

PUBLIC LAW

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LOOKING FOR CLEAR VISION

Since I last put pen to paper for the winter edition of Public Law, I have been reflecting on how we see those around us.

As a litigator, I pride myself on looking with clear vision at the narratives before me, and testing perceptions. But how much do we really see?

The account given by Malcolm Gladwell in his book *Talking to Strangers* gave me pause. Gladwell recounts some of the many tragic cases in the USA where innocent people are shot because a policeman 'fears' for his life. Gladwell examines the conclusions we jump to when we see strangers, and relays a study about the accuracy of bail decisions. Much to my horror, in that study, a computer that looked at only age and criminal history was more reliable than a judge who looks the accused 'in the eye' and hears their story.

I was reminded of the question of perception again in the profound novel, *Where the Crawdads Sing* by Delia Owens. It is the brave story of a young girl abandoned by her family, who grows up alone in a marsh. Amidst a local town rife with prejudice, the girl finds solace in the wildlife of the marsh and the kindness of a few souls who really see her. But do they see all of her?

The importance of a clear perspective in business is one of the life lessons that the CEO of Disney, Bob Iger, shares in his inspiring and entertaining memoir, *Ride of a Lifetime*. Iger relays a difficult decision he faced as incoming CEO, and cautions against letting ego get in the way of making the best decision for your company. I would add to ego, prejudice, ignorance, bias – the list goes on.

The question lingers with me, how do we practically achieve such clear vision? I don't have the answers, but I do strive to 'clean my lenses', so to speak. To really see those before us. To share, with respect and authenticity, different perceptions. To hear what is said, and what is left unsaid.

What good might we achieve, if each of us strive to live this way, every day?

[Kathryn Howard](#), Partner,
Head of Hall & Wilcox
Public Sector group
and Editor of the
Public Law
newsletter



A CLIENT'S PERSPECTIVE

We work with many fascinating people and organisations within the public sector. This month, we chat with Valentina Misevska, the Acting Chief Executive Officer of the Hunter & Central Coast Development Corporation, the NSW State Government organisation responsible for various important urban renewal projects in the Hunter and Central Coast areas.

My career snapshot

I started as a lawyer in private practice, then went on secondment with one of our major Government clients to manage a large development (repurposing the former BHP Newcastle Steelworks site). The project went longer than expected, and I enjoyed it more than I expected, so I stayed on. After many permutations, that Government client became the Hunter & Central Coast Development Corporation. In the past 10 years, I have held the Development Manager, Senior Development Manager, Director Property Development, Chief Operating Officer and now Acting Chief Executive roles.

My typical day

My day always starts with a walk about the office, touching base with the team. Other than that, no day is typical, but here is a snapshot of today: meeting with our communications team to prepare for a media release for tomorrow, reviewing our operational program for the next three years and engaging with the Minister's office.

What I love most about working in the public sector

It's a privilege to be able to influence positive change, but what I love about HCCDC is that, more importantly, we actually deliver that positive change on the ground.



Valentina Misevska,
Acting Chief
Executive Officer,
Hunter & Central
Coast Development
Corporation

Key priorities for HCCDC

In the Hunter, our hallmark project is revitalising Newcastle to bring people into the city to live, work and enjoy quality public spaces across our waterfront Honeysuckle precinct and repurposing the former heavy rail corridor. We have also just opened an amazing public space on the site of the former Civic Railway station linking the city to the waterfront.

Across 2020, we will roll out a large package of community works such as delivering the first waterfront parcel of 2ha of public space, 150m of new seawall infrastructure, road works and planning for the final stage of development at Honeysuckle. We'll also be landscaping and looking for long-term users of the heritage-listed Newcastle station, completing existing structural works to a waterfront former cargo shed to enable it to be repurposed and seeking proposals for a unique opportunity on the main street of the CBD and across from one of the recently delivered light rail stops.

On the Central Coast, a special project is the Leagues Club Field in the Gosford CBD. We are delivering a \$10 million unique nature-inspired regional play space on the waterfront.

The best advice given to me was given to me by my dad. He said...

'The most important skill is to be able to communicate.' I have reflected on it many times as the key to being able to achieve an outcome or break through a deadlock.

The best part of my role is...

Changing the face of the community that I live in, and that my family and friends live in, and providing new and quality opportunities for them and generations to come.

Outside of work you'll find me...

With my family and friends enjoying Newcastle. I love this region and I'm always looking for different opportunities to explore it. I am also quite crafty and love travel.

SPOTLIGHT ON MENTAL HEALTH

WHY WE ASK RUOK?

With mental health issues increasingly in the spotlight, it is vital that we take the time to look out for each other. R U OK? CEO Katherine Newton shared some thoughts with us.

A decade on from the inaugural R U OK?Day, the conversation movement continues to grow from strength to strength. What started as a national day of action is now a year-round call to action, encouraging workplaces to authentically address the question and build an R U OK? culture.

Fostering peer-to-peer support is becoming an integral part of our workplaces, schools and communities, with organisations increasingly recognising that none of us are immune to the ups and downs life may throw at us.

While there is no panacea to suicide prevention, R U OK? plays a significant role in facilitating early intervention. R U OK? seeks to educate people on when to have a conversation, build confidence to ask the question and importantly, gives clear, practical advice on what to do when someone says, 'No, I'm not OK'.

This year R U OK? called on Australians to 'Trust the Signs, Trust their Gut and ask R U OK?', a theme that helped people overcome uncertainty about when to have an R U OK? conversation.



The campaign responded to research commissioned by R U OK? that found nearly two-thirds of Australians (63%) were not confident they knew the signs that someone might be struggling with life. But encouragingly of those surveyed, almost half (49%) believed they'd be more confident starting a conversation if they knew the signs.

Recent research revealed 69% of Australians had asked someone 'Are you OK?' at least once in the last month, and that people are increasingly willing to reach out and offer support to someone who might be struggling with life.

Eight weeks on from R U OK?Day, we encourage you to check in on those you might have asked. Life's challenges are not resolved overnight. Let's all be the colleague, the mate, the family member who is there for the long-haul, standing shoulder to shoulder together.

R U OK? also reminds us that help is available for the care giver as well as the care seeker. Take a look at [professional support services](#) if you would like to learn more.



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OF AUSTRALIANS
HAD ASKED SOMEONE
'ARE YOU OK?'
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EFFECTING CHANGE IN YOUR WORKPLACE – A CASE STUDY IN CONSTRUCTION

Partner and Public Sector industry group leader Kathryn Howard was delighted to interview Matthew Green, the OHS Coordinator at the Level Crossing Removal Project – Southern Program Alliance, and hear about the real change being driven on the ground at his organisation.

Tell us about the Southern Program Alliance

Our alliance (Lendlease, Acciona, MTM and LXRP) has been selected to remove dangerous level crossings along Frankston Rail corridor. I am currently managing OHS for the Carrum work site.

Tell us about your workforce?

We have a predominantly male workforce on site, which empirical studies – and experience – show is traditionally reluctant to confide and has a higher than average risk of suicide.

How have you helped bring awareness to the issue and to the support Southern Program Alliance offers?

We have a Health and Wellbeing Committee comprised of both staff and workforce. The committee is held each month and ideas from all members are brought to the table, with ideas rolled out to the wider team/s throughout the month. We have elected and trained mental health first aid officers, and



Matthew Green,
OHS Coordinator,
Level Crossing
Removal Project

we are constantly delivering Mental Health awareness sessions through our toolbox talks and pre-start meetings.

Tell us about your Mental Health First Aid officers

We identified key leaders with both staff and the workforce early on, and trained them up as mental health first aiders on our sites. This means that colleagues, who everyone knows and trusts, are the first port of call on site to assist. Mental health first aiders have been trained in seeing the signs, listening, encouraging action and checking in.

You are also trialling a new initiative to provide professional support on site. Tell us about that?

We have provided a therapist (through our EAP provider) to attend our site on a monthly basis to undertake face-to-face consultations.

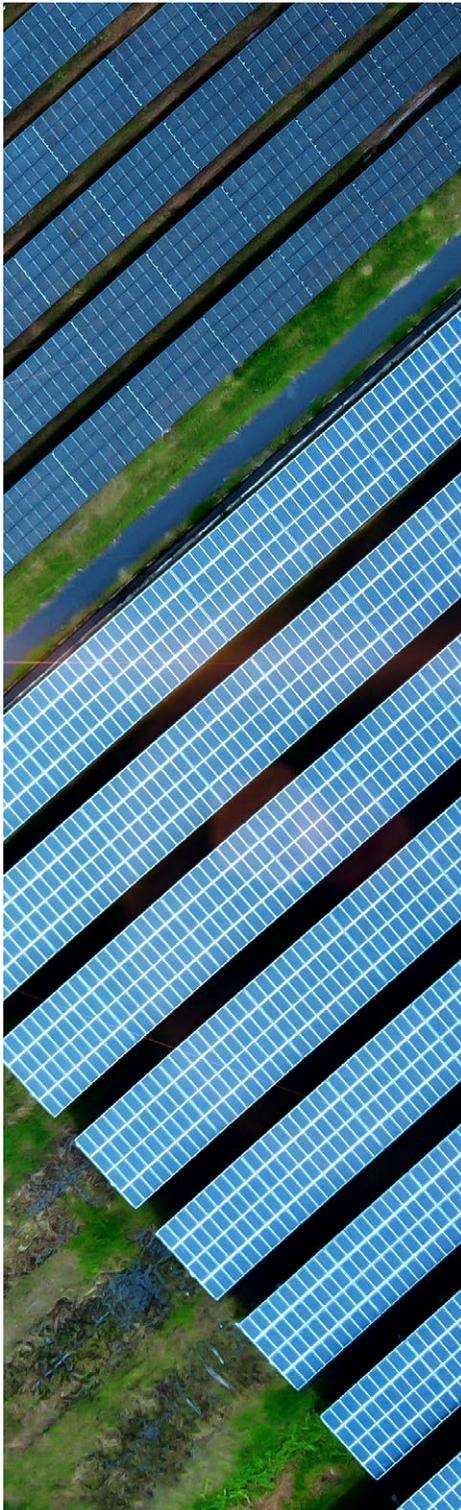
Has that been a success?

As soon as it was announced through our daily toolbox meetings, we had people asking when the counsellor would be coming and making bookings, so we are really delighted with the response.

What do you think is the greatest lesson we can all take away from the initiatives being delivered by the Southern Program Alliance?

My biggest take out from all of this is that no matter who you are or what you do, mental health is so prevalent in today's society. It can affect ANYONE. If you're struggling with life, there is help and support out there. Hopefully by implementing these small initiatives out on site, we will make a difference to those who I consider my mates, family and the loved ones around us.

WHAT'S HAPPENING



SOLAR ENERGY UPDATE

Teams from across the firm have been partnering with clients to help deliver cutting-edge solar energy projects. Property & Projects Partner Paul O'Donnell and Banking & Financial Services Partner Adrian Verdnik provide an update on what's new in this space.

SOLAR POWER PILOT PROGRAM



[Paul O'Donnell](#): We have recently been working with not-for-profit organisation Compass Housing Services (Compass)

on the design and implementation of its Solar Power Pilot Program. This involved the installation of solar and battery facilities and the development of an energy pooling arrangement to provide energy supply on concessional terms to participants in the Program.

Generally, tenants have limited opportunity to access solar power, as there is little incentive for homeowners to install solar systems at rented properties. Compass' Solar Power Pilot Program is significant because it gives Compass tenants the opportunity to realise the benefits of accessing solar power, including access to a renewable energy source and reduced electricity bills.

After the successful pilot, Compass plans to roll this out to its entire housing fleet. It has been a privilege to be involved in the pilot program, and we look forward to continuing to advise on the broader rollout.

FINANCING SOLAR HOMES



[Adrian Verdnik](#): We also recently advised on enhancements to the Victorian Government's 'Solar Homes' program.

The program is a 10-year scheme that is designed to enable the installation of solar panels, solar hot water systems or batteries on 770,000 homes across Victoria, resulting in over one million Victorian homes powered by renewable energy.

We advised the Department of Environment, Land, Water and Planning (DELWP) on the loan agreement and process, including the financial, digital and contractual aspects of loans provided through a purpose-built online program.

It was hugely rewarding to be involved in such an important program by bringing cross-practice expertise to our work with DELWP – a deep understanding of the electricity market and regulations, together with various aspects of financial services and consumer law.



VCP LIST LUNCHEON:

We are continuing our conversation about how best to support and encourage female participation in the Valuation, Compensation and Planning list, with the next luncheon with Her Honour Justice Quigley scheduled for Friday, 6 December. We are delighted that Amanda Ring and Catherine Heggen will share how they charted their paths as experts, their views on why we have not seen more women coming through as experts over the past 25 years and their tips for being seen and heard as an expert.

CONTACT JACOB LEWIS



If you would like to attend any of the events mentioned in this edition, please contact Jacob Lewis, Events Co-ordinator, on 03 9603 3612 or events@hallandwilcox.com.au.



SOCIAL AND AFFORDABLE HOUSING TOWN HALL EVENT

Lack of affordable housing has been recognised as the main source of inequality in Australia. Ideas and potential solutions are proliferating, with greater interest from all levels of government, industry and a broader cross-section of the not-for-profit sector. But without an integrated approach, efficient investment models won't be developed and the potential for superior social outcomes may be lost.

Sydney partner [Nick Slack](#), one of the leaders of our Social and Affordable Housing practice, is bringing together a panel of experts with different

backgrounds, disciplines and ideas to tackle critical questions around social and affordable housing at a town hall event in Sydney on Wednesday, 20 November. The panel consists of NSW Minister for Water, Property and Housing Melinda Pavey, PowerHousing Australia CEO Nicholas Proud, Urbis Regional Director Princess Ventura, National Housing Finance and Investment Corporation (NHFIC) CEO Nathan Dal Bon, and Frasers Property Australia Development Director, Cameron Jackson. Journalist Patricia Karvelas will moderate what we expect to be a lively debate.

TRENDS IN PERSONAL INJURY LITIGATION SEMINAR

In our final seminar in the 2019 Victorian Government seminar series, to be held on Tuesday, 3 December, Partner [Anastasia Coutsouvelis](#) and Special Counsel [Sauming Chan](#) will provide an overview of important trends that have changed the personal injury landscape over the past 12 months. We will focus on costs, damages assessments and claim farming, and discuss how claims management has been influenced by cases determined during the year.

MEET KITTY VO



THIS MONTH, WE INTRODUCE [KITTY VO](#), WHO RECENTLY JOINED US AS A PARTNER IN OUR PROPERTY AND PROJECTS PRACTICE IN SYDNEY.

The best advice you've received?

Focus on the issue – don't be distracted by the noise.

What's your favourite restaurant?

Each restaurant and cuisine is special in its own way. Eleven Madison Park in New York City and Tetsuya's Waku Ghin in Singapore are a few stand-outs overseas. There's a Vietnamese restaurant called Bau Truong at Darling Square which serves authentic 'Pho'. But most importantly, I always try a Maccas' Big Mac when I'm overseas!

What are you reading?

I recently finished *The Secrets She Keeps* by Michael Robotham.

What's your perfect Saturday morning?

A morning walk along Sydney Harbour or a ferry ride to Circular Quay, brunch at the Opera House and then a walk through the Royal Botanical Gardens until I end up at either the NSW Art Gallery or Pitt Street Mall.

What's your sporting team of choice?

Team Australia! Any team wearing green and gold (see my photo above with two budding athletes aiming to make the 2020 Australian Olympic team). But it will have to be Team Federer for tennis.

Holiday of choice: I would lean towards a cultural tour in a great city. But having said that, who doesn't enjoy a lazy island getaway?

DAVID CATANESE'S 'WHEN THE CUPBOARD IS BARE' PASTA

Special Counsel [David Catanese](#) recently joined our Employment team in Melbourne. David freely admits he is no cook. 'But I have a few "the cupboards are bare and we need to feed the troops" dishes up my sleeve. My favourite is anchovy pasta – easy, delicious and thoroughly satisfying.'



INGREDIENTS

Pasta (spaghetti or fettuccini is best), small jar of anchovies (I prefer jar to can), olive oil, garlic, half an onion, butter, sugar, fresh parsley, parmesan.

METHOD

Put the pasta on to boil.

Finely chop the onion and garlic and sauté in olive oil in a large pan. When soft, turn down the heat and add half the jar of anchovies (or the whole jar, like I do), including the oil, a tiny pinch of sugar and a little butter. You can also add some chilli flakes, though my kids don't like it.

Stir the anchovies occasionally and cook until they are soft and break apart; this doesn't take very long.

When the pasta is al dente, strain and tip it into the pan with the sauce. Add a little water to the pan if needed.

Stir the sauce through the pasta and add seasoning to taste.

Before serving, add some fresh chopped parsley.

Heap into bowls, add grated Parmigiano-Reggiano and enjoy!

LOCAL GOVERNMENT BILL INTRODUCED INTO PARLIAMENT

The Victorian Government introduced the Local Government Bill 2019 into Parliament on Thursday, 14 November. The Bill will result in the most profound changes to Victorian local government governance, administration and legislation in more than a decade.

The introduction of the Bill is the culmination of a long process that commenced in 2015. Many of you will recall that a reform Bill was introduced in May 2018, but lapsed when Parliament expired before the November 2018 election.

Post-election, the Government introduced additional areas of reform.¹ These are:

- **Voter franchise:** property owners will be required to register to vote, rather than councils automatically enrolling them from rate records.
- **Electoral structures:** re-introduction of single member wards as a single, mandated electoral structure model for all councils.
- **Training:** candidates for council must undergo training before nominating and, if elected, must undergo induction training within six months.
- **Improved conduct:** introduction of universal, mandatory and enforceable standards of conduct for councillors which cannot be modified.
- **Community accountability:** these are probably the most complex and contentious proposals, and include Commissions of Inquiry and disqualification for serious misconduct by councillors.

As usual, the devil is in the detail. The substance of many of these reforms will be known only once the Bill is passed and regulations are made, following further consultation.

Councils can rest easy that they will have time to methodically implement these changes, as they will be introduced in four stages. This is expected to occur through to late 2021, depending on when the Bill is passed.

We will be here to guide you through these changes. Early in 2020, we will hold a seminar at Hall & Wilcox's Melbourne offices to take you through the new legislation. Our focus will be on offering solutions to the potential challenges faced in implementing the new regime. We also hope to hear from the horse's mouth about the policy behind the changes and the next steps in implementing those changes.

Kathryn Howard and James Lavery will provide a detailed analysis on critical aspects of the reforms, both from a legal, disciplinary and litigation perspective (Kathryn), and from a governance, people, process and organisational structure perspective (James).

Watch this space.

¹ The detail of the proposed reforms (this is only a summary of the main changes) can be found at: <https://www.localgovernment.vic.gov.au/our-programs/local-government-act-review>



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HOW OUR EVERYDAY BEHAVIOURS CREATE A CULTURE OF INTEGRITY



In this article, the IBAC Commissioner, the Honourable Robert Redlich QC, reflects on the issue of human frailty and fallibility and its relationship to corrupt conduct.

The important issue of building trust in public sector organisations, and in the public sector more broadly, is the responsibility of everyone working in the public sector. This is influenced by our everyday behaviours in the workplace.

All public sector employees, from those in entry-level positions to senior executives, are responsible for the integrity of their decisions. Behaviours and cultures that contribute to misconduct and corruption undermine our public sector and decrease public trust and confidence. There is a collective challenge when misconduct occurs, but also when it is then subsequently concealed or obscured.

Integrity is a broad concept that covers all the little interactions in our day-to-day work. Things such as favouritism, misusing information, collusion, deliberate non-compliance with procedures and inaction on such conduct can all constitute breaches of integrity that create poor culture and lead to more serious problems within an organisation. Corruption often starts with failing to adhere to proper processes and a willingness to engage in activities such as poorly managing conflicts of interest.

Disappointingly, often in response to the evidence of corrupt conduct, the fall-back position of some public sector leaders is to focus on the myth of the 'sole bad apple' rather than taking a hard look at addressing the organisational features that enabled the corruption to occur. 'Bad apples' occur when there is a cultural problem within an organisation and a group of people who, through a combination of inaction and error, allow the 'bad apples' to exist and spread their influence.

When people conceal issues rather than talking about and addressing them, dissatisfaction accumulates, causing a loss of morale, which is difficult to remedy. By contrast, in an organisation that has a culture of integrity everyone takes responsibility for their actions and mistakes, and deals with colleagues openly and respectfully rather than with recriminations or by hiding issues.

One of the universal problems identified by research on integrity and corruption is people often end up tolerating breaches of integrity and unethical behaviour – sometimes for long periods of time – because organisational goals are being met. In such cases, it is often only when organisational outcomes are not achieved that the focus can turn to examining the process that was followed. Breaches of integrity or unsatisfactory workplace behaviour cannot be justified or ignored by the fact the job was done and goals were met. Meeting organisational outcomes can never justify misconduct, breaches of integrity, or lack of respect and openness in the workplace.

Most public sector leaders appreciate an organisation with a culture of integrity promotes and rewards ethical behaviour. These organisations make sure people who demonstrate the importance of complying with integrity obligations are recognised. Performance assessments can provide a regular reminder of how the workplace expects people to go about their work – by being respectful, open, sympathetic and behaving with integrity. And when we do all that, we will have workplaces everybody can be proud of and that better meet community needs and expectations.



We were delighted to welcome Katie Miller, one of the Deputy Commissioners of the Independent Broad-based Anti-Corruption Commission (IBAC), at a recent public sector seminar in Melbourne. Katie spoke about the history of anti-corruption bodies in Australia, corruption risks for the public sector, the reasons why corruption occurs and the fallibility of humans that can lead to corrupt conduct. Katie is pictured here with Partner Kathryn Howard and Senior Associate Julian Hammond.

SECURITY OF PAYMENT: MAKING PROGRESS ON PAYMENT CLAIMS



H&W was appointed to the Construction, Infrastructure and Major Projects Panel of the Victorian Government Legal Services Panel as of 1 July 2019.

As many of our readers will know, principals and their project managers under building and construction contracts do not have an easy job.

They know uncertainty breeds risk. And risk, if not properly managed, causes dispute. Ensuring contracts are watertight is a good start to mitigating risk. As the project progresses, claims under security of payment (SOP) legislation must be managed vigilantly. If a principal misses the deadline to respond to a payment claim under the relevant SOP Act, it will become liable to pay the full amount the contractor has claimed. To keep things interesting, these rights and obligations vary across jurisdictions and, in the case of NSW, have changed again from 21 October 2019.

Some changes to bear in mind for contracts entered into after 21 October 2019 are:

- To be valid, a contractor's payment claim under the NSW SOP Act must specify that it is made under that Act.
- Reference dates have been abolished. A contractor may now validly issue a payment claim on the last day of the month in which construction work started and then monthly on the last day of the month.

- A payment claim can now be made after the termination of the contract.
- A contractor in liquidation will no longer be able to make a payment claim, and any adjudication application will be taken to be withdrawn on liquidation.

In Victoria, where reference dates are still part of the SOP regime, a recent case clarifies when time starts running to respond to a payment claim.

In *MKA Bowen v Carelli*, a contractor issued a payment claim four days before the relevant reference date. It sought to rely on a provision in the contract which deemed any premature payment claim to have been made on the relevant reference date.

The court held the payment claim was not valid because a reference date is a necessary precondition to the making of a valid payment claim under the Victorian SOP Act.

As the SOP Act provides that parties cannot contract out of its terms, a deeming provision in a contract does not cure the invalidity. So the take-home point, as one barrister put it, is that when it comes to submitting payment claims, 'there is no cure for premature'!



[Nik Dragojlovic](#), Special Counsel
Property and Projects



Carla Thomas, Practice Support Lawyer

**A fresh perspective
and leading expertise:
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