court of Australia Act 1976 (Cth)*.
- In the Victorian case of *Fox v Westpac Banking Corporation [2021] VSC 573*, Justice Nichols observed that the statutory criterion for the making of a Group Costs Order is whether it is “appropriate or necessary to ensure that justice is done in the proceeding”.

DISCOVERY

- You find yourself with an enormous discovery task with potentially millions of discoverable digital and hard-copy documents and tight Court deadlines.
- What do you do?



THE COURTS EMBRACE THE USE OF TECHNOLOGY

The Federal Court

- Technology and the Court Practice Note.
 - Part 3 - Electronic Discovery.
- Central Practice Note.
 - Part 10 – Discovery.
- Federal Court Rules.
 - Part 20 – Discovery.

The Supreme Court of NSW

- Practice Note SC Gen No. 7 Use of Technology.

The Supreme Court of Victoria

- Practice Note SC Gen No. 5 Technology in Civil Litigation.



eDISCOVERY PLATFORMS – WHAT ARE THEY?

What is an **eDiscovery** platform?

- Cloud-based software which stores massive volumes of electronic data, facilitates the review of documents, uses analytics and artificial intelligence to derive insights about key issues, key timeframes, key players, and enables preparation documents for production.
- Examples of eDiscovery platforms are RelativityOne and NUIXDiscover.



eDISCOVERY PLATFORMS – HOW DO THEY WORK?

- **Digital documents** can be ingested into the platform with all their original metadata intact.
- **Hard-copy documents** are manually coded with date, description, author, recipient etc. and ingested into the platform.
- **Metadata** is data which provides information about other data, ie basic document metadata includes: author, date created, date modified, file size, file type.



BENEFITS OF eDISCOVERY

Metadata

- Chain of evidence issues - last person / organisation to alter document.
- Identifying gaps in evidence.
- Timing and version control of critical documents.

Tools

- Searching across potentially relevant documents.
- Analysis (including diagrammatical representations).
- **Coding** or tagging documents for: relevance, privilege, issue in dispute, reference to pleadings, witness evidence or tagging for cross-examination etc.
- Ability to create tranches of documents for review and coding.
- Visibility over progress of review.



SAFEGUARDING PRIVILEGED INFORMATION

- eDiscovery software facilitates the production of part-privileged documents by efficient redaction functions, either manually or automatically.

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WHAT'S ON THE HORIZON?

Potential for:

- More environmental PFAS class actions claims.
- PFAS personal injury class action claims.
- With climate change, the potential for more bushfire class action claims.
- Biosecurity class action claims.
- “Failure to regulate” class action claims.
- Climate change class action claims.
- Privacy class action claims.



CLIMATE CHANGE

There is a **growing trend** for class actions against governments in relation to climate change:

- ***Urgenda Foundation v. State of the Netherlands*** where a Dutch environmental group, and 900 Dutch citizens sued the Dutch government to require it to do more to stop climate change.
- ***Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560*** – where a representative class of children challenged a ministerial decision to approve an expansion of a coal mine.
- On 22 July 2020, a class action was commenced in the Federal Court by Kathleen O'Donnell, **an investor in Australian treasury bonds**, who alleged that the Commonwealth had failed to disclose information relating to Australia's climate change risks in the disclosure documents that accompany the bonds.



PRIVACY – DATA BREACH CLASS ACTIONS

- The recent Optus data breach left the accounts of as many as 10 million customers exposed.
- The Medibank data breach covered a similar number of current and former customers.
- Plaintiff law firms are already **investigating class actions** in respect of both breaches.
- Overseas, there has been a **steady rise in class action lawsuits for privacy breaches**.
- An £18 billion class action lawsuit was filed in the United Kingdom against easyJet arising out of a data breach in January 2020.
- Class actions have been filed in the UK against Google, Tiktok, Facebook, and the Marriott Hotel, although in late 2021 the Supreme Court found that the UK's privacy legislation required claimants to demonstrate loss or damage.
- **High profile class action settlements in the US** include: Equifax's 2020 settlement over more than USD \$0.5 billion; Home Depot: \$200 million; Capital One: \$190 million; Uber \$148 million; Moran Stanley \$120 million; and Yahoo: \$85 million.

PRIVACY – SPECIFIC CAUSE OF ACTION IN AUSTRALIA

- To date, privacy class actions in Australia have been hamstrung by the lack of a specific privacy tort or cause of action, as exists elsewhere, such as the UK.
- The ACCC has recommended that a specific privacy cause of action be legislated in Australia - as already exists overseas.



QUESTIONS?



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AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY 2023

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Session 3 - Administrative law in 2022 and the year ahead in 2023

Presented by Michael Palfrey, Partner and Will Sharpe, Partner

Thursday, 9 March 2023

INTRODUCTION: A YEAR IN REVIEW

- In the past year, the High Court has continued to develop the jurisprudence on jurisdictional error, particularly focusing on the concept of materiality in Nathanson [2022] HCA 26 and breach of statutory conditions in Stanley [2023] HCA 3.
- We have seen some guidance on apprehended bias in administrative settings in Chen [2022] FCAFC 41, and an ALRC report on judicial bias.
- There were also some important cases on procedural fairness and the disclosure of information, most notably SDCV [2022] HCA 22.
- The Federal government announced that it will abolish the Administrative Appeals Tribunal in 2023, and this could potentially involve wide-ranging changes to the system of merits review.

INTRODUCTION: A YEAR IN REVIEW

- The past 10 years have seen a marked increase in the establishment of Royal Commissions and inquiries as an alternative venue for scrutinising administrative action. 2022 continued and even amplified this trend.
- The next few years may see a reinvigoration of 'integrity agencies' charged with oversight of government institutions, including the National Anti-Corruption Commission to be established from mid-2023.
- Following the Privacy Act Review in February 2023, we may also see an increasing regulatory role for the Information Commissioner.

HIGH COURT AND SUPREME COURT APPOINTMENTS

- On 17 October 2022 Justice Jayne Jagot was sworn in as a Justice of the High Court of Australia replacing the retiring Justice Patrick Keane. Justice Jagot now becomes the fifty-six Justice of the High Court and the seventh woman appointed to the Court.
- In March 2022, Geoffrey Kennett SC was appointed as a Judge of the Supreme Court of the Australian Capital Territory.
- In March 2022, Anna Mitchelmore SC was appointed to the NSW Court of Appeal.
- These latter appointments are part of a significant trend in State and Territory public law, as both of these judges have spent an overwhelming majority of their careers practising federal administrative law.

MATERIALITY IN JURISDICTIONAL ERROR

- The High Court had a further opportunity in mid-2022 to clarify the application of the concept of materiality in *Nathanson v Minister for Home Affairs* [2022] HCA 26.
- Materiality requires an applicant to not only establish a legal error which goes to the jurisdiction of the decision-maker, but also to show that the error deprived them of a successful outcome.
- In *Nathanson*, the High Court held that establishing the materiality of a breach of procedural fairness does not require showing how a further opportunity to be heard would have been used to change the outcome.

MATERIALITY IN JURISDICTIONAL ERROR

- An applicant will bear the onus of demonstrating that a breach of procedural fairness is material, however that onus requires 'almost nothing' (Edelman J) – the fact that Mr Nathanson had been denied an opportunity to put on submissions about a relevant issue was itself enough to suggest the possibility of a different result.
- Although decision-makers should identify the evidence and arguments which are material to their decisions and consider what difference it would make to the decision if a different view of the evidence or arguments was taken, relying on materiality to avoid the consequences of a legal error may be challenging after *Nathanson*.

STATUTORY CONDITIONS / INTERPRETATION

- In *Stanley v Director of Public Prosecutions (NSW)* [2023] HCA 3 the High Court considered jurisdictional error in the context of sentencing powers of an inferior court.
- The Court split 4:3 on whether failing to consider whether an intensive corrections order would better serve the interests of the community in sentencing decisions.
- The majority, Gordon, Edelman, Steward and Gleeson JJ, held that in failing to assess whether an ‘intensive correction order’ or detention was more likely to address the offender's risk of reoffending, misconceived its function and thereby fell into jurisdictional error.

APPREHENDED BIAS I

- On 2 August 2022, the Attorney-General tabled in Parliament the report of the Australian Law Reform Commission on judicial impartiality in federal courts, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (ALRC Report 138).
- The rule against bias applies equally in relation to Tribunal proceedings, the application of the principle must take account of the different decision-making context.
- The recent decision of *Chen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 41 provides an example of a Tribunal member's conduct crossing the line established in *Ebner* (2000) 205 CLR 337.

APPREHENDED BIAS II

- The Full Federal Court found that the Tribunal member:
 - opened the hearing on a 'hostile note' and unfairly accused Mr Chen of 'playing games' by persisting with his request to use an interpreter;
 - persisted in asking irrelevant questions which stemmed from an irrelevant assumption, about the date on which Mr Chen had engaged a migration agent; and
 - displayed little or no interest in the central legal issue in the proceeding, which was Mr Chen's failure to disclose his criminal matter in his previous student visa application.
- The Full Court allowed Mr Chen's appeal and remitted the matter to the Tribunal.

APPREHENDED BIAS III

- The High Court will have an opportunity to consider apprehended bias this year, in *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*.
- The Appellant requested that Bromwich J of the Federal Court recuse himself from the full bench of the Federal Court in the Appellant's visa cancellation proceeding, because Bromwich J was Counsel for the Crown in the Appellant's previous criminal matter.
- The Appellant submits that Bromwich J's previous role as the DPP resulted in apprehended bias, because his Honour's role as an advocate was fundamentally incompatible with his later role of appellate judge in the Appellant's case.

THE HIGH COURT IN 2023: DAVIS

- In *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* the High Court will be asked to consider whether a decision of a Departmental officer not to refer a request for the Minister to exercise a power conferred by s351(1) of the *Migration Act 1958* is amenable to judicial review. A decision not to refer such a request to the Minister for consideration is a non-statutory administrative action.
- Davis will have implications for statutory schemes where departmental officers act in some way as gate-keepers or filters in referring matters to the relevant decision-maker for consideration. But it may more broadly have implications for any judicial review of any exercise of Commonwealth executive or non-statutory power.

SECRECY AND PROCEDURAL FAIRNESS

- *SDCV v Director-General of Security* [2022] HCA 22 held that it was permissible for information to be kept secret from the applicant in an appeal from an AAT decision.
- On appeal to the Federal Court, s46 of the AAT Act allowed security assessment information to be accessed by the court, but also provided that the court had to "do all things necessary to ensure that the [certified] matter is not disclosed to any person other than a member of the court ...".
- In a 4:3 decision, the High Court held that restricting information from the Appellant in this way was not contrary to the requirements of procedural fairness inherent in a Chapter III court.

PRIVACY UPDATE: THE PRIVACY ACT AMENDED

- Following significant data breaches in 2022 relating to Optus and Medibank, the *Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022* was introduced into Parliament.
- On 13 December 2022, the *Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022* commenced.
- The Act increases the civil penalties for serious or repeated interferences with privacy in s13G of the *Privacy Act 1988*.
- The concept of an ‘Australian link’ in s5B of the Privacy Act will be broadened, such that organisation will have an Australian link if it ‘carries on business in Australia’ – removing the requirement that it also collect or hold personal information in Australia.

PRIVACY UPDATE: THE FACEBOOK CASE

- In *Facebook v Information Commissioner*, the High Court will consider whether Facebook carries on business in Australia for the purposes of s5B(3) of the *Privacy Act*. This proceeding concerns the 'This Is Your Digital Life' application which invited users to log in using their Facebook accounts.
- The Full Federal Court concluded that an inference was available that Facebook Inc was carrying on business in Australia, because it installed cookies on users' Australian devices, and it offered a service called 'Graph API' to developers in Australia. The Full Court refused Facebook's application to set aside service upon it.
- In the High Court, Facebook submits that it had no commercial presence in Australia, no contracts with Australian users or other contract counterparties, no premises or property, and earned no revenues from Australia, so it is not 'carrying on business' in Australia.

PRIVACY UPDATE: THE PRIVACY ACT REVIEW

- The Attorney-General's Department published the final report of the Privacy Act Review on 16 February 2023. The report recommended (among other things):
 - a 'fair and reasonable test' – requiring that the collection, use and disclosure of personal information must be fair and reasonable in the circumstances, which would be an objective test;
 - potentially expanding the definition of 'personal information' to include IP addresses and device identifiers, etc;
 - the small business exemption should be removed; and
 - strengthening enforcement of the Act, new civil penalties and new powers for investigations, public inquiries, and determinations.

PRIVACY UPDATE: THE PRIVACY ACT REVIEW

- The Attorney-General's Department is currently seeking feedback to inform the Federal government's response to the Privacy Act Review Report. The deadline for feedback is 31 March 2023.
- We anticipate that there could be further substantial changes to the Privacy Act following this review.

THE AGE OF INQUIRIES

- On 18 August 2022 the Royal Commission into the so-called Robodebt Scheme was established. Ms Catherine Holmes AC SC was appointed Royal Commissioner and is required to produce a final report to the Governor-General by 18 April 2023.
- This Royal Commission raises significant issues for Commonwealth lawyers, including:
 - the use of automated decision-making in social security;
 - the role of draft legal advices, both from in-house government lawyers and also from external providers; and
 - the role of FOI and privacy laws in ensuring transparency of government programs.

THE AGE OF INQUIRIES

- The second significant inquiry in 2022-23 concerns Australian Defence personnel and veterans. The Royal Commission into Defence and Veteran Suicides was established on 8 July 2021 with Nick Kaldas APM, the Hon James Douglas KC, and Dr Peggy Brown AO as Royal Commissioners. The final report is due 17 June 2024.
- The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, initially established on 4 April 2019, has been extended. The final report will now be delivered by September 2023.

ABOLISHING THE ADMINISTRATIVE APPEALS TRIBUNAL

- On 16 December 2022, the Federal government announced its intention to abolish the Administrative Appeals Tribunal and establish a new Federal Administrative Body to review administrative decisions. The changes might be very wide-ranging, but this depends on the final legislation.
- One of the key stated intentions of these measures is to create a 'transparent, merits-based system of appointment'. While the new system of appointments will be fundamental, the changes also seek to increase capacity, provide consistent funding and remuneration, and an updated case management system to improve communication between parties and the Tribunal.

ABOLISHING THE ADMINISTRATIVE APPEALS TRIBUNAL

- However, many of the details and arrangements relating to the new system of review remain to be determined. We think the following issues will be particularly significant for Commonwealth agencies as respondents to review applications:
 - Will the jurisdiction of the new body be substantially the same as that of the Tribunal?
 - Will the new body incorporate a 'two tier' system of review, with a second tier of review being heard by multiple members?
 - Will the new body maintain the current system of alternative dispute resolution whereby registrars convene case conferences prior to a final hearing before a member?
 - Following the move to substantially remote and online appearances during the pandemic, will this remain, or will there be a return to in-person appearances before the new body?

QUESTIONS?

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AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY 2023

Professional Development and Networking for the In-House
Legal Community

Session 4 - What Zoomers want

How to develop, retain and learn from your Generation Z team members

Presented by Sophie Lloyd, Partner, Ali Gorman, Solicitor, Liam Gilligan,
Solicitor and Tez Murrell, Personal Assistant

Thursday, 9 March 2023

THE DIFFERENT GENERATIONS



Gen Z

Born: 1995 - 2015
Age: 8 - 28



Millennial

Born: 1980 - 1994
Age: 29 - 43



Gen X

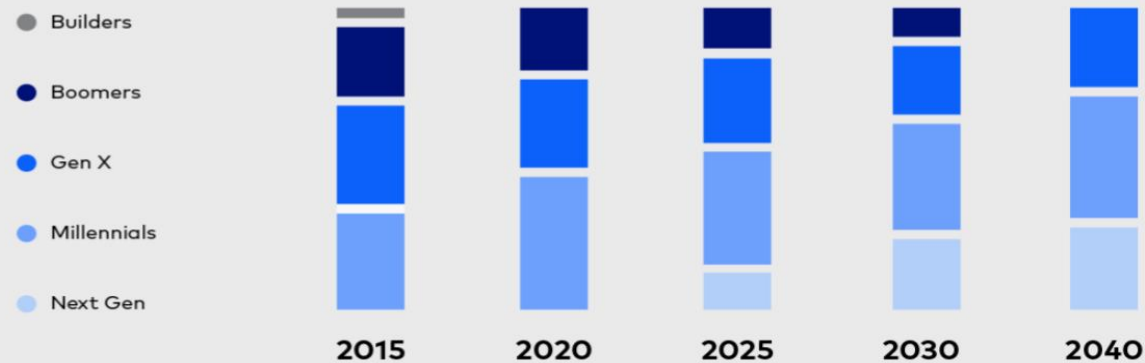
Born: 1965 - 1979
Age: 44 - 58



Baby Boomer

Born: 1944 - 1964
Age: 59 - 79

ABOUT GEN Z



- Gen Z (colloquially referred to as Zoomers) are born between 1995 and 2015.
- Now aged between 8 and 28.
- By 2025 Zoomers are predicted to make up 27% of the workforce.
 - [Gen Z and Gen Alpha Infographic Update - McCrindle](#)

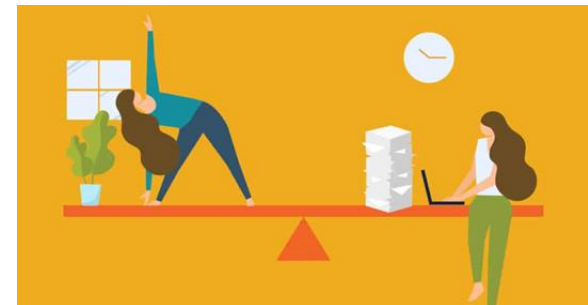
PERCEPTIONS OF ZOOMERS

Negative Stereotypes

- Short attention span.
- Addicted to technology.
- Dislike face-to-face interaction.
- Want to be rewarded quickly.

Positive Stereotypes

- Good at multitasking.
- Well versed in using new tech.
- Values driven.
- Prioritise mental health.



IS IT GEN Z, OR DO OLDER GENERATIONS ALWAYS FEEL THIS WAY?



"Youth were never more sawcie... the ancient are scorned, the honourable are contemned, the magistrate is not dreaded"

Thomas Barnes, the minister of St. Margaret's Church on New Fish Street in London, 1624

[*Protzko, John & Schooler, Jonathan. \(2019\). Kids these days: Why the youth of today seem lacking. Science Advances. 5. eaav5916. 10.1126/sciadv.aav5916.*](#)

THEME: FLEXIBILITY AND WORK/LIFE BALANCE

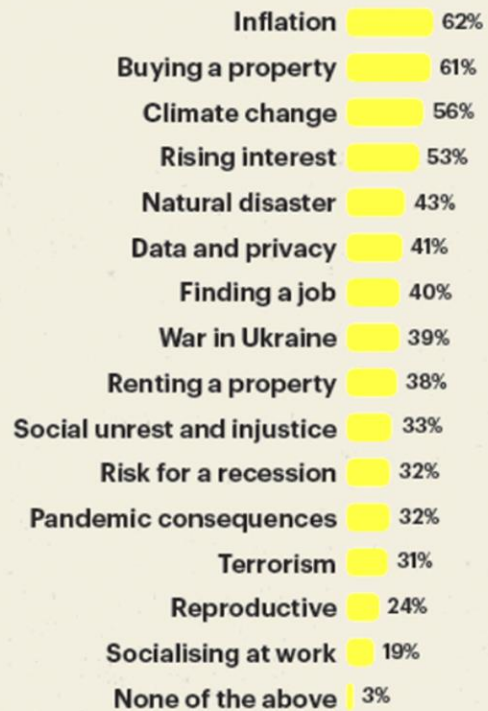


83% of Gen Z “actively look for employment opportunities that offer balance, flexibility and wellbeing”

Snapchat x
CrowdDNA research

THEME: STRESS

WHICH OF THESE CONCERN YOU ABOUT THE FUTURE?



BASE: GEN Z N=1560

... BBC

[Are Gen Z the most stressed generation in the workplace?](#)

Research indicates Gen Z are emerging as the most stressed demographic in the workplace, and struggling mightily to cope.



THEME: THE MULTI-CAREER GENERATION



THEME: COMMUNICATION

3 out of 4 Zoomers prefer face-to-face interactions when receiving manager feedback.

Source: [Generation Z Says They Work the Hardest, But Only When They Want To, Dana Wilkie, Society for Human Resource Management](#)

Gen Z have high expectations of personal communication in a workplace. They want clear expectations, evaluations and communication.

Source: [How Gen-Z is Bringing A Fresh Perspective to The World of Work, Ashley Stahl, Forbes](#)

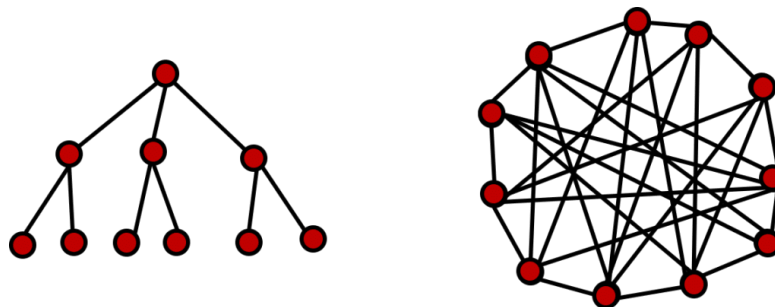


THEME: COLLABORATION OVER HIERARCHY

Gen Z appears to be less interested in traditional hierarchies at work, preferring to work in a collaborative style.

“Boomers will say, ‘we had to earn our stripes, do the mundane or boring jobs before we could work our way up’...It’s an understandable pain point, but we have a society that has shifted significantly over the past few decades, and we have to update our leadership styles.”

[Claire Madden, social-researcher](#)



THEME: DIVERSITY AND INCLUSION



“Diversity, equity and inclusion is not a ‘nice to have’ for this generation; it's an imperative that is core to their personal identities.”

Source: [4 Things Gen Z and Millennials Expect From Their Workplace, Ed O'Boyle, Gallup](#)

THEME: POLITICAL ENGAGEMENT

“Gen-Z’s expectations in the workplace are values-driven and aligned with their personal morals.”

Source: [How Gen-Z is Bringing A Fresh Perspective to The World of Work, Ashley Stahl, Forbes](#)

“You talk to older people and they’re like, ‘Dude we sell tomato sauce, we don’t sell politics,’ ...Then you have younger people being like, ‘These are political tomatoes. This is political tomato sauce.’”

Source: [The 37-Year-Olds Are Afraid of the 23-Year-Olds Who Work for Them, Emma Goldberg, The New York Times](#)



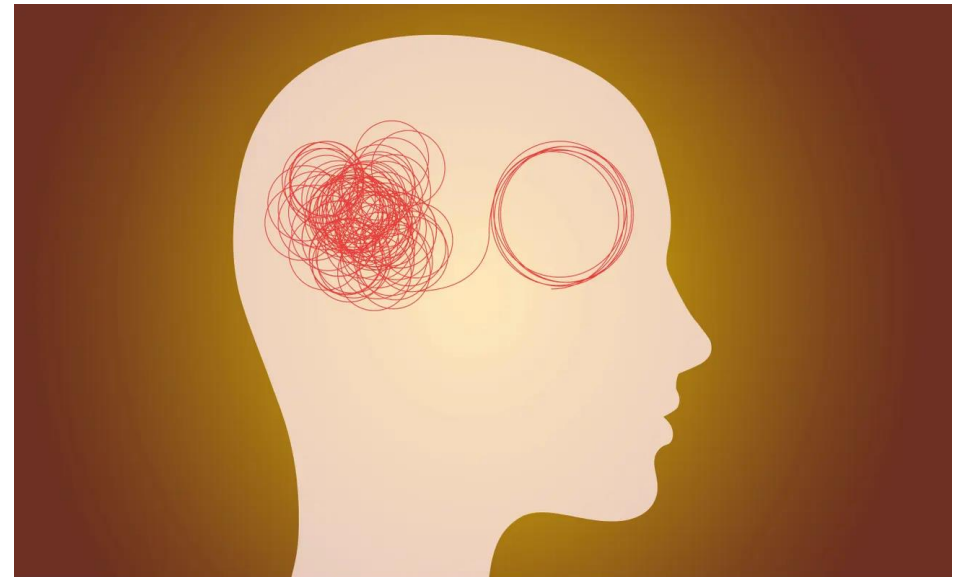
UNCONSCIOUS BIAS

What is it?

- Attitudes and patterns of perceptions that we form outside of our own conscious awareness from our own experiences and social conditioning.
- These biases are often social stereotypes about certain groups of people, whom we attribute specific qualities to unconsciously.

Why should we care about it?

- Because being aware and changing behaviors ensures more safe, respectful and equitable workplaces
 - where people really want to work!



TYPES OF BIAS

Name of Bias	Impact	Ask yourself / others
Value Attribution	Initial evaluation is instinctive and not fact based. This initial assessment has a disproportionate impact on the final outcome.	What's the basis of this view? Where did it come from?
Confirmation Bias	Leads us to seek out evidence that confirms our beliefs, and ignore or dismiss anything that contradicts our view.	What specifically would it take to prove me/you wrong or change my/your mind?
Groupthink Bias	Too quick to reach consensus / poor appraisal of alternatives due to a preference to preserve group harmony or defer to powerful members.	Have we considered alternatives? Have we sought multiple perspectives? Are our assumptions valid?
Availability Bias	Information and examples that we can recall more easily or vividly have more impact on our decisions, regardless of the actual probability of these events.	Do we have actual hard data to support our decision? Have we considered longer term history or information/candidates from distant locations?
Status Quo Bias	We fear loss more than we value gain, even when the odds are good. Make us change and risk averse.	Are we being overly cautious?
Affinity Bias	Leads us to favour people similar to ourselves – we subject them to less scrutiny than those who are different.	Have we subjected this person to the same scrutiny as others? If this person fails, what would the reasons have been?
Attribution Error	We explain the behaviour of others based on our preferences rather than facts. Given the same set of facts, people we favour we will regard as "skilled", whilst people we do not favour are "lucky".	Does the evidence support a fair skill or luck conclusion? Would we reach the same conclusion if it was a different person?
In-Group / Out-Group Bias	Favouring members of our in-group over outsiders, because we inherently view our in-group as 'superior'.	Could we view this difference in a positive light? Would we take the same view of this person if they were in our gender/race group?

DEBIASING TIPS

- **Remind myself that I have unconscious biases.** Doing this will increase your mindfulness and makes you more likely to notice biased or stereotypical thought patterns when they arise.
- **Question my first impressions.** Whilst 'gut instinct' could be telling you something important, it is also how value attribution bias occurs.
- **Ask for feedback, involve others in my decision.** Diversity of thought is the most effective counter to unconscious bias. Someone with varying perspectives will open lines of inquiry that might be totally hidden to you.

GETTING THE BEST OUT OF DIVERSITY

- Be attuned to cultural differences.
- Override your brain's tendency to take shortcuts.
- Communicate in different ways.
- Adapt your management techniques to individual team members.
- Use active listening and summarising to boost understanding.

QUESTIONS?

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AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY 2023

Professional Development and Networking for the In-House
Legal Community

Session 5- Probity in Procurement and Prickly Issues in Procurement

Presented by Brian Ambler, Partner

Thursday, 9 March 2023

OVERVIEW

1. Introduction and scene setting.
2. What is probity.
3. Fundamentals of probity (value for money).
4. Conflict of interest in detail.

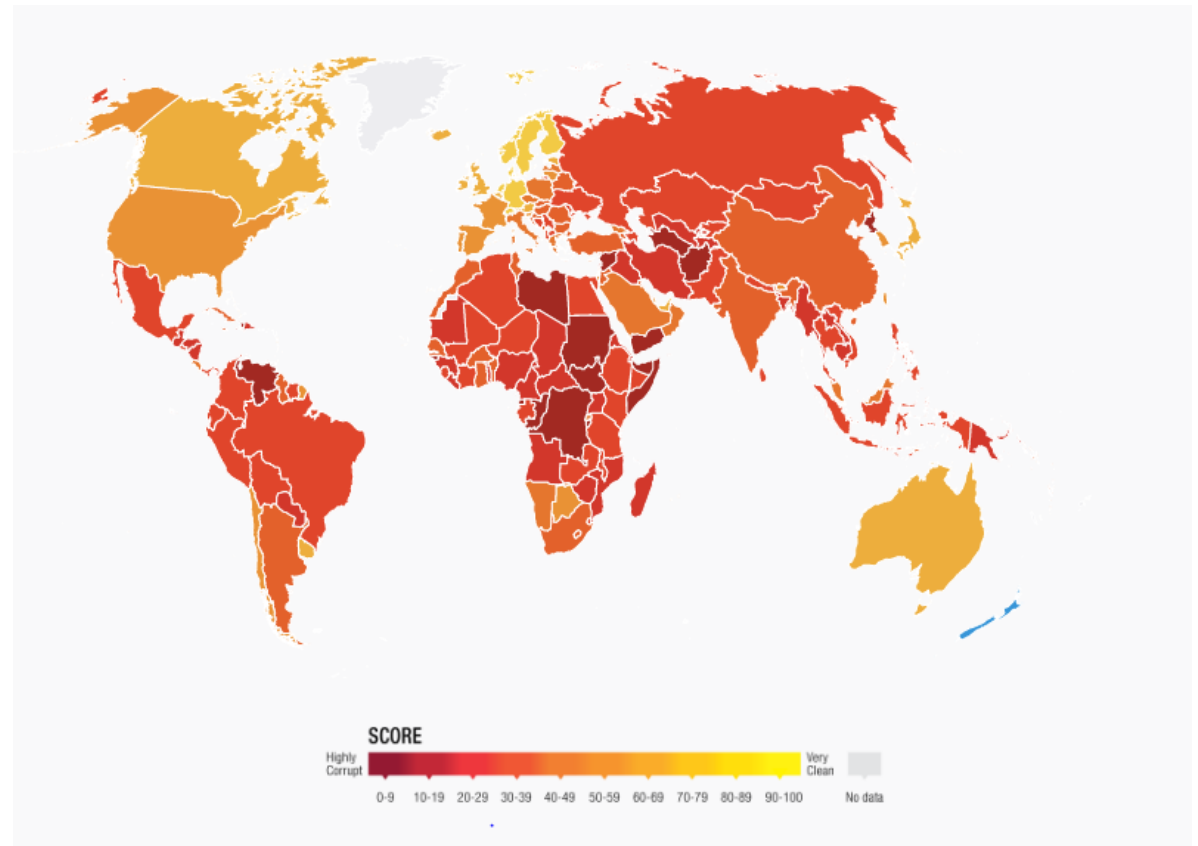
ARE LAWYERS ETHICAL?

- We are part of a 'profession' – and bound by rules.
- Governance Institute of Australia 2021 Ethics Index Survey:
 - Fire Fighters +85.
 - Ambulance Officers +79.
 - Accountants +35.
 - Public Service + 46 (from 56).
 - Government + 5 (from 16).
 - Lawyers +11.
 - Real Estate Agents -2.
 - Politicians (Federal) – 3 (State -2) (Local +6).

TRANSPARENCY INTERNATIONAL

Corruption Perceptions Index 2021:

- Aus – 18/180.
- NZ – 1.
- Sing – 4.
- UK – 11.



WHAT IS PROBITY?

“**Probity**” means:

- The evidence of ethical behavior, and can be defined as complete and confirmed Integrity, uprightness and honesty in a particular process.

[Macquarie Dictionary and Probity and probity advising (Guidelines for managing public sector projects) ICAC November 2005 and Commonwealth Department of Finance of Finance ‘Ethics and Probity in Procurement’]

WHAT IS PROBITY?

“**Probity**” involves:

- More than the avoidance of corrupt or dishonest conduct.
- Ensuring processes are conducted in manner that is fair, impartial, accountable and always in the public interest.
- Adherence to public sector duties such as impartiality, accountability and transparency.

WHO IS ACCOUNTABLE FOR PROBITY?

Everyone involved in the project is accountable for probity



PROBITY FUNDAMENTALS

Principles of ethics and probity in procurement

Best Value for Money

Managing/Dealing*
with Conflicts of
Interest

Impartiality

Accountability
and
Transparency

Confidentiality

PROBITY FUNDAMENTALS: PRINCIPLES OF PROBITY

Officials must:

- Act ethically.
- Not make improper use of their position.
- Avoid placing themselves in a position where there is the potential for claims of bias.
- Not accept hospitality, gifts or benefits from any potential suppliers.

Further principles:

- Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.
- All tenderers must be treated equitably.
- Conflicts of interest must be managed appropriately.

PROBITY FUNDAMENTALS: PRINCIPLES OF PROBITY

- Probity and conflict of interest requirements should be applied with appropriate and proportionate measures informed by sound risk management principles.
- Value for money outcomes are best served by effective probity measures that do not exclude suppliers from consideration for inconsequential reasons.
- Confidential information must be treated appropriately during and after a procurement process.
- External probity specialists should only be appointed where justified by the nature of the procurement.

PROBITY FUNDAMENTALS: BEST VALUE FOR MONEY (CPR4 / 4.5)

VFM

- Price is NOT the sole factor – MUST consider the relevant financial and non-financial costs and benefits including:
 - Quality;
 - Fitness for purpose;
 - Experience and performance history;
 - Flexibility;
 - Environmental sustainability (Australian Government's Sustainable Procurement Guide);
 - Whole of life costs; and
 - [Broader Benefits to Australian Economy >\$4 million].

PROBITY FUNDAMENTALS: WHAT ARE WHOLE OF LIFE COSTS

- Upfront price.
- Maintenance and Operating Costs.
- Transition Out Costs.
- Licensing Costs.
- Cost of Additional Features Procured After Initial Procurement.
- Consumable Costs.
- Decommissioning, Remediation and Disposal Costs.

PROBITY FUNDAMENTALS: CONFIDENTIALITY

- Pre-requisite – sign Code of Conduct.
- Conversations – in private, avoid public transport mobile phone calls, water cooler conversations, your own ‘code’ etc.
- Papers – confidential – be careful where you print, where you read, where you leave them, how you dispose.
- IT – who has access to your inbox.
- Social media – don’t.
- No publication of anything, including even fact of involvement.

CONFLICTS OF INTEREST - DETAILED

What is a Conflict of Interest (Col)?

- Conflict of interest test:
 - Does the official have a personal interest / affiliation?
 - Does the official have a public duty?
 - Is there a connection between the personal interest and the public duty?
 - Could a reasonable person perceive that the personal interest might be favored and affect impartiality?
- It is not wrong to have a Col – it is only wrong and damaging to not disclose a Col.
- Ongoing consideration and disclosure.
- In some cases, it is obvious, in others, a personal feeling and subjective test – always consult (with the Probity Advisor if you have one).

CONFLICTS OF INTEREST - DETAILED

Factors that put you at risk

- Financial and economic interests (debts / assets).
- A family or private business.
- A secondary employment commitment.
- Affiliations with for profit / not for profit bodies, interest groups, clubs and associations.
- Affiliations with political, trade union or professional organisations, and other personal interests.
- Obligations to professional, community, ethnic, family or religious groups in a personal or professional capacity.
- Obligations because of relationships to people living in the same household.
- Feelings towards others (positive / negative / personal).
- Enmity towards, or competition with, another individual or group.
- Significant family or other relationships with clients, contractors or other staff working in the same (or a related) organization.
- Highly specialised skill(s) in an area where demand for the skill(s) frequently exceeds supply.
- Future employment prospects or plans (that is, 'post separation').

CONFLICTS OF INTEREST - DETAILED

What to do if a Col is identified?

- Disclose.
- Formally register.
- Confidential disclosures.

No reason recusal

Always better to disclose than conceal

If in doubt... Disclose

CONFLICTS OF INTEREST - DETAILED

Strategies to manage a Col

Register*

Restrict

Recruit

Remove

Relinquish

Resign

OVERVIEW

1. Case Studies: Real Life Procurement Issues
 - a) How did these issues arise?
 - b) How were these issues mitigated and resolved?

CASE STUDIES

- The director of both – conflict of interest.
- The involved consultant – bias, level playing field.
- The wrong email addressee – care on communications.
- The unwanted gift – perceptions and formal process.

CASE STUDIES

- The big day out – perceived conflict of interest.
- The wrong criteria – pressure on evaluation team.
- We didn't really mean mandatory – following RFT statements.

CASE STUDIES

- I haven't read the tenders... What now?
- This looks too cheap – is it too good to be true?
- The tenderer I wanted was late – what can I do?
- The Contract is about to expire – can I extend?

QUESTIONS?

CONTACT DETAILS



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AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL DAY 2023

Professional Development and Networking for the In-House
Legal Community

Session 6 - What do I do next? Steps for complying with the positive duty to prevent sexual harassment

Presented by Bede Gahan, Partner

Thursday, 9 March 2023

...boys and girls should be equally explore their sexuality...
 ...without fear judgement or shaming...
 ...two-thirds respondents said that girls are judged more harshly for sexual rumours shared about them online than boys...
 FIND OUT MORE

FIND OUT MORE
 @heartsholdvoice
 www.boldvoices.co.uk

Over half of respondents (62%) said that they felt that if someone's nude or nearly nude image is shared online, they are partly to blame.
 Source: Childnet International - Project GENIUS

WHY IS VICTIM BLAMING WRONG?

1. Victim blaming is the attitude that a survivor is partly or wholly to blame for their experience.
2. It makes it harder for survivors to speak up and access the help they need.
3. Blaming the survivor moves responsibility and focus away from the perpetrator.

If you've experienced sexual violence or harassment it is never your fault.

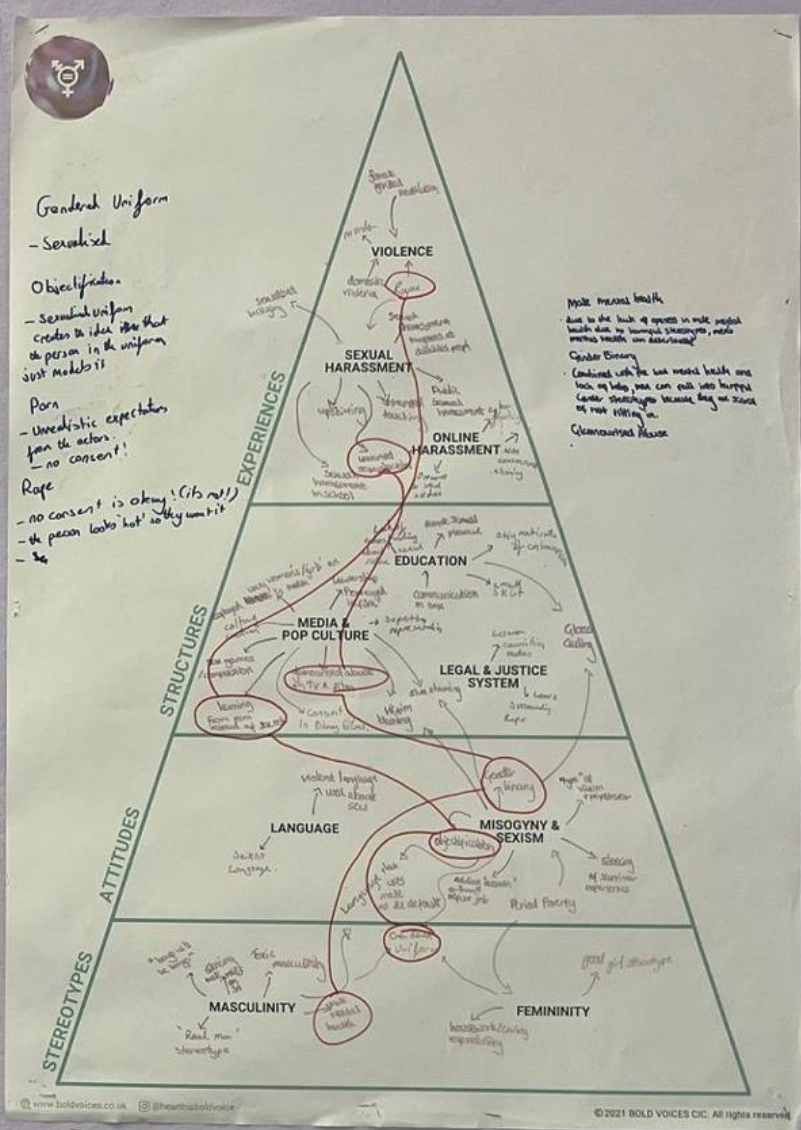
FIND OUT MORE
 @heartsholdvoice
 www.boldvoices.co.uk

Bold Voices
 Did you know the sharing of intimate photos is a criminal offence?

Bold Voices
 Over half of young people aged 13-17 years in the UK (51%) have witnessed people others sharing nude or nearly nude images of someone they know in the last year.

Bold Voices
 As a result of non-consensual sharing, young people often face further harassment and bullying.

Bold Voices
 Change starts with you. Think about your actions and if you see it happening - call it out.



...E...
 ...IG...
 ...?...
 FIND OUT MORE

Choose To Challenge

How do I call something out? Don't overthink it. Here's a few ideas.

- DON'T BE THAT PERSON.
- ARE WE REALLY STILL SAYING THAT?!
- EXPLAIN WHY THAT'S FUNNY
- MATE, THAT'S NOT OK

FIND OUT MORE ABOUT CHALLENGING
 @heartsholdvoice
 www.boldvoices.co.uk

“ SHE WAS ASKING FOR IT ”

WAS SHE ASKING TO BE HARASSED? HUMILIATED? DEGRADED? ASSAULTED? SHAMED? BLAMED? PROBABLY NOT.

FIND OUT MORE ABOUT VICTIM BLAMING
 @heartsholdvoice
 www.boldvoices.co.uk

BEFORE WE GET STARTED

A CULTURE OF GENDER BASED VIOLENCE EXISTS WHEN SEXUAL VIOLENCE IS CONDONED AND NORMALISED THROUGH SOCIETAL ATTITUDES, ACTIONS AND STRUCTURES

STRUCTURES

Anything else to know? **INTERSECTIONALITY**

Intersectionality is a concept that recognizes how different forms of oppression (like race, gender, class, disability, etc.) can overlap and affect someone's experience.

WHAT CAN WE DO?

Understanding and recognizing shared language is a key element of gender based violence in what we do in our lives, and we have to support those who are the most at risk or experience of gender based violence.

WHAT CAN WE DO?

Understanding and recognizing shared language is a key element of gender based violence in what we do in our lives, and we have to support those who are the most at risk or experience of gender based violence.

AGENDA

- Overview of the new laws.
- Obligations regarding legal compliance.
- Assessing legal compliance through legal compliance audits.

POSITIVE DUTY TO PREVENT SEXUAL HARASSMENT

OVERVIEW OF THE NEW LAWS

- The positive duties requires a duty holder to take **reasonable and proportionate measures** to eliminate, **as far as possible**:
 - Unlawful discrimination based on sex, engaged in by:
 - the duty holder; or
 - the duty holder's employees, workers or agents.
 - Sexual harassment / harassment on the ground of sex.
 - Hostile workplace environments.
 - Victimisation that relates to complaints, proceedings, assertions or allegations in relation to the above.

POSITIVE DUTY (CONT)

OVERVIEW OF THE NEW LAWS

- Factors relevant to assessing what are reasonable and proportionate measures include:
 - the size, nature and circumstances of the duty holder's business or undertaking;
 - the duty holder's resources, whether financial or otherwise;
 - the practicability and the cost of measures to eliminate the prohibited conduct; or
 - any other relevant matter.

NEW AHRC ENFORCEMENT POWERS

OVERVIEW OF THE NEW LAWS

- The Australian Human Rights Commission will be able to:
 - Conduct inquiries into a person's compliance with the duty, if it reasonably suspects non-compliance;
 - Provide recommendations to achieve compliance;
 - Issue a compliance notice specifying:
 - action that a person must take; and
 - action that a person must refrain from taking;
 - Apply to the Federal Courts for an order directing compliance with a compliance notice; and
 - Enter enforceable undertakings with duty holders.

ENFORCEMENT POWERS (CONT)

OVERVIEW OF THE NEW LAWS

- The Australian Human Rights Commission will be able to:
 - Inquire, on its own initiative or at the direction of the Minister, into **systemic unlawful discrimination**;
 - Systemic unlawful discrimination is defined as unlawful discrimination that:
 - affects a class or group of persons; or
 - is continuous, repetitive or forms a pattern.
 - Inquiries may be held into:
 - businesses; or
 - industries or sectors.

THE KEY STEPS FOR COMPLIANCE

OBLIGATIONS FOR COMPLIANCE

- Minimum standards in the Victorian guidelines:
 - Standard 1: **Knowledge**

Employers understand their obligations under the Equal Opportunity Act and have up-to-date knowledge about workplace sexual harassment.
 - Standard 2: **Prevention Plan**

Sexual harassment is prevented through the development and implementation of an effective sexual harassment prevention plan.
 - Standard 3: **Organisational Capability**

Leaders drive a culture of respect by building organisational capability.

THE KEY STEPS FOR COMPLIANCE (CONT)

OBLIGATIONS FOR COMPLIANCE

- Minimum standards in the Victorian guidelines:
 - Standard 4: **Risk Management**

Employers have built a culture of safety and address risk regularly.
 - Standard 5: **Reporting and Response**

Sexual harassment is addressed consistently and confidentially to hold harassers to account, and responses put the victim-survivor at the centre.
 - Standard 6: **Monitoring and Evaluation**

Outcomes and strategies are regularly reviewed, evaluated and improved.

ASSESSING LEGAL COMPLIANCE

ENSURING LEGAL COMPLIANCE

- Organisations **must** develop or obtain a suitable legal compliance audit to satisfy itself that it is complying with the new laws.
- Audit should be regularly conducted – say, annually.



ASSESSING LEGAL COMPLIANCE (CONT)

LEGAL COMPLIANCE AUDITS

- A legal compliance audit assesses whether your processes comply with the law:
 - The Sex Discrimination Act;
 - Any relevant regulations;
 - Codes of practice; and
 - Case law.

ASSESSING LEGAL COMPLIANCE (CONT)

LEGAL COMPLIANCE AUDITS

- *Workcover Authority of NSW (Inspector Macready) v Forcon Pty Limited and Forsyth* [2007] NSWIRComm 132:
 - Prosecution regarding a fall from a height where guardrail did not meet the Australian Standard.
 - In relation to working from heights, there was:
 - a regulation in the relevant work health and safety Act; and
 - a relevant Australian Standard.
 - The NSW Industrial Relations Commission considered whether demonstrating compliance with an Australian Standard was necessary to demonstrate compliance with the law.

ASSESSING LEGAL COMPLIANCE (CONT)

LEGAL COMPLIANCE AUDITS

- *Workcover Authority of NSW (Inspector Macready) v Forcon Pty Limited and Forsyth (Cont):*

*While Australian Standards have been accepted by Courts at appellate level as 'the consensus of professional opinion and practical experience as to the sensible safe precautions', it has also been held, correctly in my view, that such Standards are 'not legally binding' and **it is 'for the judge to decide how much weight it deserved in the particular circumstances of the case'**.*

ASSESSING LEGAL COMPLIANCE (CONT)

LEGAL COMPLIANCE AUDITS

- *Your audit tool should identify all those steps that are reasonable and proportionate measures **for your organisation to take** to eliminate, as far as possible:*
 - *Unlawful discrimination based on sex;*
 - *Sexual harassment / harassment on the ground of sex;*
 - *Hostile workplace environments; and*
 - *Victimisation.*
- *Depending on the nature of your workplace, some recommended measures may be more or less important – but, does the law require you to take that step?*

ASSESSING LEGAL COMPLIANCE (CONT)

LEGAL COMPLIANCE AUDITS

- Traditional (essential) elements for your audit:
 - Measures that demonstrate high-level management support.
 - Existence, adequacy and implementation of a sex discrimination and sexual harassment policy.
 - Training and information on sex discrimination and sexual harassment, to all staff and management.
 - Measures to ensure appropriate conduct by managers.
 - Measures to ensure a positive and respectful workplace environment.

ASSESSING LEGAL COMPLIANCE (CONT)

LEGAL COMPLIANCE AUDITS

- You should also consider the following:
 - Organisational culture and leadership.
 - Organisational capability.
 - Gender equity and diversity measures.
 - Training (including bystander interventions).
 - Reporting, investigation and discipline.
 - Outcomes and transparency.
 - Monitoring processes.
 - Supports.
 - Performance measurements.

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