

PUBLIC LAW

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It has been three months since our last edition of Public Law, which was published just before the coronavirus hit Australian shores. How times have changed.

I have reflected a lot on what to share with you, given the momentous times in which we are living. I confess I have been at a loss. Who am I to reach into your household, with all the challenges it faces, and know what to say? And so I turn to the great messages that are in this edition of Public Law, and see that what has been on my mind has been on others'.

We hear from our client, Suzanne Campbell, about how her company's platform is finding new ways of connecting communities – which has never been so important as it is now. Suzanne shares that the best piece of advice she has received is to 'try new things'. After a decade, I have picked up the drawing pencil again, and started to sketch – this time with my niece by my side. She tells me that I am too slow! And I realise that for me, sketching is meditative and is in fact, the slowest thing I do. I smile.

Speaking of creativity, our colleague Melinda Woledge shares with us an engaging review of Liz Gilbert's book *Big Magic*. Funnily enough, it was Liz Gilbert who prompted me to set up my easel – shown in the picture – in my dining room. Liz posted on Instagram that as no one can come to dinner during the lockdown, set up the dining table as a permanent place of creativity. So I did just that. And when the restrictions lifted and my niece made a surprise visit, we did some drawing together. I smile.

And for inspiration, we have a podcast with Georgina Costello SC, a Victorian barrister who shares what sparks joy in her life. So it turns out it isn't just me who is enjoying hearing the birds louder than the traffic, seeing the reflection of sunlight through the trees rather than fluorescent light on internal walls of office towers and enjoying the quieter pace on weekends. I smile.

Of course, we share with you recent legal developments and how to protect your legal rights and obligations, from empowering flexible work practices, securing your step-in rights and why you might want a lease rather than a licence (yes, they are different!).

Most of all though, let us inspire, encourage and empower each other. As we say at Hall & Wilcox, #bettertogether.



Kathryn Howard
Partner
Head of Hall & Wilcox Public Sector group
and Editor of the Public Law newsletter



A CLIENT'S PERSPECTIVE

As leader of Hall & Wilcox's [Frank](#) initiative, [Jacqui Barrett](#) is lucky to work with some amazing innovators in the public sector. Jacqui caught up with Suzanne Campbell, CEO and Founder of [Vennu](#), an online platform showcasing community spaces for hire.

Tell us about your business.

[Vennu](#) is the first dedicated community spaces marketplace. Our purpose is to build communities, and our goal is to transform the use of community spaces.

Vennu is making community venues accessible for anyone to easily book in real-time. Vennu allows guests to search, review and book community venues on the platform, which allows the venues to monetise underutilised spaces, create new revenue streams and enhance community connection.

How has the business evolved so far?

We are applying lessons from the sharing economy (think Airbnb) to solve the challenges of more complex organisations including government, councils, not-for-profits and others.

Vennu was successfully launched in regional New South Wales in August 2018 with listings from organisations such as Surf Life Saving NSW, Bowls NSW and Scouts NSW. We have custom CGU Public Liability Insurance from Insurance Australia Group to effortlessly address a major impediment to hall hire – the pain of insurance.

We are busy working to understand how best to deliver confidently and safely as COVID restrictions lift. Now, more than ever, is the time to look for ways to help strengthen community, build connections and resilience and to work together on creating more sustainable business models.

How are you finding this new environment?

With the gradual lifting of restrictions on the use of community space and

easing of social distancing, we expect government programs will help to restore demand and accelerate the recovery.

We are excited about providing owners of community spaces with a way to monetise their assets, and are encouraged by their enthusiasm to adopt new business models and more efficient ways of operating.

And customers are shifting their spending to choices which are local, affordable and community-focused.

After decades of increasing atomisation, social distancing has, ironically, drawn us closer than ever before – amazing!

What is the best piece of career advice you have ever received?

Don't be afraid to try new things.

What lesson did it take you the longest to learn?

Ask for help! People are incredibly generous with their time, insights and support.

What are you doing during this time to look after your wellbeing?

I am spending quality time with my husband David and dog Poppy, practising running and learning to meditate – finally.

What are you most looking forward to when things return to normal?

For the next normal – I am keen for us to take forward the many positive things we have discovered about ourselves and others over the last three months. People are good, collaborative, ingenious, smart and deeply caring; science is powerful; leadership imperative; and we can act with purpose and speed.

Let's seize the opportunity and apply these same qualities to finding ways to build a newly prosperous Australia. One that puts the health, economic and social wellbeing of all our people at its centre, honours our history, respects the natural world around us and addresses global warming.

What is your favourite book/movie?

It is always the book I am reading at the time, so right now, at the suggestion of a friend, I am learning about leadership and resilience by reading *Long Walk to Freedom*, *The Autobiography of Nelson Mandela*.

What is one thing you would tell your younger self?

You need not worry about your future.



Suzanne Campbell
CEO and Founder of [Vennu](#)



[Jacqui Barrett](#)
Partner – Corporate and commercial

FLEXIBLE WORK AS THE NEW NORMAL



Fay Calderone
Partner – Employment



While employees are increasingly connected and the four walls of the workplace have been eroding for some time, the COVID-19 lockdown has made flexible and remote working the 'new normal' overnight.

Fay Calderone recently presented to the Local Government Professionals, and provided guidance on how to effectively work from home through the COVID-19 pandemic and beyond. Fay encouraged employers to 'flex for the future' by dispelling fear and myths about employees working from home, embracing trust and emphasising core purpose, focusing employees on achieving objectives and managing performance through creating the right culture.

The benefits of flexible work are well-established: enhanced organisational performance, improved productivity, reduced commute time and greater employee satisfaction and retention.

However, full-time remote working creates nuanced difficulties. Fay discussed the new phenomenon of 'Zoom fatigue', which relates to the taxing effect of virtual interactions on the brain.

There's much employers can do to lead the way in creating flexible work boundaries at the outset: when employees are expected to be online, how teams should communicate and when a separation of home and work is required. Setting expectations for output and deliverables early also helps remote workers stay productive and accountable. And of course, keep a constant eye on mental health support and connection with colleagues at the virtual 'water cooler'.

From a risk perspective, Fay discussed the Local Government (COVID-19) Splinter Award 2020 (NSW). The Award is a temporary measure in response to COVID-19, which provides scope to vary employees' working conditions. For example, employers can now direct employees to perform alternative duties or agree for the employee to take their annual leave at half pay. One hot tip: the Splinter Award dictates that employees working from home are not

entitled to weekend or shift penalties unless they work outside ordinary hours.

Local governments will already be familiar with their obligations under the Local Government (State) Award 2017 (NSW) when considering flexible work requests. Looking beyond the pandemic, employers will now need to carefully consider if they can deny requests on 'reasonable business grounds' if employees have already demonstrated the ability to work effectively at home.

Fay encouraged employers to implement flexible practices for a progressive future. This is an opportunity to move beyond compliance and create healthy, inclusive and agile workplaces. It will be appealing for the next generation as well as remove structural barriers to equitable remuneration and career progression for those who access flexible work.

The take home message: when the working world returns to normal, flexible working should keep moving forward.

You can watch the webinar [here](#).

REGISTER STEP-IN RIGHTS AS A SECURITY INTEREST?



[Mark Inston](#)

Partner – Banking and financial services

The State often enters into tripartite or direct agreements with commercial parties. These agreements give the State the right to step in to a contract if something goes wrong, so as to allow the State to maintain a public service or utility.

Step-in rights are, in most cases, a contract with three parties: the State, the person providing the service and a financier or contractor. A step-in right will allow the State to cure a default, to prevent the termination of the contract and enable it to step-in to the rights of the person providing the service to continue it. Often, the step-in rights will allow the State the right to use equipment and property required to maintain the

service. It is the grant of this right to use that equipment and other property that likely gives rise to a security interest.

This raises the question about whether step-in rights need to be registered on the Personal Property Securities Register (PPSR).

The Court considered exactly this issue in the recent case of *Bluewaters Power 1 Pty Ltd v The Griffin Coal Mining Company Pty Ltd* [2019] WASC 438. Griffin Coal supplied coal to the power stations of Bluewaters Power and a related company under coal supply agreements. This agreement contained a step-in clause, which entitled Bluewaters Power entities to enter on, and take possession of, plant, material, equipment documents and other property, to operate the coal mine if certain defaults occurred (such as Griffin Coal's insolvency).

While the Court did not authoritatively determine that there was a PPSA security interest, it was satisfied that there is a reasonably arguable case that the step-in rights under the coal supply agreements constitute a registrable security interest. It also referred to a New Zealand authority *McCloy v Manukau Institute of Technology* [2013] 3 NZLR 390 where step-in rights can constitute a security interest under the New Zealand personal property securities regime. We consider it is advisable for the reasoning in this case to be followed by the market and step-in rights under tripartite arrangements registered on the PPSR.

The State should therefore consider when entering into any tripartite or direct deed with a commercial party whether its step-in rights give rise to a security interest that must be registered on the PPSR.

CONNECTING YOU: INTERVIEW WITH GEORGINA COSTELLO SC

While we physically distance due to COVID-19, it is more important than ever to remain connected to each other. We are delighted to feature Georgina Costello SC as the first guest in our new 'Connecting You' series.

Georgina recently recorded a lockdown chat, where she spoke about how she was coping, silver linings and opportunities the pandemic has presented (including why it's important to eat the canned food we've all stocked up on!), ideas on how to improve our approach to work post-COVID-19 and what sparks joy in her life.

Please take a break from your desk, play the podcast and be inspired. Listen [here](#).



BRINGING SOME CREATIVE MAGIC INTO YOUR LIFE

COVID-19 lockdown has brought many anxieties – about employment, finances, health, even our society’s future. But with social events wiped from our diaries, it has also given many of us the chance to pause and reflect. Perhaps there’s even been time to pick up a hobby or creative pursuit that’s been pushed aside for many years.

Sadly, many people silence their creativity with fear: that people will laugh, that it’s not possible to make a living out of art, or simply that we’re no good. And that’s where the ideas in *Big Magic: Creative Living Beyond Fear* by Elizabeth Gilbert (best known for her blockbuster memoir *Eat Pray Love*) may help.

Creativity comes in many guises: writing, drawing, singing, dancing, acting, knitting, sculpting, gardening – the list goes on. Gilbert defines a creative life not as one that is necessarily professionally or exclusively devoted to the arts, but as ‘living a life that is driven more strongly by curiosity than fear’.

In six sections – Courage, Enchantment, Permission, Persistence, Trust and Divinity – Gilbert offers practical advice to help overcome the paralysis caused by fear and find joy in creativity. Anecdotes offer real-life examples to inspire. You don’t have to have dedicated yourself to creativity from a young age, as Gilbert did. What’s most important

is that you choose to be creative now and you choose to have fun with it.

The purpose of creativity isn’t to lead to financial success or fame; it doesn’t have to lead anywhere at all. It is the joy found in the act of creating, rather than the outcome. Overcome your self-doubt and avoid perfectionism, Gilbert says. Create because you enjoy it and because it enriches your life.

As lockdown restrictions start to ease, and we consider how to resume daily life, *Big Magic* may inspire you to prioritise expressing creative magic in your life.

DID YOU KNOW?

LEASES VS LICENCES: SAME SAME BUT DIFFERENT?

Not quite! You wouldn’t call a donkey a horse, would you?

Many people mistakenly refer to leases and licences interchangeably. Many matters have ended up in court over this very issue.

One of the key distinctions is the concept of ‘exclusive possession’. When a landlord grants a lease to a tenant (whether it be a commercial, retail or residential lease), the landlord grants the tenant exclusive possession of the property.

This means that during the term of the lease, the tenant has a right to exclusively use the property, to the exclusion of all others. That is, the tenant may exclude any third party, including the landlord (except in certain circumstances and as specified in the lease), from entering the

property. The landlord cannot simply unlock the door and walk into the property unannounced to inspect it.

On the other hand, when a licensor grants a licence to a licensee, the licensor is merely granting the licensee a contractual right to enter and use the licensed area for the purpose specified in the licence. The licensee does not have exclusive possession or any interest in the land – unlike a lease where the tenant has proprietary rights over the property (for the lease term) by virtue of the lease.

A licence would be appropriate where a flexible or temporary arrangement is required (for example a storage, rooftop or car park licence). However, the downside

is that a licence does not provide the licensee with security of tenure and is normally terminable with only a short period of prior notice.

Therefore, before granting or taking a lease or licence over property, a party should clearly identify their needs and determine whether a lease or licence best serves those needs.

- Is it intended to be a short term, flexible arrangement?
- Or do you actually require a lease with a fixed term and greater rights and protections?

Don’t buy a bike if what you need is actually a car!



[Kitty Vo](#)

Partner – Property & Projects

RHETT SLOCOMBE'S CHERMOULA SALMON WITH GARLIC LEMON BUTTER



Rhett Slocombe
Partner and National Insurance
Practice Head

Chermoula is the heart of Moroccan food. It is a North African blend of spices, with a depth of flavour comprising notes of sweet paprika, garlic, cayenne pepper, cumin and coriander.

While we cannot visit Morocco any time soon, let's bring the aromas home. This is an extremely simple dish with an intensity of flavours.

Ingredients

- 460g skin-off salmon fillets
- Olive oil
- 50g butter
- 2 tablespoons Chermoula spice (purchase online or at specialty stores such as Gewürzhaus and Herbie's Spices)
- 4 sprigs coriander, chopped
- 3-4 cloves finely chopped garlic
- 1 lemon, cut into 8 slices
- Coriander for garnishing

Method

Lay salmon fillets on a plate and thoroughly cover all sides with olive oil. Rub each side of the salmon fillet with Chermoula and leave in fridge to marinate for approximately 30 mins.

While the salmon is marinating, chop the garlic, coriander and lemon. Cut the butter into 12 small cubes and refrigerate until ready to cook.



Preheat oven to 180°C.

On a foil-lined baking tray, lay the lemon slices in two rows of four. Lay salmon fillets on the lemon slices then top each fillet with three butter cubes. Sprinkle with a generous amount of chopped garlic. Sprinkle over chopped coriander and cover the salmon fillets with foil.

Bake for 10-15 mins until salmon is cooked to your liking.

Serve on a bed of rice or with roasted vegetables. Spoon the aroma-filled sauce from the baking tray over the salmon fillet and voila!

Serves 2

MEET JOHN GRAY



This month, we introduce [John Gray](#), who recently joined us as a partner in our Sydney office. John specialises in IT, telecommunications, media, intellectual property and outsourcing.

How are you finding this new environment?

I'm loving Hall & Wilcox, which I joined in February. Even in lockdown, there's a very positive energy among the teams. The firm is very supportive and focused on helping its clients, its people and the community to thrive.

What is the most exhilarating career moment you have had?

I have been lucky to work in Australia and Asia. I've lived in Hong Kong, and worked for clients in Hong Kong, Singapore, Malaysia, India and China. The business cultures in those places are diverse and fascinating and the work was always challenging.

What lesson did it take you the longest to learn?

The KISS principle: try to keep it simple in everything you do, especially drafting, negotiating and setting out advice for clients.

What are you doing during this time to look after your wellbeing?

Walking the dog and cooking healthy meals with my wife and three adult children, all of whom are currently living with us. Cooking is a bit of a hobby for me.

What is your favourite book/movie?

My absolute favourite book is Tolstoy's *Anna Karenina*. Because I combined my law degree with Film Studies, my favourite movies are too numerous to list. But here are some that everyone should try to catch: *High Noon*; *Once upon a time in the West*; *The Graduate*; *Julius Caesar* (with Marlon Brando as Mark Antony); *The Third Man*; and anything by Stanley Kubrick (except you can give his last film a miss).

What is one thing you would tell your younger self?

Stop and smell the roses.

CREATING MORE SOCIAL INFRASTRUCTURE IN THE WAKE OF COVID-19



[Katrina Reye](#)

Partner – Property and Projects

Governments across Australia are considering investments in the property industry to accelerate development and boost the economy.

While details are still to be released, this is a welcome development. The COVID-19 pandemic has caused significant economic impacts, including increases in unemployment which could lead to a greater demand for social and affordable housing. Pre-COVID-19, waiting lists for social housing in Australia range from a waiting time of five to 10 years, or longer in some areas.

The substantial pent-up pre-existing demand in social and affordable housing is therefore likely to worsen because of the impacts of the COVID-19 pandemic. In addition, the construction industry is a major employer in Australia, employing more than 1.15 million people nationally. Government investment in infrastructure becomes even more critical, with the expectation of reduced demand for commercial office space, as businesses realise that part of their workforce can work from home, or a softening of demand in residential purchases, as people struggle with unemployment or reduced employment.

Government investment into social and affordable housing developments would have the joint positive impacts of:

- stimulating the construction industry and supporting employment in that important sector; and
- also providing new social and affordable housing stock to address current shortfalls that are only projected to accelerate over time.

Projects in the social housing sector in Australia and New Zealand have shown that government stimulus is necessary to bring additional social housing stock to market.

Some examples are:

- The NSW Social and Affordable Housing Fund used to stimulate the construction of new social housing dwellings by the community housing sector in exchange for a services fee from government over a term of 25 years.
- The Victorian Social Housing Growth Fund, which invested initial capital provided by government with the returns used to fund the service payment stream for the dwellings over a long term concession.

Creation of new social housing stock is heavily dependent on government incentives and government projects to make the projects feasible and sustainable.

- NSW Communities Plus projects, which often involve the contribution of land from government. For example, the Communities Plus build to rent project in Redfern was proposed to involve the construction of 500 build to rent units on government land to be held by the developer for market rent for 40 years until the development reverts back to government.
- Construction of social housing stock by or on behalf of government, which is then leased to community housing providers. Community housing providers then enter

into residential tenancy agreements with social housing tenants. Tenants of community housing providers are then eligible for Commonwealth Rent Assistance (as opposed to tenants of State or Territory housing authorities), which can be used to subsidise rent payable back to government for use of the asset or the fee payable for the tenancy management and maintenance services.

- New Zealand's capacity building model whereby the government pays the social housing provider the Income Related Rent Subsidy (IRRS), which is the gap between the rent recoverable from the social housing tenant and the market rent plus an operating supplement based on approximately 25 to 30% of the market rent. The IRRS subsidises the reduced market rent recoverable from social housing tenants and the operating supplement subsidises the tenancy management services.
- The National Rental Affordability Scheme (NRAS), under which investors received a tax offset for building and renting out properties at rates at least 20% below market value.

Creation of new social housing stock is heavily dependent on government incentives and government projects to make the projects feasible and sustainable.

In the current economic environment, these types of projects are the perfect opportunity for government to stimulate the economy, create employment, support unemployed persons and create more social infrastructure.

WHAT'S ON

RETURNING TO WORK BEYOND COVID-19



Now that government restrictions are easing, some employers and employees will be preparing to return to work. In this webinar, our Q&A panel will discuss the many issues associated with returning to work beyond COVID-19, including:

- WHS, privacy and discrimination considerations;
- flexible work as the new normal;
- ongoing compliance with government restrictions in the workplace; and
- employment law considerations.

When: Thursday, 4 June, 1.30-2.30pm

Panellists: [Alison Baker](#), [Melinda Bell](#) and [David Catanese](#)

Facilitator: Kathryn Howard

Where: Zoom webinar. If you would like to attend, please contact Sarah Porter, National Events Manager, on 02 8267 3815 or events@hallandwilcox.com.au

CONNECTING YOU: NEXT EDITION

Look out for our interview with The Hon. Justice Michelle Quigley – President of the Victorian Civil and Administrative Tribunal (VCAT) in the next edition of Public Law.



RECONCILIATION ACTION PLAN

We are excited to launch our first Reconciliation Action Plan. An integral part of our purpose is to enable our clients, our people and our communities to thrive. Success in fulfilling this purpose includes doing our part to improve equality of opportunity for Aboriginal and Torres Strait Islander Peoples. Our RAP provides us with a plan to fulfil that purpose.

In this video, our Managing Partner Tony Macvean and our RAP Committee Co-Chairs Danielle Davis and Erin Doyle explain why a RAP is so important to them and to our firm.

Watch our RAP video [here](#).

You can read our RAP [here](#).

**A fresh perspective
and leading expertise:
we are your firm.**