

ISSUE 277
SPRING 2026

ethos

JOURNAL

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SIDE HUSTLES & THE LAW

Can lawyers have side hustles?

GIVING CHILDREN A VOICE

The 2026 Blackburn Lecture:

The evolution of the independent children's lawyers

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Litigating the Human Rights Act in the ACT

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- Registering deceased estates
- Liaising with the ATO

Spotlight: Federal Budget Changes for Estate and Succession Planning

The 2026/27 Federal Budget included reforms to CGT and discretionary trusts that are relevant to estate and succession planning. The CGT reforms have been legislated, while the discretionary trust measure remains proposed.

From 1 July 2027, the 50% CGT discount will generally be replaced, for gains accruing from that date, with cost base indexation and a minimum 30% tax rate on real capital gains. For assets held across 1 July 2027, the pre and post 1 July 2027 components of a later gain will need to be identified. Records and, where relevant, valuation evidence will therefore be important for real property, private company shares, trust interests and other assets without a readily ascertainable market value. Treasury has released exposure draft legislation dealing with the calculation of those gains.

From 1 July 2028, the Government also proposes a minimum 30% tax on the taxable income of discretionary trusts. Genuine testamentary trusts and deceased estates are intended to be excluded. August exposure draft legislation also proposes exclusions from the new CGT minimum tax for certain capital gains involving testamentary trusts and deceased estates.

For estate practitioners, these changes are most likely to affect matters involving long-held assets, family trusts, private companies and testamentary trusts. Wills should give legal personal representatives sufficient flexibility to obtain valuations and tax advice, meet tax liabilities, and make informed decisions about the timing of asset sales and distributions. Trust succession arrangements may also need review as the remaining measures are finalised.

In the meantime, the focus should be on identifying affected assets and structures, preserving records needed to support future tax positions, and avoiding unnecessary constraints in drafting.



Anmol Kaurah will be presenting at the Wills and Estates Conference on 13 October, exploring the estate and succession planning implications of the latest Federal Budget changes.

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The day-to-day operations of the Society are overseen by the Chief Executive Officer, supported by a dedicated and diverse team of staff across the following functions:

Engagement

The Engagement Team is responsible for policy and advocacy work for the Society and all member engagement, education, stakeholder engagement and community engagement.

Regulatory Services

The Regulatory Services Team is responsible for all regulatory matters including licensing, complaint enquiries and assessments, investigations, trust account compliance and disciplinary matters.

Finance and Corporate Services

The Finance and Corporate Services Team is responsible for the Society's financial requirements, office IT systems, human resources and compliance.

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The Law Society acknowledges the Ngannawal and Ngambri peoples, who are the traditional custodians of the land on which our building is located.

SOCIETY UPDATE

Leadership report	2
Policy updates	4
Member services: Resources for practitioners	48
Upcoming events	52
Sponsors	53

FEATURES

Can lawyers have side hustles?	6
The law of secondary employment	
The Blackburn Lecture:	10
The evolution and significance of the independent children's lawyer	
Litigating the Human Rights Act:	23
Exploring uncharted territory	
Ogbonna v Link Workforce Pty Ltd (No 2)	31
Litigants in Person Practice Note	
From the courtroom to repair:	34
ACT courts and the restorative justice process	

CONNECTION AND COLLEGIALLY

Early Career Lawyers	38
The contented lawyer:	41
How to survive and thrive as a lawyer	
Law Week 2026	44
Law Week awards	46
Social events	50

JUDGMENTS

High Court Judgments	54
Federal Court Judgments	57
Supreme Court Judgments	61
Family Court Judgments	62

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PRESIDENT, ACT LAW SOCIETY



SIMONE CARTON
CHIEF EXECUTIVE OFFICER, ACT LAW SOCIETY

Leadership report

Supporting members through a changing professional environment

Welcome to the Spring edition of *Ethos*.

The legal profession continues to navigate significant change, from evolving regulatory obligations and increasing practice pressures to the rapid emergence of artificial intelligence and other technological advancements. The Society remains focused on providing practical support, timely information, relevant education and advocacy to help members adapt. Ongoing feedback from members is essential in helping us identify priorities and respond to emerging issues facing the profession.

One of the most significant changes facing practitioners is the introduction of AML/CTF obligations from 1 July 2026. The commencement of the new AML/CTF regime has also necessitated amendments to the Solicitors' Conduct Rules, which took effect on the same date. These amendments address the ethical and professional responsibility issues arising from the new obligations, support a more consistent approach across jurisdictions, and provide practitioners with clearer guidance on navigating their professional responsibilities. Thanks to all members who responded to the consultation on the proposed amendments – suggestions that were outside the scope of the current consultation are under consideration for potential future changes or guidelines.

To assist members through this transition, the Law Society continues to expand and update its [AML/CTF Hub](#), providing guidance, links to resources and practical information to help firms understand and comply with the new requirements. This included a complimentary practical webinar covering key compliance requirements, critical deadlines and implementation considerations ahead of 1 July. A [recording of the session](#) is now available on demand for members who were unable to attend.

The Law Society also continues to work closely with the Law Council of Australia and other jurisdictions on advocacy and the development of national guidance on this topic.

We encourage members to share any challenges or issues they are experiencing in this area with our [Member Connect Team](#) so we can continue to update and enhance our resources. This is an evolving and increasingly complex area, and the best way we can assist the profession is by understanding the issues members are facing.

To expand the support available to members, we are pleased to announce the appointment of an Ethics and Practice Lawyer within the Engagement team. This role reflects our commitment to providing practical, locally relevant support for ACT practitioners through tailored advice, education, resources and professional guidance. We acknowledge the support provided by the Law Institute of Victoria's Ethics and Practice team while we developed this role to sit separately from our regulatory services team.

During their initial months, the Ethics and Practice Lawyer will engage with ethics and practice teams in other jurisdictions, advisory committees and key stakeholders to better understand the needs of the ACT profession. The role will also draw on insights from complaint and enquiry trends to help develop practical resources, education and guidance for practitioners. Appointments to the Professional Ethics Advisory Committee will be finalised once this consultation and engagement work is undertaken.

Members will be provided with further information once the role is ready to commence taking enquiries. In the meantime, members can continue to access support through the Law Institute of Victoria's Ethics and Practice team – contact via Member Connect.

Improving how members access information, services and resources also remains a priority. Despite some technology challenges causing delays, work continues on the Society's new public-facing website and member portal. We acknowledge the firms and members who have actively contributed to this process through consultation, feedback and user testing. We would also like to acknowledge the staff who have contributed to this project alongside their day-to-day responsibilities. As a small team, their commitment has been instrumental in progressing work that will enhance how members connect with the Society, access resources and engage with professional development opportunities.

Several advisory committees have now commenced following the recent renewal and refresh process and are providing valuable expertise and insight to support the Society's work, including Personal Injury and Torts Law, Property Law, Criminal Law, Early Career Lawyers, Succession Law, Military Law, Family Law and Public Law. Some committees have been consolidated or reconfigured to provide better coverage and alignment with how our members work. Others are still being developed.

We continue to work with members to identify opportunities for advisory committees that reflect areas of professional interest and expertise. These groups help ensure the Society remains connected to the profession, responsive to emerging issues and informed by the experiences of practitioners across a broad range of practice areas. If there is a practice area or professional interest not currently represented, or if you would like to contribute through a committee, we encourage you to get in touch. Expressions of interest help us assess whether there is sufficient interest and expertise to sustain a committee in that area.

We also take great pride in recognising the outstanding contributions members make to the profession and the community. During Law Week, we celebrated the recipients of the 2026 Law Week Service Awards, Ana Anzani and Jo Twible, and the joint recipients of the 2026 Emerging Lawyer of the Year Award, Xiao Lin King and Caroline Doherty.

We also acknowledged Andrew Giddings, recipient of the President's Award for Outstanding Service. Andrew's career reflects the values this award represents: a deep commitment to public service, improving access to

justice and strengthening the Society and the profession. Through his professional work, extensive contributions to Society committees and Council, and unwavering support for the community, Andrew has demonstrated exceptional leadership, integrity and service.

Over recent months, the Council also finalised the transitional steps under the new Constitution. Councillors agreed, through a collegiate discussion, on the term of office for each current Councillor to create the staggered terms contemplated by the new Constitution. This change will enable a mix of corporate knowledge retention and renewal on the Council, supporting greater governance and strategic oversight on a longer-term basis. We will update members in due course about terms and vacancies, leading up to the AGM.



Throughout all of this work, our focus remains the same: building a modern, responsive Society that supports excellence in legal practice and delivers value to members at every stage of their professional journey. Through advocacy, education, ethics support, proportionate regulation, committee engagement, digital improvements and professional resources, we are working to ensure the Society remains well positioned to support a strong legal profession today while preparing for the opportunities and challenges of tomorrow.

Policy updates

AUGUST 2026

Court reforms, budget advocacy and successful law reform submissions have made it a busy year for the Society's policy and advocacy work. From establishing a new Litigation Law and Practice Forum to influencing legislative reform in the ACT and nationally, the Society has continued to ensure practitioners have a voice in decisions that affect the justice system.

A new voice for court reform

One of the most significant developments this year has been the establishment of the Litigation Law and Practice Forum.

The Forum provides a central point of engagement between the Society and the ACT Courts and Tribunal on matters of practice, procedure and court operations. Bringing together representatives from across the Society's advisory committees, it enables court reform proposals to be considered collectively rather than through multiple parallel forums.

While procedural changes can appear technical, their practical impact is often far-reaching. A single amendment to court processes may affect multiple areas of practice in different ways. The Forum provides a structured mechanism for identifying those impacts early, testing proposed reforms against real-world practice and developing coordinated responses. In doing so, it helps ensure reforms achieve their intended objectives without creating unintended burdens for practitioners or their clients.

The Forum has already strengthened collaboration across the profession and enhanced engagement with key stakeholders, including the Joint Rules Advisory Committee and ACT Courts user groups. It has informed several recent amendments to the Court Procedures Rules 2006, with further reforms currently under consideration.

Taking justice priorities to the budget table

The Society also expanded its advocacy through the ACT Budget process.

Following consultation with members and justice sector stakeholders, the Society prepared a submission to the 2026/27 ACT Budget focused on measures to improve access to justice and strengthen the operation of the legal system. Key priorities included sustainable funding for legal assistance services, investment in court infrastructure and appropriate resourcing across the criminal justice system.

This year's budget advocacy also included the Society's first mass campaign, encouraging practitioners to write directly to the ACT Treasurer and ACT Attorney-General in support of these priorities. Participation reflected a strong commitment across the profession to speak collectively about the challenges facing the justice system and to amplify concerns about resourcing, delay and access to justice.

While some priorities were reflected in subsequent budget announcements, the Society continues to advocate for long-term investment in legal assistance services and greater recognition of the pressures placed on the justice system when demand exceeds available resources.

Looking ahead, the Policy team has already commenced work on the Society's next ACT Budget submission, which is expected to be submitted later this year. Engagement with advisory committees, the broader membership and justice sector stakeholders will be central to that process, and the Society looks forward to hearing from members as priorities for the next budget cycle are developed.

Advocacy in action

The Society has continued to contribute to a broad range of law reform and policy initiatives throughout the year. While not an exhaustive list, the examples below highlight some matters of particular significance to the profession and the administration of justice.

Inquiry into insurance costs in the ACT

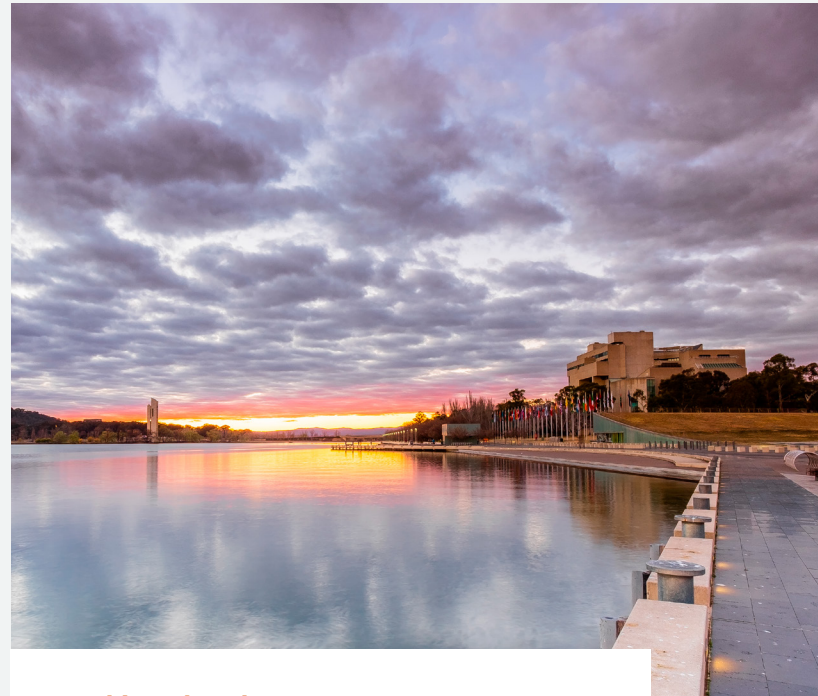
A notable advocacy outcome was the Society's submission to the *Inquiry into Insurance Costs in the ACT*. The Society raised concerns about proposals that could have restricted access to personal injury and workers' compensation claims. The ACT Government ultimately rejected recommendations involving direct intervention in insurance pricing and committed to further consultation before considering potential limits on compensation claims, providing reassurance that significant changes to compensation rights would not proceed without further stakeholder engagement.

Inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025

In partnership with the ACT Bar Association, the Society made a joint submission to the *Inquiry into the Magistrates Court (Indicative Sentencing) Amendment Bill 2025*. All recommendations were accepted in full by the ACT Legislative Assembly's Standing Committee on Legal Affairs, ensuring practitioner concerns were reflected in the Committee's consideration of the Bill and supporting a more workable approach to sentencing reform.

Administrative Review Tribunal practice directions: six-month review

At the national level, the Society provided detailed feedback through the Law Council of Australia on draft Practice Directions for the Administrative Review Tribunal. Several recommendations concerning review procedures, expert evidence and tribunal practice were incorporated into the final directions, providing greater clarity for practitioners and supporting fairer and more efficient review processes.



Looking ahead

The breadth of these initiatives reflects the value of practitioner involvement in shaping law reform and justice policy. Member input has helped identify practical issues, strengthen advocacy to government and courts, and secure outcomes that support effective and efficient legal processes.

Whether raising concerns about court procedure, contributing to budget discussions or responding to legislative reform, members continue to provide the expertise that underpins the Society's advocacy.

As the year continues, the Society will maintain its focus on reforms that support legal practice, improve the administration of justice and strengthen access to justice for the ACT community.



JOHN WILSON
MANAGING DIRECTOR,
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KIERAN PENDER
HON. SENIOR LECTURER ANU LAW &
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Can lawyers have side hustles?

THE LAW OF SECONDARY EMPLOYMENT



In the modern workplace, the idea of having one employer and a single role is increasingly unusual.

Introduction

In the modern workplace, the idea of having one employer and a single role is increasingly unusual. The gig economy, the cost of living and the rise in workers wanting to pursue external hobbies has seen the proliferation of side hustles – employees pursuing additional work, whether motivated by pay or passion.

Side hustles come with employment law obligations. Following a recent Fair Work Commission decision, it is timely to consider how the law regulates employees pursuing additional employment or external professional obligations. This article will set out the legal context, before considering the additional complexities that arise for lawyers and public servants pursuing additional employment.

Context

The common law imposes on all employees a duty of loyalty and fidelity to their employer.¹ This has contractual underpinnings, as an implied term in the contract of employment, and, in certain circumstances, may also have an equity basis where employees owe a fiduciary duty to their employer. This duty prevents an employee acting contrary to their employer's interests. However, the extent of the duty, particularly outside work hours, will vary depending on the nature of the role.

This tension, between protecting an employer's interests and safeguarding the private lives of employees, was aptly summarised by Lord Greene MR in *Hivac Limited v Park Royal Scientific Instruments Limited*:

It has been said on many occasions that an employee owes a duty of fidelity to his employer. As a general proposition, that is indisputable. The practical difficulty in any given case is to find exactly how far that rather vague duty of fidelity extends. Prima facie it seems to me on considering the authorities and the arguments that it must be a question on the facts of each particular case. I can very well understand that the obligation of fidelity, which is an implied term of the contract, may extend very much further in the case of one class of employee than it does in others. For instance, when you are dealing, as we are dealing here, with mere manual workers whose job is to work five and a half days for their employer at a specific type of work and stop their work when the hour strikes, the obligation of fidelity may be one the operation of which will have a comparatively limited scope.

¹ *Robb v Green* [1895] 2 QB 315.

The law would, I think, be jealous of attempting to impose on a manual worker restrictions, the real effect of which would be to prevent him utilizing his spare time. He is paid for five and a half days in the week, the rest of the week is his own, and to impose upon man, in relation to the rest of the week, some kind of obligation which really would unreasonably tie his hands and prevent him adding to his weekly money during that time would, I think, be very undesirable. On the other hand, if one has employees of a different character, one may very well find that the obligation is of a different nature.²

Fortunately, the world of work has evolved beyond five-and-a-half-day work weeks. But this balancing act remains. Some employers deal with it through explicit contractual provisions, seeking to regulate secondary employment. Typically, these require disclosure and approval, and limit secondary work where it causes a conflict of interest or health and safety risk to the employee. Even where an explicit secondary employment clause is missing, an employer could still rely on a general conflict of interest clause (commonplace as they are), or the implied duty.

But an employer's contractual reach has limits. In the private sector, particularly, an employer's ability to regulate out of hours is limited by the extent of its legitimate interest, as Lord Greene recognised.

As Australian case law has famously recognised, '[a]n employee is entitled to a private life.'³

Recent Case Law

While the legal principles are well-settled, their applications are very much case dependent. It is instructive, then, to look at a recent Fair Work Commission decision to see how these issues play out in practice.

In *McGregor v The Trustee For The Eagle Twin Trust*,⁴ the Commission considered an unfair dismissal application made after the employee was dismissed for, the employer contended, the employee's external business activities: 'starting and operating a life coaching and counselling business, creating a website and various social media pages, as well as publishing an e-book on life coaching topics.'

Relevantly, Mr McGregor's employment contract included performance standards requiring that he serve the employer 'efficiently, faithfully and diligently' and '[d]evote the whole of his time, attention and abilities exclusively to the business'.⁵ It also contained a relatively standard conflict of interest clause, which prohibited 'undertaking any other business or profession which competes with [the employer] or where the employee's involvement would create a conflict of interest, either actual or potential.' However, Mr McGregor contended that he had disclosed his external activities, such that they could be said to be 'condoned' by the employer.



This argument was rejected by the Commission, which found that the extent of Mr McGregor's secondary business activities – which verged on activity in competition with his employer – had not been fully known or approved by the employer.

Instead, the Commission accepted that the nature and extent of the activities constituted a breach of contract, giving a valid reason for dismissal.

This was particularly so given Mr McGregor was a relatively senior employee, at one point in his employment supervising 12 employees. Additionally, the specific contractual obligations were central to the Commission's analysis. 'It is at least arguable the exclusive attention obligation extended beyond normal business hours, particularly for a management employee,' the Commission held. 'The obligation to give the whole of his time, attention and abilities exclusively to Anteo would not require him to work 24 hours a day for Anteo. It would require that he not be distracted from giving his whole-time attention and abilities exclusively to Anteo by activities which he undertook outside normal working hours.'⁶

² [1946] All ER 350.

³ *Rose v Telstra Corporation Ltd* [1998] AIRC 1592.

⁴ [2026] FWC 345 (4 February 2026).

⁵ *Ibid* [16].

⁶ *Ibid* [130].

In *McGregor* the need for explicit disclosure, rather than passing mention, was also underscored. The employee sought to rely on the fact he had mentioned his external work in team meetings, and shared an e-book he had authored with his boss. While reading the book ‘may have implied the secondary career’, Commissioner Mark Perica held, ‘falls short of clear evidence’. This was particularly so when the employee’s covering email attaching the e-book had explicitly said ‘[t]here is no expectation of any sort e.g. reading it at all’; the Commission noted the email thereby ‘essentially said that [the supervisor] did not have to read it.’

In *McGregor*, then, the seniority of the employee, and the closeness of the external activity with the operations of the business, and the uncertain nature of attempted disclosure were all salient factors. These circumstances might instructively be contrasted with a hypothetical.

Where the employee undertaking additional employment is a lawyer, there will be an extra gloss at play by virtue of the nature of legal practice...

BAL Lawyers employs a number of excellent paralegals on a casual or part-time basis. Say one of those paralegals worked as a yoga instructor on the weekend, or a football referee. Provided that work was done out of hours, and did not cause health and safety risk (ie the work hours were not so substantial that, cumulatively with their employment with BAL Lawyers, they were overworked), it could hardly be said that BAL could seek to prevent that secondary employment. It might be reasonable for BAL to require disclosure, to manage workplace health and safety and conflict of interest risks – for example, to avoid the possibility that the yoga studio is a client of the firm. But absent such factors, BAL is unlikely to have the lawful authority to direct a paralegal not to referee or teach yoga on the weekend.

Legal Profession

The above example hints at the additional nuance in the legal profession. Where the employee undertaking additional employment is a lawyer, there will be an extra gloss at play by virtue of the nature of legal practice. This gloss is at least threefold.

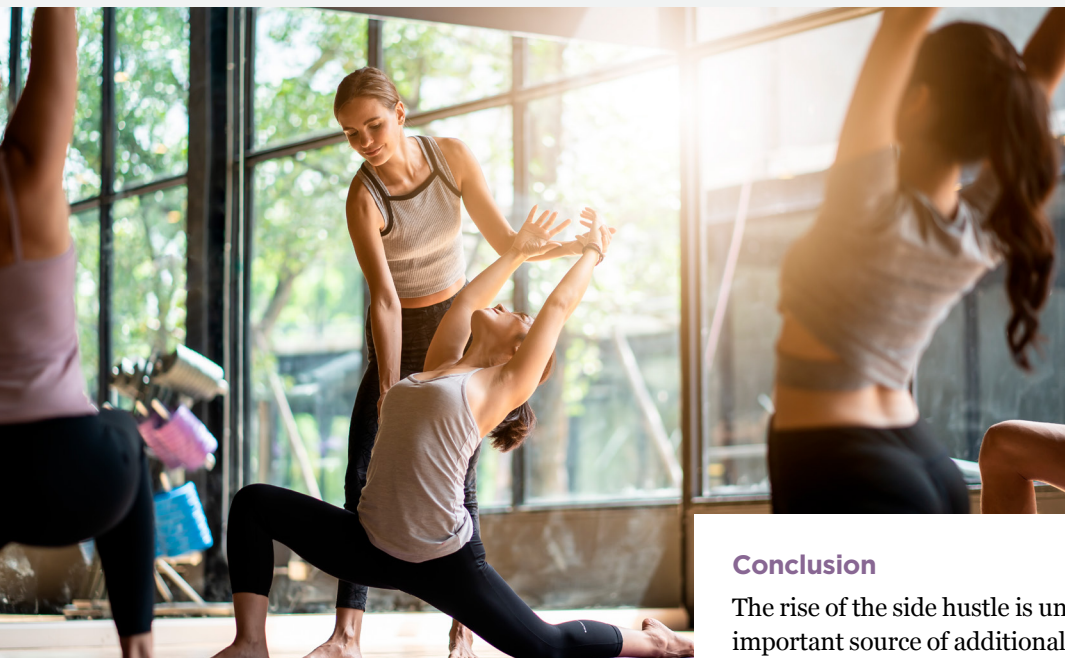
First, a solicitor wanting to pursue a side hustle must meet the conditions of their practising certificate. Different categories of certificates come with different conditions (which vary across jurisdictions); an in-house lawyer might not automatically be able to pick up some extra cash consulting in private practice, for example. Of particular salience in Canberra, some government solicitors do not have practising certificates but are deemed to be able to practise pursuant to federal legislation – that entitlement would no longer apply if they were freelancing in the private sector.

Second, and more substantively, a solicitor’s professional obligations of confidentiality and to avoid conflicts of interest may be engaged in the event of secondary employment. Where the side hustle intersects with a solicitor’s practice – say a property lawyer decides to moonlight as a real estate agent, or an employment lawyer starts a recruitment firm – there will be heightened risk of a conflict of interest.

Finally, all solicitors must remember that, above all, they are officers of the court. This has implications even when not acting in a legal capacity. As the NSW Law Society’s Professional Support Unit observed last year:

Whether you are acting in your capacity as a solicitor or as the founder of a new line of stationery products, you must not do anything that is likely, to a material degree, to be prejudicial to, or diminish the public confidence in, the administration of justice, or bring the profession into disrepute, or that would demonstrate that you are not a fit and proper person to practise law.⁷

⁷ Katherine Lau, ‘Can a solicitor have two jobs?’ *Law Society Journal* (24 February 2025, online) lsj.com.au/articles/can-a-solicitor-have-two-jobs



Public Sector

Federal public servants, whether lawyers or not, have additional obligations when it comes to secondary employment, by virtue of the APS Code of Conduct in the *Public Service Act 1999* (Cth). This requires public servants to ‘act with care and diligence’ and ‘take reasonable steps to avoid any conflict of interest’, among other obligations.

Most federal agencies have developed specific conflict of interest policies, which typically deal with secondary employment. These usually require disclosure, and, if necessary, the development of a conflict of interest management plan. Other jurisdictions are even stricter: the NSW public sector prohibits external paid work without permission, as does the ACT (for senior public servants).

Conclusion

The rise of the side hustle is unlikely to go away. For some, it is an important source of additional income – all the more important in this time of rising fuel prices. For others, it is part of expanding their horizons, whether within the law (both authors of this column have taught law, in addition to their practice), or beyond. But secondary employment or entrepreneurial activity comes with risk.

Those risks are heightened for lawyers, given their professional obligations, and public servants, in light of the statutory context. As much was made clear by a recent article in the *Canberra Times*, which reported on a post on an online forum. ‘I recently joined the public sector and I am wondering how me doing stand up comedy (which I also post clips on my social media, along with skits) affects my employment,’ the anonymous public servant said. The individual expressed concern about whether they needed to advise their manager. ‘The only thing I can think of is that the comedy may be perceived as not acting professionally?’⁸

The public servant is right to be concerned – secondary employment is no laughing matter. The law has sought to balance the interests of employers with workers’ right to have a private life, and be a comedian, an Uber driver or a law tutor on the side. But our guidance is to always err on the side of caution – better to disclose, and manage risks with your employer, than spot your startled boss in the audience when you begin your stand-up set.

⁸ Ray Athwal, and Dana Daniel, “‘Prefer not to tell’: APS newbie’s anxious plea as side gig sparks code of conduct fear” *Canberra Times* (30 March 2026, online) canberratimes.com.au/story/9207260/public-eye-is-stand-up-comedy-a-breach-of-the-aps-code

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THE BLACKBURN LECTURE

The evolution and significance of the independent children's lawyer

DELIVERED ON 26 MAY 2026 IN CANBERRA

THE HON JUSTICE DI SIMPSON

Federal Circuit and Family Court of Australia (Division 1)

Introduction

May I commence by acknowledging that those of us here in person are gathered on the beautiful lands of the Ngunnawal and Ngambri peoples. For a presentation focused on the law and the best interests of children, I acknowledge the societal kinship, laws and customs of Aboriginal peoples, caring for generations of families and young people prior to colonisation. This was apparent to Sir Richard Blackburn when, in 1971, in the Gove Land Rights case (as it is commonly known) he observed that:

The evidence shows a subtle and elaborate system highly adapted to the country in which people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called 'a government of laws, and not of men', it is that shown in the evidence before me.

and in doing so, acknowledged for the first time in an Australian higher court, the existence of a system of Aboriginal law.

I pay my respects to all Aboriginal and Torres Strait Islander elders, and I acknowledge those who sought justice and recognition in this country, paving the way for the leaders of today, who continue to care for and nurture emerging young voices.

I also acknowledge the essential work undertaken by the Domestic Violence Crisis Service, as a frontline service, responding to the needs of women and children in the ACT, impacted by domestic and family violence. I acknowledge those of you who have, as part of your registration, donated to their essential work.

Thank you, Vik, for your kind words of welcome.

I acknowledge the Honourable Justice Gill and the Honourable Mary Finn for joining us today.

I thank all those who are here in person and those of you joining remotely. I am delighted to see so many friends and colleagues here today.

Before I begin, if you will also allow me to thank my Associates, for their help, but particularly Keith, for his remarkable research and assistance in the preparation of these remarks.

I am delighted to be back home.

As a solicitor practising in the ACT for almost 30 years, the ACT Law Society was my professional regulatory body and I benefitted from the many services and supports it offers to its members – including, participating in the varied offerings of Law Week.

I am humbled by the ACT Law Society's invitation to deliver this year's lecture. It is an honour that I share with distinguished academics, judges and lawyers including former colleagues from the Family Court, and, of course, Sir Richard himself.

It is appropriate that I take a moment to invite reflection upon the remarkable contribution made by Sir Richard Blackburn, of course to the law, but also to the communities in which he lived and worked, including ours in the ACT.

Sir Richard lived a life of accomplishment. He was born and raised in Adelaide, served in the Australian Imperial Force, was a Rhodes Scholar, practised at the London and Adelaide Bars, held the Bonython Professorship of Law at the University of Adelaide, was Chairman of the ACT Law Reform Commission, served as judge of Supreme Courts in Darwin and Canberra, as well as the Federal Court of Australia, and was eventually appointed Chief Justice of the ACT.

Reflecting on this extraordinary life a year after Sir Richard's death, The Honourable Michael Kirby said this of his friend:

All of these are the external features of the life of a scholar turned judge. They give a clue to his nature. But they could scarcely bring to life his memory which is still green for those of us who knew him. Nor do they reveal his long and happy marriage to Lady Blackburn. They do not bring to the fore his quizzical demeanour. His lively searching mind. His unfailing politeness. His seriousness and precision. His tendency to worry and always to strive to get things right. He was a graceful man with interests beyond the law which sometimes caused astonishment.

Forty years ago, at the very first of these lectures, Sir Richard expressed hope that this series would eventually become an integral part of the ACT Law Society's commitment to fulfilling two of its duties, as he considered them to be – one, to assist the public to understand the law and the profession and the other, to assist the profession by way of professional education.

In my remarks today I will endeavour to do both in a manner that pays respect to Sir Richard's legacy.



The evolution of the independent children's lawyer

I will be speaking today about the evolution and significance of the role of the Independent Children's Lawyer, or ICLs as they are presently known in family law.

The representation of children is a substantial and important feature of state-based care proceedings, but my remarks today will focus on child representation in family law proceedings. For ease of reference, I will use *ICL* when referring to Independent Children's Lawyers and, with no disrespect, the shorthand of the 'family law courts' when referring to the family law jurisdiction of the FCFCOA Division 1 and the FCFCOA Division 2.

ICLs are appointed in family law cases to represent children. Since their inception, they have been considered a vitally important 'resource'. In a quantitative study by the Australian Institute of Family Studies in 2014, 94 percent of judges and 88 percent of non-ICL lawyers surveyed indicated that ICLs play a significant evidence-gathering role. Across the board, the data also indicated that ICLs play a significant role in facilitating agreement between the parties to avoid a final hearing.

Notwithstanding their importance, the future of their role lies in some peril.

In early May of this year, the Law Council of Australia released a statement titled "Children's voices at risk as family law safety net frays". In it, the Law Council expressed concerns as to the state of funding for ICLs across the country:

"Two years ago this week, amendments were made to the Family Law Act to bring more children into personal contact with their ICL. We supported the intent of these reforms — giving children a genuine voice in decisions about their own lives and safety.

"But the increased demand this has created, without any additional government funding to match it, has pushed the ICL workforce to the brink.

A day after the federal Budget, Legal Aid NSW (serving our most populous state) announced that in addition to general family law eligibility changes, by year end, a new policy would be in place such that ICLs would "only appear in final hearings where one or both parties are self-represented" noting that "family law advice services [have grown] 30 percent in the last three years" and that Legal Aid "has not been given the funding needed for us to maintain service levels".

To the extent that there are non-family lawyers here today, I expect one way or another, most will have had some exposure to family law, even if not firsthand. The law permeates every aspect of modern family life and family law courts deal with disputes between people who are, typically, at the lowest points of their lives when they come to the courts.

For a child caught between parents in intractable conflict and litigation, the appointment of an ICL can assist to return focus to the best interests of the child and better align the focus of dispute resolution to what the child needs, rather than who might win a particular skirmish.

The press releases to which I have just referred, raise questions as to how we've arrived at this juncture but perhaps more importantly, what the future looks like. We are at a point where the system of appointment and funding of ICLs is imperilled, which creates an obvious risk that children will go without representation in some complex parenting disputes.

The independent representation of children's interests is governed by Division 10 of Part VII of the *Family Law Act 1975* (Cth). Section 68L provides a very broad and general discretion to the court to appoint an ICL when "it appears to the court that the child's interests in the proceedings ought to be independently represented by a lawyer". The court may make the order on its own initiative, or on the application of a child, an organisation concerned with the welfare of children or any other person (which, most commonly, is a parent).

Section 68LA of the *Act* provides the framework for the role of the ICL, including mandatory directives that the ICL *must* form an independent view, based on the evidence available, of what is in the best interests of the child, and act in what they believe to be in the best interests of the child.

They *must* if satisfied that a particular course of action is in the best interests of the child, make a submission to the court suggesting that course.

The *Act* makes clear that the ICL is not the child's legal representative (though that phrasing is commonly used to explain the role to the child) and the ICL is not obliged to act on the child's instructions about the proceedings.



There are other mandated obligations on ICLs:

- To act impartially in dealings with the parties.
- If the child expresses views about the matters in dispute, ensure those views are fully put before the court.
- If a report or other document is to be used in the case, analyse it and identify those parts of most significance and ensure those matters are properly brought to the court's attention.
- Endeavour to minimise the trauma to the child associated with the proceedings.
- Facilitate an agreed resolution if in the best interests of the child.
- And, since the amendments of May 2024, the ICL *must* meet with the child prior to the final hearing, except in defined circumstances (including exceptional circumstances where it may adversely impact a vulnerable child).
- And the ICL *must*, in doing so, give the child an opportunity to express their views about the matters in contest.

The ICL is not under a duty to disclose to the court any information the child communicates to the ICL – but may disclose information that the child has communicated to the ICL if the ICL considers the disclosure to be in the best interests of the child.

In each state and territory in Australia, Legal Aid Commissions arrange ICL representation through a mixed service model. Once an ICL appointment order is made by the family law courts, it is referred to a Legal Aid Commission in the state in which the children reside (or last resided). The matter is then either allocated to an in-house Legal Aid practitioner or referred out to a private practitioner whose name has been added to an ICL panel, which indicates that they are qualified and willing *to be asked* to do ICL work. A panel lawyer does not have to accept ICL work.

This modern system, and the legislation and rules underpinning it, is a creation of the last few decades. The notion of the ICL, in fact, finds its genesis in the English courts of equity.

As far back as the seventeenth century, guardians *ad litem* were appointed in the Court of Chancery to defend the interests of infants (children), over whom the courts had assumed responsibility under the *parens patriae* jurisdiction. At its core, *parens patriae* assumed a paternalistic role 'to act in the place of a parent, as if it were the parent of the child' through a power derived from the Crown rather than any concept of parenthood (*See Falkland v Bernie* (1696) 23 ER 814). This concept eventually underpinned the welfare principle, a 19th century construct applied in 'inherent jurisdiction' cases (as in *Re Callaghan* (1885) 28 Ch D 186 (CA)), which is similar to the modern best interests principle – that a child's welfare (best interests) must be the paramount consideration when the court makes decisions.



Taking a leap forward, in Australia, the *Matrimonial Causes Act 1959* (Cth) introduced for the first time in federal legislation, the concept of the “interests of the children as the paramount consideration” as a proxy to the welfare principle (section 85(1)(a)). The introduction of “best interests” formed the groundwork for the first iteration of ICLs, the guardian *ad litem*, when, in 1967, a new rule was added to the *Matrimonial Causes Rules* (Cth) to provide for the appointment of a guardian *ad litem* for a child to be separately represented in proceedings between parents (Rule 115A).

Rule 115A’s adoption by the courts at that time was minimal; in part a reflection of the times. Guardians *ad litem* were rarely appointed, according to one judge, because of the fact that the costs of such an appointment would fall at the feet of the parties, and, where commonly the husband “*paid his wife’s costs in any event*”, neither the husband nor the court looked to place an additional burden on *his* shoulders. Others saw limited benefit in hearing from persons other than those who were caring for the children.

These concerns weren’t lost on the federal Government when, in 1974, the Family Law Bill was tabled in Parliament.

Section 65 of the eventually enacted *Family Law Act 1975*, read alongside Regulation 112 of the *Family Law Regulations* provided the second conception of ICLs, the separate representative. Described as “an improvement on rule 115A”, a separate representative could be appointed notwithstanding that a guardian *ad litem* had not been appointed (the first time the roles were distinguished) and, for the first time, requests by the court for such representation could be made to the Australian Legal Aid Office.

The Act was silent as to function and role.

There were differences in views as to how the child’s wishes would be communicated to the court. In *Todd & Todd (No 1)* (1976) FLC 90-001 the judge likened the role to that of the Official Solicitor in England in that the object was “*to ensure that the ward’s interests and point of view may be represented by an objective outsider*” and ordered that a report be prepared for the court by the separate representative. In *Demetriou & Demetriou* (1976) FLC 90-102 Asche SJ remarked that the ICL was appointed to “*assist the Court and consequently the child*” and as such, the views of the child constituted “*only one, albeit often an important factor, in assessing those*

interests.” The separate representative in that matter was directed not to place any report prepared by himself before the court, but to confine himself to submissions on the evidence, properly adduced.

The uncertainty about the nature and purpose of the role persisted throughout the late 70s. In *Lyons & Boseley* (1978) FLC 90-423 the Full Court had expressed “tentative views” that, effectively, a separate representative had a duty to express their *personal* opinions as to the child’s interests or welfare.

The Chief Justice issued guidelines for separate representation in the form of a practice direction in 1980.

From the early 1980s, a move to create a framework of expectations about the role and expertise of the separate representative took on a particular impetus, spearheaded in NSW by, amongst others, the Hon Justice Josephine Maxwell and the Hon Justice Eric Baker, and a small but determined group of family lawyers at the Australian Legal Aid Office in Sydney, together with counsel.

That group included luminaries of the Legal Aid office, including the Hon Judy Ryan, the Hon Anne Rees, the late Anne Connor (then Anne Charlton), Hamish Cumming, and from the NSW Bar, the Hon Ann Ainslie-Wallace. Theirs was groundbreaking work to develop a framework for the training and support of separate representatives and to endeavour to ensure a regularisation of expertise being brought to this important role.

Legal Aid offices in some of the other states and territories were grappling with the same challenges.

By 1994, and at the FLS National Family Law Conference that year, the Hon Alistair Nicholson, Chief Justice of the Family Court, spoke of the court's work informing the further reforms to the Act, then under consideration. That reform engagement included the formation of a committee, chaired by the Hon Mary Finn and including the Hon Richard Chisholm and the Hon Joseph Kay, in part seeking to emulate aspects of the UK *Children Act* in our legislation, to facilitate a more child focussed approach to matters involving children.

Following the lifting of the practice direction, the Full Court continued to develop jurisprudence as to the role of the separate representative in decisions such as *Bennett & Bennett* (1991) FLC 92-191, *Re K* (1994) FLC 92-461 and *P & P* (1995) FLC 92-615.

I will touch on them briefly, if only as a reminder of how far we have come.

Bennett & Bennett was a case which stands out for the extraordinary history of repeated litigation; successive applications, hearings and appeals, conduct which might in modern terms be described as *weaponised litigation*. The case is of interest given that the primary judge had appointed a separate representative at the *conclusion* of the final hearing, ostensibly to explain the orders to the children, but not limited to that task.

The mother appealed the final orders. The separate representative took a number of child focused steps, including bringing their own appeal and making an application to adduce further evidence at the appeal (being a report from a psychiatrist who had, after the trial, met the children).

The Hon Justice Finn was part of the Full Court on that occasion (along with Chief Justice Nicholson and Justice Simpson – no relation). The Full Court likened the role of the separate representative to that of counsel assisting a Royal Commission and endorsed the separate representative acting in an independent and unfettered role, in the best interests of the children. The Full Court noted that it was perfectly appropriate for the separate representative to have obtained expert evidence in the best interests of the children (despite the decision not to admit it in the appeal).



P & P concerned an application for approval for the hysterectomy of a young person with an intellectual disability (the young person was not able to consent to the procedure). The mother's application was supported by the child's father and by the separate representative.

This hearing occurred after Marion's Case (*Secretary, Department of Health and Community Services (NT) v JWB and SMB* (1992) 175 CLR 218) in 1992, in which the majority of the High Court confirmed the jurisdiction of the Family Court to make orders of this kind.

The separate representative made submissions directed to the proper role of separate representatives in proceedings of this kind.

As an aside, I note that in this case, the Hon Ann Ainslie-Wallace appeared as junior to Mr Jackson QC on behalf of the appellant wife, the Hon Judy Ryan was the separate representative, and the bench of the Full Court again included the Hon Justice Finn (along with Chief Justice Nicholson and Justice Fogarty).

The Full Court made additional comments about the role of the separate representative, endorsing their early appointment, and made clear that while separate representatives should call expert evidence, they were not limited to examination in chief of those witnesses.

And, again, in recognition of the work of those who have come before, I note that the Full Court broadly endorsed the written submissions of the Hon Judy Ryan, about the role of the separate representative.

The submissions extracted in the judgment continue to provide the broad framework for the work of ICLs to this day.

The focus during this period on *the role* of the separate representative meant that the question of when one ought to be appointed remained a matter of some inconsistency. To add complexity and impetus to the issue, in 1990, Australia ratified the *United Nations Convention on the Rights of the Child* which recognised, among other things, the right of the child to participate in proceedings as to their care and to make their views known, and to prioritise the best interests of the child in those proceedings.

There remained divergence of opinion as to the possibility of the Court issuing guidelines about when circumstances justified the appointment of separate representatives. A majority of a small cross-section of judges thought, in 1991, it inappropriate to lay down administrative rules, concerned to avoid unduly fettering the court's discretion. Legal Aid Commissions, too, had mixed views, with one resisting a list of categories entirely and instead suggesting that "the basic question is whether a separate representative is likely to be of assistance to the Court."

In *Re K* (1994) FLC 92-461 the Full Court resolved the issue, expressing guidelines as to the circumstances in which separate representatives *should be appointed* and what ought to be expected of a separate representative, once appointed. The Full Court expressed satisfaction that the guidelines were consistent with and furthered the Objects of the *Convention on the Rights of the Child*. While The Hon. Mary Finn was not a member of that Full Court, I note that The Hon. Diana Bryant appeared on behalf of one of the appellants.

When I return to thinking of this case, I also wonder about the child at the centre of that dispute – a simple reminder of why the work of ICLs is so important.

In that matter, the mother of the 3 year old child had been murdered and her father was in custody, charged with her murder. The mother had been shot while in bed with the child. The child's vulnerability, in the face of that horror, was acute.

The primary dispute was between the maternal aunt and the paternal grandparents (who had the support of the child's father). The primary judge had granted "sole custody and guardianship" to the aunt and permission for her to take the child to live with her in the US.

While the Full Court agreed that this was a matter in which the appointment of a separate representative was appropriate, it considered that the failure of the primary judge to do so should not lead to a reversal of the orders made. The various appeals were dismissed.

Leaving aside allowance for changed attitudes to homosexuality, the principles in *Re K* have continued to provide important guidance to practitioners and parties as to when a separate representative may be appointed.

In the period following *Re K* the number of orders for separate representatives (renamed the child's representative following the 1995 reforms) climbed considerably. In the eight-month period prior to *Re K*, the Legal Aid Commission of Victoria received about eight orders per month. A mere three months after *Re K*, that number had jumped to 35 per month. Comparable statistics were noted in other states which, to this day, have risen in a statistically not-insignificant way.

The work led by the NSW Legal Aid team, joined by like-minded colleagues in other states, assisted in the development of the jurisprudence of separate representation and was instrumental in distilling, from the developing case law, cogent principles delivered at national training programs for child representatives.

Those interested Legal Aid offices led the charge in developing a specialist training program to enhance the skills of practitioners interested in undertaking child representative work. The initiative was well received, and I acknowledge the role of the Family Law Section of the Law Council in helping to build and provide the child representative training programs nationally during the 1990's. The refinement of the specialist skills and expected knowledge of child representatives grew.

Locally, the ACT Legal Aid office provided leadership and excellence in training of child representatives, with foundation work under Chris Staniforth and stars of the Legal Aid firmament – including from the early 90's, Judge Kate Hughes, the Hon Justice Shane Gill, Mary Burgess, Margie Rowe and Linda Crebbin AM.

The skills of our local child representatives were being honed before the Hon Justice John Faulks (and in the appellate space, the Hon Justice Mary Finn) and then from 2000, Judge Jim Brewster – a roll call of outstanding practitioners and interested and engaged judges, whose contributions assisted in carrying the increased workload and shepherding the burgeoning role of child representatives in Canberra in the 1990s and 2000s.



In that context, I acknowledge that one of the features or demands of the child representative program in the ACT was the expectation of ACT Legal Aid that funding *would not*, save in the most exceptional circumstances, extend to briefing counsel – so ACT child representatives were required to develop skills in advocacy including at final hearings.

While appointments of child representatives were increasing, the 1990s also saw a substantial reduction in Legal Aid funding, which no doubt contributed to the rise in self-represented litigants appearing before the Court. Studies in the late 90s including by the Australian Law Reform Commission, found that self-representation was most common in parenting matters where parents were ineligible for aid.

When the *Family Law Act* was amended, once again, in 2006, the role and ambit of the newly created ‘Independent Children’s Lawyer’, the third and current iteration of ICLs, were codified. The amendments, too, brought about an increase in ICL appointments, nationally.

Legal Aid ACT and Legal Aid NSW have helpfully provided statistics as to their current management of their respective ICL programs. In the almost four-year period from 2022 to April 2026 the Canberra Registry made around 550 requests for the appointment of ICLs to Legal Aid ACT. During the period of 2024 to 2026, the ACT ICL panel membership increased by 4, to a total of 21 panel ICLs (the same number as in 2012). Of those 21, 7 presently accept ICL grants and there are a number who have accepted just one grant over a period of years.

In NSW, around 1,500 ICL requests are made of Legal Aid NSW annually. Following enhancements to the Legal Aid NSW ICL policy in January 2023, requests increased from 1,300 in 2023 to 1,600 in 2025. Today, the NSW ICL panel consists of approximately 140 private practitioners, however a significant number of those practitioners do not have capacity to take on ICL matters. On a broad level, it was observed that over half of the panel had taken less than five matters in the preceding year.

Challenges facing the independent children’s lawyer program

A number of factors have impacted the frequency of the appointment of ICLs in cases before the family law courts. Among those factors, is the very high prevalence of family violence (and complex factual contentions relating to family violence), other parental challenges (including drug and alcohol dependence and mental health challenges) and allegations of child sexual abuse.

Relevantly, over the preceding years, family violence allegations in parenting filings in the family law courts rose from 80 percent to 86 percent. The Australian Bureau of Statistics Personal Safety Survey 2021–2022 revealed that one in five adults over 15 had been the victim of family or domestic violence. More recent ABS statistical analysis indicates that across Australia the number of family violence offenders rose by 8 percent from the previous year (and the offender rate by extension).

At the risk of anecdotal bias, cases certainly *feel* more complex than they did 20 or 30 years ago and clients are more informed (in part due to the accessibility of information) and expect more from their lawyers, including those appointed on behalf of children.

The progressive rise in ICL orders has increased the burden on Legal Aid commissions tasked with providing such representation.

ICLs are presently funded under the National Access to Justice Partnership 2025–2030, a five-year agreement, between the Commonwealth and state and territory governments. Funds are provided annually to the states and territories for disbursement to various frontline legal assistance services and legal-adjacent service providers including Legal Aid Commissions, community legal centres, law-adjacent counselling providers and the like. There is no dedicated funding for ICLs or, indeed, the wider umbrella under which ICLs are categorised, “family law services”. Instead, funding ultimately disbursed to Legal Aid Commissions by the states and territories cover, in bulk, services across the board in federal family, civil and migration, and criminal law matters. It is a matter for each Legal Aid commission to allocate funds using the mixed model, according to their obligations and need.

For many years now studies have shown that the majority of ICLs feel that they are under remunerated for their work. The final report into the Independent Children’s Lawyers Study by the AIFS, published in 2014, noted that 68 percent of panel ICLs and 37 percent of in-house ICLs identified remuneration to be inadequate.



In 2018 submissions to the Legal Aid NSW fee review process, the Law Society of NSW commented that legally aided matters often result in a financial loss to solicitors.

In the 2024 Census of Legal Aid Private Practitioners (all areas of law), in a study of 1,010 panel practitioners conducted for National Legal Aid, 51 percent of private practitioners reported feeling undervalued and 89 percent reported doing unremunerated work – working for free.

The 2024 final report of the Independent Review of the previous National Legal Assistance Partnership (the Mundy Report) covering the period between 2020 and 2025, accepted that Legal Aid Commissions had increasingly come to rely on panel private practitioners (to the tune of 43 percent of all LACs expenses nationally). The remuneration of panel private practitioners was described in the report as “*simply insufficient in comparison to work undertaken privately.*” To illustrate the point, the report noted that the average family law solicitor (non-ICL) legal aid fee of \$154 per hour was less than half the rate provided to private practitioners on government legal service panels (and even worse in comparison to private rates).

It also leaves aside the issue of the allocation of an insufficient number of hours, paid at that low rate, for the completion of particular stages of matters.

To all of this must be added the observation that this work is not easy. In undertaking the role of the ICL, resilience is required – practitioners may be exposed to some of the worst manifestations of family dysfunction, violence and abuse, and the risk of vicarious trauma is real. At times, the professionalism and independence of the ICL can be unreasonably attacked and in some instances, their personal safety may be threatened and, or, at risk.

Consequently, Legal Aid offices, including in the ACT, are having to accommodate increasing numbers of ICL orders in their in-house family law practices (because of reduced panel practitioner availability). That leads to a decreased capacity to conduct party/party matters – a contest between how to service the access to justice needs of vulnerable clients.

Legal Aid NSW’s recent press release also suggests funding re-prioritisation will occur; a reality which has been in place in some other states for some time.

This was identified in the Mundy Report, quoting a submission of National Legal Aid that various Legal Aid commissions “have had to reduce the type of service available to manage resources.” Nowhere is this more acute than in the vast expanses of the North and the West. In the Northern Territory, there are 6 ICLs for the whole of the Territory, 4 of whom are private practitioners who do very little ICL work. In Western Australia, there are 15 private practitioners across the entire state.



So, what is the way forward?

The reluctance of private practitioners to accept ICL (and other legal aid) work for commercial reasons has been a reality for a number of years, around Australia, and I know that it has challenged the provision of ICL services in the ACT for some time.

It was a recommendation of the 2024 Mundy Report that, as an interim measure, “the Commonwealth should fund LACs to provide ICLs ... at the relevant levels of the court’s scales” noting the understanding that “scale rates are often about two-thirds of prevailing market rates”.

A user pays contribution system has been in place for some time, with ICLs required by the respective Legal Aid Commissions to seek costs at the conclusion of final hearings. Where parties are privately funding their own legal representation and using the costs provisions now in section 114UC, orders are routinely made for a contribution to the costs of the ICL. I do not know the extent to which the Legal Aid Commissions are able to collect on those orders, but any funds recovered have clearly been insufficient to remedy the shortfalls arising from decades of inadequate legal aid funding in this country.

In the absence of a short-term or sustained longer-term funding under the National Partnership, Legal Aid Commissions are progressively indicating that they are unable to allocate funds to ICL representation to meet the rise in the number of ICLs being appointed in increasingly complex matters.

For exploration another day, is the gendered impact of the prioritisation of criminal law representation (where men are over-represented) by Legal Aid Commissions against reduced funding of family law and ICL work, impacting heavily upon women and children.

For further consideration of these issues, among others, I commend to you the 2024 Family Law Council Report “Support for children and Young People (Children) and Strengthening their Voices”. Not surprisingly, that report also called for additional and sustained funding to legal aid services including to ensure the proper training and provision of competent ICLs to advance the voices of children in family law proceedings.

In my experience both in practice and now in my newer role, I know that ICLs work tirelessly and often with little thanks and or recognition. The 2024 Private Practitioners Census indicated that the majority of practitioners who take on Legal Aid work do so because of a commitment to clients and community – to make a difference in peoples’ lives and to help provide access to justice.

I expect that many practitioners who choose employment in Legal Aid offices do so for similar reasons.

There remains vital interest in the ICL program, and Legal Aid work at large, by legal practitioners both in-house Legal Aid and in the private profession. Their not unreasonable and modest claim, is that they should receive adequate remuneration for their work.

And in the context of this grim summary of the current challenges, let me express this invitation to optimism.



Give real consideration to undertaking the ICL training and finding a means to offer your services as an ICL. I am confident, as someone who walked that path a long time ago, that you will be a better practitioner for those efforts.

You will better understand the challenges faced by ICLs and will no doubt engage more generously with other ICLs in your future cases. You will be better able also to help your clients understand the role of the ICL.

And in that process, you will strengthen your relationships with your colleagues in this community and will experience a different engagement with those before whom you appear.

They are some of the reasons why you will benefit from doing this work – but I am confident you will also experience the satisfaction of undertaking work, fundamental to the success of our family law system, on behalf of those who are vulnerable and require the advocacy of highly skilled and dedicated lawyers on their behalf.

And you will have the thanks of your community.

Thank you.

AUTHOR

The Honourable Justice Simpson

The Honourable Justice Di Simpson was appointed to the Federal Circuit and Family Court of Australia in 2025. With more than 30 years' experience in family law, she is a former Chair of the Law Council's Family Law Section and a 2023 President's Award recipient.



The 2026 Blackburn Lecture is available to watch as an ACT Law Society on-demand webinar.

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Litigating the Human Rights Act

EXPLORING UNCHARTED TERRITORY

KYLIE EVANS KC

When we reflect on the history of the land rights movement in this country, especially the inception of native title rights, we see that international law played an important role. But so did creativity and courage – both by the advocates and judges.

Historically, it is fair to say that international law was very largely detrimental for First Peoples, through the classic 19th and early 20th century international law principles establishing land acquisition through conquest, cession or occupation of land that is *terra nullius* or land regarded as belonging to no sovereign.

While the outcome of the Mabo litigation is well known to many – how the Court reached the outcome is worth recalling. It is sometimes forgotten that the Court overturned the principle of *terra nullius* by drawing on a range of areas of law from public international law (the law of colonial acquisition), property law, and equity. No single area of law provided the answer to the question that the Court was answering.

Justice Brennan (with whom Mason CJ and McHugh J agreed) relied on international law, drawing on the

International Court of Justice’s reasoning in the *Western Sahara Advisory Opinion* [1975] ICJ Reports 12 to support the conclusion that the doctrine of *terra nullius*, as applied to an inhabited territory, was no longer defensible. His Honour said (*italics added*):

*“If the international law notion that inhabited land may be classified as terra nullius no longer commands general support, the doctrines of the common law which depend on the notion that native peoples may be “so low in the scale of social organisation” that it is “idle to impute to such people some shadow of the rights known to our law” can hardly be retained. If it were permissible in past centuries to keep the common law in step with international law, it is imperative in today’s world that the common law should neither be, nor be seen to be, frozen in an age of racial discrimination.”*¹

¹ *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 41-42.

In more recent times, the ICJ has delivered the consequential judgment on climate change in its unanimous Advisory Opinion on *Obligations of States in respect of Climate Change*, Advisory Opinion, [2025] ICJ Reports. The judgment is significant for many reasons, including because the Court affirmed the relevance of human rights law, including the right to a clean, healthy and sustainable environment, and drew on the work of the UN human rights treaty bodies and the regional human rights courts.

Just as international law has been an important piece in the development of land rights for First Peoples, so too, can international human rights continue to play an important role in the ongoing application of the Human Rights Act in the Territory.

ACT Human Rights Act

The Human Rights Act has been in force for over two decades. I have long described the ACT in the provincial human rights setting in Australia as the trend-setter – the eldest child of a siblingship of three, and like perhaps many an oldest child, leading the way. The trailblazer, producing the first Human Rights Act in this country, the ACT is the only jurisdiction with a direct cause of action in the Supreme Court and is the only jurisdiction that has legislated significant amendments to the Act, most recently legislating new environmental and housing rights.

So, returning to Den Haag, and the International Court of Justice, the ACT Human Rights Act too recognises a right to a clean, healthy and sustainable environment. As this nascent right takes form in the Territory, it is timely to reflect on the way that international jurisprudence may be relevant in a domestic court, including on matters about which the International Court of Justice has opined.

Indeed the ACT Parliament commands us in s 30 of the Human Rights Act that “[s]o far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights.” The human rights are almost entirely rights protected in international human rights covenants. The meaning of these rights in international human rights law may be considered when interpreting the rights in the ACT Human Rights Act. Section 31(1) states: “International law, and the judgments of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.”

While there is much scope for these provisions to have work to do in the context of ACT legislation, there has been a paucity of jurisprudence on the interpretative provision since the decision of the High Court 15 years ago in *Momcilovic v The Queen* (2011) 245 CLR 1.

Before turning to exploring the uncharted territory of the HRA, the two primary mechanisms by which the HRA may be litigated in a court or tribunal proceeding are worth recalling. The first is the interpretative obligation which has already been mentioned. It operates on Territory statutes.

The second mechanism is the public authority obligations which are imposed on a range of public authorities - administrative units, territory authorities and instrumentalities, police officers, Ministers, public employees and “an entity whose functions are or include functions of a public nature, when it is exercising those functions for the Territory or a public authority (whether under contract or otherwise).” Relevantly for litigators, the ACAT is included when it is acting in an administrative capacity. Its judicial role however is *excluded*, due to the constitutional constraint that the common law is a unified one in our Federation.

...the ACT is the only jurisdiction with a direct cause of action in the Supreme Court and is the only jurisdiction that has legislated significant amendments to the Act, most recently legislating new environmental and housing rights.

The two public authority obligations are set out in s 40B of the Human Rights Act. They are cast in the negative: it is unlawful for a public authority to act in a way that is incompatible with a human right and, in making a decision, to fail to give proper consideration to a relevant human right.

For litigators, s 40C of the Human Rights Act is important. Litigants may bring a direct action against a public authority by commencing a proceeding in the Supreme Court against the public authority or they may rely on their rights under the HRA in other legal proceedings — the "piggyback" provision — which may be used either offensively or defensively.

The direct action makes the ACT unique — it does not feature in the legislation in Victoria or Queensland. But like Queensland, but unlike Victoria, the Human Rights Commission has jurisdiction over complaints that public authorities have breached their s 40B obligations.

Also of great interest to litigators are remedies. And here we see a significant limitation in the Human Rights Act with s 40C(6) stating: "The Supreme Court may, in a proceeding under subsection (2), grant the relief it considers appropriate *except damages*." This limitation has driven advocates to explore other forms of relief such as declaratory relief and stays.

ACT jurisprudence

In the Territory, claims under the Human Rights Act have been brought in the ACT Supreme Court in both its civil and criminal jurisdictions. It has been raised on bail applications², the appointment of a witness intermediary³, sentencing⁴ and judicial review.⁵ It has been considered on appeal in the ACT Court of Appeal.⁶ The HRA has also been relied on in the Magistrates Court (criminal procedure, bail, summary matters), the Children's Court (application for a permanent stay of a sexual offence prosecution: *Perovic v*

CW (ACT Children's Court, 1 June 2006), and in the ACAT across its administrative review, guardianship, mental health, residential tenancies, occupational discipline, and discrimination jurisdictions. The former Mental Health Tribunal (now constituted within ACAT) has also engaged with HRA rights in compulsory treatment and forensic mental health matters.

The Human Rights Act has been used in litigation concerning conditions of incarceration, for example access to open space and strip-searches in prison. Comparative law suggests there is no shortage of human rights issues that arise in detention, ranging from overcrowding, strip-searching, prolonged use of segregation and access to culturally appropriate rehabilitation programs and health care. Although very important, the use of the Human Rights Act to improve conditions of detention in prison is a path that is clear. What about the paths that don't yet exist, or are only beginning to emerge?

One of the most enjoyable aspects of human rights law is the opportunity for creativity. Human rights necessarily will arise in a context involving other legal principles.

Sometimes the other legal principles have such a distinct focus that it's not apparent how they may relate at all to human rights law.

Criminal law

When one surveys the jurisprudence, it is apparent that the Human Rights Act has not featured prominently in criminal law to the same extent as compared to civil law. It is interesting to reflect on why this is so? In one respect, it is perhaps unsurprising given the common law protections in the criminal law. How might the Human Rights Act be used in criminal proceedings?

Exclusion of evidence

One way the Human Rights Act may be used is to rely on a breach of a right protected in the Act as a basis to exclude evidence. Some practitioners may be very familiar with s 138 of the *Evidence Act 2011* (ACT) which confers a judicial discretion for the exclusion of improperly or illegally obtained evidence. The provision applies to evidence that

² Re Application for Bail by Isa Islam [2010] ACTSC 147.

³ *R v QX (No 2)* [2021] ACTSC 244.

⁴ *Ngata v The Queen* [2020] ACTCA 18.

⁵ *Hubzin v The Commissioner for Social Housing; Van Loo v The Commissioner for Social Housing; Irwin v The Commissioner for Social Housing* [2026] ACTSC 11.

⁶ e.g. *Ngata v The Queen* [2020] ACTCA 18; *McIver v ACT* [2024] ACTCA 36.

was obtained in contravention of an Australian law or in consequence of a contravention of an Australian law, including the Human Rights Act.

Once it is established that the evidence was obtained in contravention of an Australian law or in consequence of a contravention of Australian law, the desirability of admitting the evidence is weighed against the undesirability of admitting the evidence that has been obtained improperly or illegally.

Sub-section 138(3) sets out a non-exhaustive list of factors that the court may take into account when determining whether to exercise the discretion to exclude the evidence. The factors include the probative value of the evidence and importance of it, the relevant offence, the gravity of the impropriety or contravention, but also:

“(f) whether the impropriety or contravention was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights;”

Therefore, the breach of a right protected by the ICCPR is expressly recognised as a factor that the court may take into account when the court is deciding whether to exercise the discretion to exclude the evidence. The Human Rights Act is a separate, additional path: arguing that breach of the HRA (s 40B) is itself a *contravention of an Australian law* under s 138(1)(a), and/or *impropriety* under s 138(1)(b), sharpens the focus of s 138(3)(f) by giving domestic legislative weight to the ICCPR rights it mirrors. The leading case where this argument has succeeded is *DPP v Kaba* [2014] VSC 52. In *Kaba*, the relevant rights were freedom of movement (s 12) and privacy (s 13) of the Victorian *Charter*, both of which have direct ACT analogues (ss 13, 12). Bell J upheld the Magistrate's exclusion of the demand-and-refusal evidence on which the offending was based.

There are many rights that may be relied on for this type of argument. For example, the right to privacy is a right not to have one's privacy unlawfully or arbitrarily interfered with. In another case, a prisoner argued that a court ordered psychiatric report should be excluded because it was prepared in circumstances that allegedly involved a breach of their privacy right. The prisoner argued that

the interview undertaken with the psychiatrist was not private because it was not held in a private room.⁷

It is not difficult to imagine other fact scenarios in which there may be a basis to rely on the Human Rights Act in the application of s 138 of the Evidence Act, such as an unauthorised search or seizure of evidence. The framework for this type of argument is in place, and indeed, there is precedent. There is no principled reason why the ACT should not develop a body of jurisprudence in this area.

Child protection and discrimination

It is worth recalling that the Human Rights Act protects a range of non-discrimination and equality rights (s 11), as well as protecting a broad right to the protection of a family. Children also have a right “to the protection needed by the child because of being a child, without distinction or discrimination of any kind.”

There is a paucity of jurisprudence across all of the statutory Human Rights Acts on the application of these rights in the child protection area, including in the context of voluntary agreements. Voluntary agreements are contracts made between a child's parents (or other person with parental responsibility) and the relevant statutory child protection authority under which the parents agree that the child is placed in out-of-home care, or accept particular forms of departmental involvement, without the need for a court order. In the ACT the agreements are made under part 12.3 of the *Children and Young People Act 2008* (ACT) between the parent and the Director-General of the Community Services Directorate.

From a human rights perspective, voluntary agreements engage numerous rights: the protection of families (s 11), the rights of children (s 11(2)), recognition and equality before the law (s 8), the right to a fair hearing (s 21), and often the cultural rights of Aboriginal and Torres Strait Islander peoples (s 27(2)).

⁷ *Vlahos v DPP (Vic) and Victorian Institute of Forensic Mental Health* [2021] VCC 1520.

Repeated, rolling voluntary agreements raise questions as to the compatibility of the Department's actions with human rights.

When it comes to First Peoples' children, we know, and have known for some time, that children are over-represented in the ACT child protection system.⁸ The practices that contribute to that over-representation, including the way decisions are made to remove children from families and to keep them in out-of-home care are areas that would be well suited to scrutiny under the Human Rights Act. Some of this work was done in Victoria in the Yoorrook Justice Commission,⁹ but the jurisprudence is underdeveloped.

In considering this area further, we also should not forget that we have a series of Commonwealth anti-discrimination laws including the Racial Discrimination Act. Enacted following Australia's ratification of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) in 1975 using the external affairs power, the provisions are underused and yet the scope of the protections are wide.

Climate

Perhaps the fastest growing area of human rights law jurisprudence internationally is climate change litigation. And in this area, far from lagging behind other parts of Australia, the ACT's enactment of environmental rights is leading the way.

Leading the way because it is the only jurisdiction to legislate a human right to a clean, healthy and sustainable environment. The legislative development is particularly significant because of the state of the common law which has so far not recognised a novel duty of care to protect children from the effects of climate change, despite attempts for it to do so: for example in the *Sharma*¹⁰ litigation and more recently in *Pabai*.

So it is worth asking whether and how the enactment of the human rights to a clean, healthy and sustainable environment may be used by practitioners? Will it make a difference?



The consequences include rising sea levels, threatening coastal communities...

When the environmental rights were enacted, unlike the other rights protected in the Act, they were legislated with an important proviso. The proviso, in s 40C(8) is that legal proceedings may not be brought in respect of a claim that a public authority has acted in contravention of section 40B if the contravention claimed is a breach of the new environmental rights.

But the door is not shut. It is ajar. Section 40C(9) tells us that a person may still make a claim in relation to another human right even if the subject matter of the claim or part of the claim is the same, similar or related to the subject matter of a claim to which subsection (8) applies. There are a range of human rights that may be relevant, including those referred to by the International Court of Justice in its *Advisory Opinion* – such as the right to life, cultural rights and the protection of families and children. The International Court reminds us in the *Advisory Opinion* that the “consequences of climate change are severe and far-reaching; they affect both natural ecosystems and human populations.” The consequences include rising sea levels, threatening coastal communities, the disruption of natural habitats pushing certain species towards extinction, human life and health are being put at risk. “These consequences,” the Court said, “underscore the urgent and existential threat posed by climate change.”¹¹ The International Court has done the analytical work connecting climate change to human rights. The task for practitioners is to bring that reasoning into this jurisdiction.

⁸ *Our Booris, Our Way*, Final report (December 2019).

⁹ Yoorrook for Justice, *Report into Victoria's Child Protection and Criminal Justice Systems* (2023).

¹⁰ *Sharma v Minister for the Environment, Pabai v Commonwealth* (No 2) [2025] FCA 796.

¹¹ at [73].



The right to life is especially relevant.

Coronial context

Turning now to a different context, there is scope for the Human Rights Act to be used by advocates in coronial proceedings.

When acting for an interested party, or perhaps as Counsel Assisting the Coroner, the Act can be relied upon to ensure the coronial *process* is compatible with human rights, especially the right to life.

There is yet to be any superior court authority from any Australian Human Rights Act jurisdiction on whether the coroner is a public authority when carrying out the function of conducting an inquest. There are divided opinions on this question. One view is that the coroner is performing an administrative function and is therefore a public authority when conducting an inquest, because the coroner is not doing things that would be understood to fall within the exercise of judicial power, for example, determining a dispute between parties by way of a legally binding resolution.

If the Coroner is a public authority when conducting an inquest, the s 40B public authority obligations apply to it, meaning the coroner must give proper consideration to relevant rights and act compatibly with them.

The right to life is especially relevant. Protected in s 9 of the HRA and in Article 2 of the ECHR, the jurisprudence from the ECHR is rich in this area. It requires that where the State may bear responsibility for a death — particularly a death in custody, a death in care, a death involving police force, or a death where State agencies on notice failed to protect the life of a known-at-risk person — an investigation into the death must be: (i) independent, (ii) effective, (iii) prompt, (iv) sufficiently open to public scrutiny, and (v) involve

the next of kin. The right to a fair hearing is also relevant, and potentially engages the rights of family members and interested persons to be heard, representation, and to participate meaningfully in the inquest.

But the other important rights that are relevant are the cultural rights of Aboriginal and Torres Strait Islander peoples, particularly in inquests into Aboriginal deaths in custody, and to the way a coroner conducts such an inquest.

At present, there is no analogue in the ACT to the Coroners' Court of Victoria *Practice Direction 6 of 2020* on cultural safe practices for indigenous deaths in custody. That Practice Direction formalises a set of culturally informed processes developed within the Court, some of which arose from the many unfulfilled recommendations of the *Royal Commission into Aboriginal Deaths in Custody* (1991). The protocol sets out requirements for early engagement with the Victorian Aboriginal Legal Service within 48 hours of the death to facilitate independent legal advice to the senior next of kin about the coronial process and the family's rights; an early directions hearing to give the deceased's family early visibility over the process; preparation of a cultural brief, identifying issues specific to the deceased's community, kinship and cultural obligations, so that those matters are accommodated procedurally and substantively.

In terms of the conduct of hearings, the protocol requires inquests to be convened in a culturally appropriate manner: acknowledgement of country, smoking ceremonies where requested, in-court display of cultural items, and warnings before any use of the deceased's name.

More generally, relying on the Human Rights Act may be important when acting for deceased's family member in terms of the exercise of the coroner's power to hold (or not

hold) an inquest, the scope of the inquest, the conduct of the inquest – for example, standing, and evidential issues, and the findings and comments at the conclusion of an inquest.

That all relates to the *process* undertaken in the Court. The second area in the coronial context in which the HRA may perform a role is through parties seeking factual findings that rights have been interfered with by public authorities who were involved in the person's care before their passing.

There is a growing number of cases reporting findings relating to human rights, most recently in the *Inquest into the death of LX*, handed down on 15 April 2026 into the death of a man who was held in post-sentence detention following his conviction for sex offences. Numerous findings were made by the Coroner about the Charter including the duty of the Department of Justice and Community Safety to protect the right to life was not adequately discharged.¹² The Coroner also found that LX was not treated with dignity and due respect as required by s 8 of the Charter; LX was “effectively detained”; and further, LX had rights under ss 21 and 22 of the Charter requiring him to be provided by the Department with reasonable opportunities to engage in treatment and rehabilitation programs. Finally, the Coroner found the right to families was not protected by reason of the way LX's mother was treated by a Department staff member, and the family visitation situation at Corella Place.

Findings like these may have utility. Leaving aside the potential for a coroner to form the view that they have reasonable grounds for believing that a criminal offence has been committed by a person mentioned at the inquest (s 58, *Coroners Act 1997* (ACT)), there may be utility for a deceased's family to obtain factual findings: not only for vindicating the deceased person's human rights, but also the strategic benefit in obtaining factual findings for subsequent civil law proceedings.

There are limited coronial decisions referring to the ACT Human Rights Act. For example, in *Inquest into the death of Steven Claude Freeman* [2018] ACTCD 7, a 25-year-old Aboriginal man who died at the Alexander Maconochie Centre. It contains a brief reference to the right to life.

There is potential to use the HRA in this jurisdiction both with respect to the procedures adopted by the Court and to inform the conduct of an inquest and subsequent findings and comments. The underutilised potential may be particularly important where an inquest raises systemic issues and failures of the State, such as the deaths of First Peoples in custody.

The final area to mention is planning law.

Planning

There is a young man called Jai living at home with his parents in Melbourne who has profound autism. He can't leave home without the support of two adults. His home has been adjusted so that he can live comfortably there. Jai has never lived anywhere else. He spends most of his time at home, including in the backyard garden. Next door to Jai's family home, a property developer acquired the land and sought a permit to demolish the existing single storey home and build an apartment building.

The permit would have permitted a seven-story building next door which would have had the effect of significantly removing the sunlight from Jai's backyard.

Planning and human rights are not areas of law that would appear to have much in common. The planning system is one that governs the use and development of land through controls that are mostly entirely agnostic as to the characteristics of individuals. Who ever happens to be living next door to a permit applicant is generally irrelevant.

Unlike the Territory, in Victoria, planning permit applications are largely determined by local councils. They are public authorities under the Charter, as is the ACT Planning and Land Authority which administers the Territory Plan governing land use and development across the ACT and assesses most development applications.

Back to Jai's case. After some persuasive advocacy by his family, the local Council refused the permit application for the construction of the seven-storey apartment building, including on the basis that granting the permit would

¹² *Finding into Death with Inquest of LX*, COR 2020 2744 at [17]–[21].

breach Jai's human rights to privacy and protection of family and children. At the time the permit application was decided, Jai was 17 years old.

The developer sought review of that decision in the Victorian Civil and Administrative Tribunal. It argued that the human rights ground should be summarily struck out. Human rights arguments were put before the Tribunal, which was persuaded that this ground for refusing the permit should remain. Jai's family, for whom I had the pleasure to act, relied on the privacy right, the protection of families and the equality and non-discrimination rights. The Tribunal agreed it was a public authority and had to act compatibly with human rights. It agreed that Jai's human rights were relevant to the decision as to whether to grant the permit and should not be summarily dismissed.¹³

The case is an example of human rights arguments proving consequential in a planning case. It required creative thinking about how two apparently unrelated areas of law could be made to work together in the service of one person's quality of life. Ultimately, we got a great outcome for Jai. Following our success in the Tribunal, Jai got more sun in his backyard.

With the right to adequate housing commencing next year, there will be new opportunities to think about how human rights can assist in the housing space.

It required creative thinking about how two apparently unrelated areas of law could be made to work together in the service of one person's quality of life.

Conclusion

The Human Rights Act is now more than two decades old. It has been amended, expanded, and with the new rights to a healthy environment and adequate housing, it is more ambitious in its reach than ever before.

The International Court of Justice reminds us in the Advisory Opinion on the *Obligations of States in respect of Climate Change* that "[H]uman rights are focused on the protection of individuals and peoples and are not limited to specific fields of activity."¹⁴

While I have given you somewhat of a taxonomy of areas in which the Human Rights Act may be consequential, the potential is more far reaching. Our clients, and in particular the most vulnerable among them for whom the Human Rights Act is most important, need us to bring our skills to its interpretation and application. I encourage you to think about the Human Rights Act when you are with your clients and in court. Let's continue to use our creativity and make the arguments so that it maintains its place as an important law in the Territory.

This article is an edited version of a presentation delivered to the ACT Law Society on 25 May 2026 and co-hosted by the ACT Human Rights Commission. The views expressed are those of the author. This article is provided for general information only and does not constitute legal advice.

¹³ *Bespoke Development Group Pty Ltd v Merri-bek CC* [2023] VCAT 758 (5 July 2023).

¹⁴ at [371].



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Ogbonna v Link Workforce Pty Ltd (No 2)

[2026] FCA 298; Ogbonna v Link Workforce Pty Ltd (No 3) [2026] FCA 668; and the Federal Court's Litigants in Person Practice Note (GPN-LIP)

THE ACT LAW SOCIETY PUBLIC LAW COMMITTEE



The Litigants in Person Practice Note (GPN-LIP)

The Federal Court of Australia's Litigants in Person Practice Note (GPN-LIP) was published on 5 March 2026. The stated purpose of the Practice Note is to explain to self-represented litigants their responsibilities, what they must and must not do, what the Court and its staff can and cannot do, and how proceedings are expected to be conducted.

GPN-LIP was introduced against the background of increasing numbers of self-represented litigants in the Federal Court and the practical difficulties that self-representation can create for courts, represented parties and litigants themselves. In a paper delivered at the Commonwealth Law Conference shortly before GPN-LIP commenced, Chief Justice Mortimer explained that the Court was developing a suite of initiatives to manage self-represented litigation more effectively while maintaining access to justice, procedural fairness and the efficient resolution of disputes.¹

GPN-LIP emphasises that appearing before the Court without a lawyer is a serious undertaking carrying responsibilities. It explains that self-represented litigants must comply with court orders, present their cases through proper procedural mechanisms rather than informal communications with the Court, and conduct themselves respectfully towards judges, court staff and other parties. The Practice Note also explains that the obligations imposed by ss 37M and 37N of the *Federal Court of Australia Act 1976* (Cth) require the Court and parties to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible.

The decisions in *Ogbonna* (No 2)² and *Ogbonna* (No 3),³ discussed in the following section, provide an early illustration of how the Court has applied GPN-LIP in practice to address disruptive conduct by a self-represented litigant.

¹ fedcourt.gov.au/digital-law-library/judges-speeches/mortimer-cj/mortimer-cj-20260227

² *Ogbonna v Link Workforce Pty Ltd* (No 2) [2026] FCA 298.

³ *Ogbonna v Link Workforce Pty Ltd* (No 3) [2026] FCA 668.

Background to the Ogbonna decisions

The applicant in the Ogbonna decisions has a long history of litigation. The proceedings against Link Workforce Pty Ltd—heard in the weeks immediately following GPN-LIP’s commencement—included applications for relief against general protections contraventions under the *Fair Work Act 2009* (Cth) and defamation. A sequestration order was subsequently made against his estate, and his trustee in bankruptcy elected to discontinue the general protections component of the proceeding. Following the later setting aside of the sequestration order, the applicant sought to reintroduce the discontinued claim.

The Court granted leave for the claim to be reintroduced in *Ogbonna (No 2)*. The Court considered that refusing to do so would create unnecessary cost, delay and inefficiency and would be inconsistent with the overarching purpose of civil practice and procedure in s 37M of the *Federal Court of Australia Act 1976* (Cth).

Conduct of the applicant

In addition to dealing with the application to reintroduce the discontinued general protections claim, *Ogbonna (No 2)* also addressed concerns about the applicant’s conduct as a self-represented litigant during a case management hearing on 12 March 2026. The Court found that his conduct substantially disrupted the hearing:

- The applicant was late to the hearing and did not apologise for delaying the commencement of the hearing. Instead, he asserted at one point that it was the presiding judge’s fault for dismissing his application for summary judgment in 2023.
- The applicant became agitated and aggressive, interrupted repeatedly, and ‘made numerous and baseless and unfounded assertions of bias, racism, fraud and crimes directed at the presiding judge, another judge of the Court, and a Registrar of the Court’. The Court characterised these assertions as ‘objectively disrespectful, scandalous, abusive and insulting’.
- The applicant threatened to contact members of Parliament and national integrity bodies in respect of the presiding judge, and threatened to take steps to have the presiding judge removed from judicial office and prosecuted for unspecified crimes.

- The applicant interrupted the respondent’s counsel and approached him in a physically and verbally threatening and intimidating manner. The applicant also threatened to bring a case of fraud and contempt of court against counsel and take steps to have counsel’s practicing certificate revoked.

The Court considered it was fundamental to the proper administration of justice that any person (including judge, registrar, court staff, litigant, lawyer, witness or member of the public) is able to attend court and participate or observe court proceedings without fear of physical harm, verbal abuse or insult, intimidation or threats of any kind.

The Court therefore required the applicant to provide written submissions as to why the proceeding should not be stayed unless he provided an undertaking that he had read and would comply with the standards contained in GPN-LIP. In particular, mirroring much of the language in paragraphs 4.7 to 4.12 of GPN-LIP, that he:

- will act respectfully and honestly when dealing with Judges, Registrars, Court staff and lawyers for the other parties, in all written documents, emails and phone calls, when meeting with people in Court or elsewhere, and when attending or appearing at hearings in Court;
- will not shout, swear, threaten or be rude;
- will only contact the Court when he has to or when his contact relates directly to his case;
- will copy all emails or letters to the Court to the lawyers for the other party;
- will not send multiple similar emails to the Court and try to argue his case in emails;
- will comply with the orders of the Court; and
- will attend all court hearings at the right place and at the right time.

In *Ogbonna (No 3)*, after the applicant refused to provide the required undertaking and the Court considered his subsequent conduct, the Court ordered that the proceeding be stayed until he provided a written undertaking to comply with the standards in paragraphs 4.7 to 4.12 of GPN-LIP. In the 6 May 2026 case management hearing, the applicant was late, interrupted the presiding judge numerous times, became agitated, angry and aggressive, and a short adjournment was required.

The Court's treatment of the Litigants in Person Practice Note

GPN-LIP is a framework for behavioural expectations to allow for procedural fairness

The Court did not treat GPN-LIP as creating special obligations unique to self-represented litigants. Instead, it considered GPN-LIP as a statement of the minimum standards of behaviour expected from a party in litigation.

In *Ogbonna (No 2)*, the Court considered it necessary to stay the proceeding unless and until the applicant gave a written undertaking that he had read GPN-LIP and would observe the standards of conduct in paragraphs 4.7 to 4.12, as his conduct, if continued, would render it 'impossible or extremely difficult' for the Court to accord both parties procedural fairness.

In *Ogbonna (No 3)*, when ordering the stay as a result of the applicant refusing to provide the undertaking, the Court stressed that the stay is not permanent. If the applicant secures legal representation, proffers a suitable undertaking to the Court or otherwise demonstrates he is willing and able to conduct himself in a manner that is consistent with the standards described in GPN-LIP, the stay should be lifted.

The Court's power to control proceedings

The Court relied on its general case management powers, including ss 23, 37M and 37P of the *Federal Court of Australia Act 1976* (Cth) and rr 1.32 and 1.40 of the *Federal Court Rules 2011* (Cth) to make the stay order.

The Court also considered the impact of the applicant's behaviour in circumstances where the matter arises under the *Fair Work Act 2009* (Cth), noting that no adverse costs orders can be made where a party fails to act consistently with the overarching purpose of the civil practice and procedure provisions but does not act unreasonably within the meaning of s 570 of the *Fair Work Act 2009* (Cth). In these circumstances, the Court considered it important to resolve matters arising under the *Fair Work Act 2009* (Cth) at a cost that is proportionate.



Conclusion

The Court's decisions in *Ogbonna (No 2)* and *Ogbonna (No 3)* do not change the role or powers of the Court when it comes to self-represented litigants. However, GPN-LIP provides a clear statement of expectations in relation to the behaviour of self-represented litigants. The Court has demonstrated that it is willing to use GPN-LIP in a practical way to require self-represented litigants to behave respectfully, by staying proceedings where behaviour threatens the ability to conduct a matter with procedural fairness.

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From the courtroom to repair

ACT COURTS AND THE RESTORATIVE JUSTICE PROCESS

In June 2026, the ACT Restorative Justice Unit (RJU) reached a significant milestone with its 500th referral from the ACT Magistrates Court. This milestone highlights the important role courts and legal practitioners play in connecting eligible matters to the RJU and to consider how court referrals contribute to a justice system that can respond not only to offending, but also to repairing harm.

Since commencing in 2005, the RJU has provided a structured, voluntary process where victims, offenders and, where appropriate, their supporters can address the harm caused by offending. The RJU operates both alongside, and as an alternative to, the traditional justice system offering an additional opportunity for participation, communication, responsibility and, where possible, repair.

The ACT Courts are a major gateway to restorative justice. In 2025–26, the RJU received 153 referrals with 48 percent of these referrals coming from the ACT Courts and ACT Circle Sentencing Courts.

By the time a matter reaches court, sufficient information is often available about the offence, those affected and the broader circumstances to consider whether restorative justice may be appropriate. Lawyers are therefore well placed to identify when restorative justice may be suitable, explain how it relates to court proceedings and support clients to make informed decisions. If clients go to court for sentencing after restorative justice, the court may take participation into consideration.

Referrals can also be made by other referring entities, including ACT Policing and the Director of Public Prosecutions at other stages of the criminal justice process. Restorative justice is available for all offence types in the ACT. It is also available for harmful conduct by children, including those under the minimum age of criminal responsibility.

The benefits of a restorative justice process

Criminal courts play a key role in holding people accountable and upholding justice. But the answers a court provides do not always address the questions that remain for those affected by the offence.

A victim may want to know:

- Why did this happen?
- Why me?
- Did the offender understand the impact of what they did?
- What has changed?
- What can be done to reduce the risk of further harm?

An offender may want to understand:

- Who was affected by what I did?
- How did my actions impact them?
- What can I do to take responsibility?
- Is there anything I can do to repair the harm?
- What needs to change to reduce the risk of further harm?

The RJU provides an opportunity for these questions to be answered where it is safe, suitable, and voluntary to do so. Conferences will involve victims, offenders, and supporters coming together with careful preparation and facilitation by the RJU. Participation may occur directly, with parties meeting together, or indirectly, including through video-conferencing arrangement where appropriate.

The ACT Restorative Justice Unit (RJU) reached a significant milestone with its 500th referral from the ACT Magistrates Court.

Where appropriate, participants may reach an agreement aimed at repairing harm. The content of any agreement will depend on the circumstances and the needs of those involved.

Flexibility within the restorative justice process is important so the process is responsive to the particular people and harm involved. Meaningful outcomes can be different from one matter to another.

Importantly, restorative justice is not an easy option. For offenders, hearing directly about the impact of their actions and engaging in meaningful accountability can involve a level of personal responsibility that differs significantly from traditional court proceedings.

The restorative justice process can help an offender view the victim not simply as a name in a statement of facts, but as a real person whose life has been affected by what happened.

Restorative justice can have positive impacts for the broader ACT community by:

- reducing reoffending
- strengthening community ties
- increasing public confidence in a fair and effective justice system.

By repairing harm, restorative justice can contribute to communities feeling safer and more connected.

Victim-centred participation

Restorative justice gives victims an opportunity to be heard on matters that are important to them. A victim-centred approach considers a victim's experiences and needs, and recognises that each victim experiences offending differently. They may not want the same process or outcome as someone else.



For some victims, asking questions may be important, and others may want the offender to understand the ongoing impact of their behaviour. Some victims may wish to discuss practical steps that could contribute to repair and other victims will not want to participate in the process at all.

The voluntary nature of restorative justice is central to the integrity of the process. The choice of every victim must be respected.

This distinction is important for legal practitioners. The court referral pathway matters in this context because it can create access without creating an obligation.

Making a referral to the RJU allows potential suitability and participation to be explored, but it does not mean that a victim must engage. A restorative process should support informed choice and careful preparation, particularly where the effects of offending are complex or ongoing.

The outcomes achieved through RJU demonstrate the value of this approach. During 2025–26:

- 29 conferences were held
- 86 percent of conferences satisfied the needs of the participants without the need for a formal agreement
- 100 percent of these agreements were complied with at the end of the reporting period
- overall participant satisfaction rate was 94 percent among both victims and offenders

The role of legal practitioners

Awareness is the starting point for effective referrals.

A practitioner does not need to determine if a matter is suitable for restorative justice or whether a victim will want to participate. However, they should be alert to the availability of restorative justice as a potential pathway and ensure clients receive accurate information about the process.

For victims, legal advice may help explain how restorative process sits alongside traditional justice proceedings, its potential benefits and what participation may involve. For offenders, legal professionals can explain the potential benefits of restorative justice in the context that it is a process focused on accountability and repairing harm, not simply a tactical step in criminal proceedings. Clear advice can help protect the voluntary nature and integrity of participation.

Legal professionals can also correct common myths about restorative justice:

- Restorative justice does not automatically involve a face-to-face meeting
- A referral does not guarantee that a conference will proceed
- Careful assessment and preparation are essential to the process

The ACT Courts as a referral pathway

The ACT Magistrates Court deals with a substantial volume, and range, of criminal matters, and is a key point of connection between the community and the justice system. Reaching 500 referrals from the Magistrates Court demonstrates the important relationship between traditional court processes and the RJU and tells a broader story about the place of restorative justice in the ACT.

Of the 73 referrals made by the ACT Courts in 2025–26:

- 53 percent came from the Magistrates Court
- 27 percent came from the Galambany Circle Sentencing Court
- 15 percent came from the Children’s Court

While not every referral results in a conference, each referral gives the RJU an opportunity to assess suitability and explore participation with those affected.



Looking ahead

After more than two decades of operation, restorative justice has established itself as an important part of the ACT justice landscape.

The 500th referral from the Magistrates Court is a significant milestone, but it is also a reminder to recognise this development while keeping focused on the work ahead.

Restorative justice can address things that traditional criminal proceedings are not always designed to explore. It gives participants opportunities to:

- ask questions
- talk about the impact of harm
- take responsibility
- consider what might help repair the harm.

Restorative justice complements, rather than replaces, the work of the courts. By creating opportunities for participants to ask questions, discuss harm, accept responsibility and explore repair; it addresses needs that traditional criminal proceedings are not always designed to meet.

Strong collaboration between the courts, RJU and the legal profession remain essential to ensuring that people affected by crime have meaningful opportunities to participate in processes that support accountability, repair, and healing.

Learn more about the RJU and the restorative justice process on the ACT Government website:
act.gov.au/law-and-justice/restorative-justice



The **Restorative Justice Unit** is part of the ACT Justice and Community Safety Directorate and delivers restorative justice services to people affected by offending in the ACT.

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grow my career."*

– Mark Evans, LLM Graduate



Early Career Lawyers

Reflections on the first year after admission

Starting a legal career is a significant milestone. The first year in practice is often filled with new responsibilities, steep learning curves, and opportunities to grow both professionally and personally. It is a time when theory meets practice, and when experience, guidance, and resilience begin to shape the lawyer you will become.



SARAH MANWARING

LAWYER, CLAYTON UTZ

What aspects of your job have you found surprisingly rewarding?

I'm currently rotating through the Public Sector: Corporate team within my firm, which specialises in government ICT procurement and contracting. When I started, I imagined procurement work would be fairly transactional - primarily contracts and compliance. What I didn't expect was how much of it connects to something real; the ICT projects we advise on underpin services that everyday people rely on, so there's a genuine sense that the work matters beyond the deal itself.

In every issue of *Ethos*, the Engagement team invites recently admitted members to share their experience of their first year in the profession. Their reflections provide an authentic glimpse into the challenges, achievements, and lessons that come with taking those first steps in legal practice.

This edition features insights from Sarah and Kate who generously share their experiences and what they have learned along the way.

I've also found the variety far more engaging than I anticipated. On a single matter, I might be grappling with a point of contract law, a probity issue, an unfamiliar technology and the client's commercial and policy objectives all at once. And because government engagements often run over months (or sometimes years!), you build real relationships with clients and have the opportunity to see a project through its entire lifecycle.

What surprised you the most about working as a lawyer in your first year?

How much of the job isn't strictly "legal". I arrived ready to deploy everything I'd memorised throughout university, and quickly learned that the real skills are judgement, commercial awareness, clear writing and communication, and simply staying organised across a lot of moving parts.

I was also surprised by how much responsibility you're trusted with early on. From the outset, I've been contributing to advice that clients genuinely rely on, which is equal parts exciting and a very effective way to learn quickly (and to double-check your work!).

Working in ICT procurement, you pick up a real working knowledge of technology, government processes and how large projects actually come together. I never expected to become the kind of person who would get quietly excited about a well-run tender process, and yet here we are.

Every lawyer has their own personality, communication style, and approach to problem-solving. Supervision provides benchmarks for excellence, but it also creates space to grow, experiment, and discover what feels authentic and sustainable in one's own practice. That realisation that I could learn from others while gradually shaping my own approach was an unexpectedly freeing moment.

What was the biggest difference between law school and the real-world practice of law that you encountered?

At university, problems are presented as clean fact patterns that point towards a single “right” answer. In legal practice, however, finding that answer can be much less straightforward. Often, the first task is working out what the facts actually are and what the client really needs - which is not always the same as what they have asked for.

There is rarely a single correct answer; instead you’re weighing risk, commercial reality, and time and cost to arrive at advice that’s genuinely useful. I also had to unlearn the exam habit of setting out everything I knew. A busy client wants clear, practical advice they can act on, not a thesis - so learning to be concise and get to the point was a bigger shift than I’d expected.

What advice would you give to law students or recent grads entering their first year of practice?

A few things - and I am by no means an expert yet! Ask questions, and ask them early. No one expects you to have all the answers in your first year, and a quick question beats an hour of quietly guessing. Saying “I don’t know, but I’ll find out” is a perfectly good answer, and much better than a confidently incorrect one.

Focus on being reliable and getting the details right. Following through, meeting deadlines, and producing careful work will build trust far more quickly than any single clever insight. Stay curious about your clients’ world, not just the law; better advice comes from understanding a client’s industry, priorities, constraints and commercial context.

Finally, look after yourself and invest in your relationships across the firm. Mentors, colleagues and friends can make an enormous difference to both how much you learn and how much you enjoy the work you do.

**KATE STRETTON**

SOLICITOR, COLQUHOUN MURPHY LAWYERS

What aspects of the job have you found surprisingly rewarding?

Being a lawyer is regarded as adversarial by nature; it’s lawyer v lawyer - at least that is how it is perceived. What I have found surprisingly rewarding is getting to engage with other members of the profession to achieve compromises and outcomes for both clients. I have found that the quick out of court chats in the hallways, the exchanged letters, and phone calls to my colleagues have been very fruitful in achieving positive outcomes for clients. This aspect of the job is rewarding not only for clients, but for the wider legal community by building a collegiate and cooperative atmosphere. I have found contributing to this atmosphere very rewarding for myself as I start my career with this attitude in mind.

It is also exciting to see my fellow law school and PLT course classmates have similar attitudes, where we are shaping the practice into a more respectful, cooperative and collaborative space.

If you were admitted within the last 12 months and would like to contribute to a future edition, we would be delighted to hear from you. Please contact memberconnect@actlawsociety.asn.au

Early Career Lawyers

What surprised you the most about working as a lawyer in your first year?

I have worked in my firm as a paralegal for over four years so I have seen what lawyers in my position are responsible for doing - I had seen the late nights, the quickfire drafting, a few court experiences and some long meetings. That being said, it is still a surprise when I became a point of contact for clients, involved in strategy meetings and became more aware of the bigger, long-term picture for clients. I was surprised at how smoothly this transition happened for me, going from a supporting role to being supported in a sense.

It is very surprising, sometimes daunting, but more often empowering, that I get to play a much larger part in helping people get outcomes - particularly when my actions and knowledge have a direct and positive result for someone.

What was the biggest difference between law school and the real-world practice of law that you encountered?

Law school equips you with the knowledge, the real world will make you rely on that knowledge - the biggest difference is inherently there. Whilst I found law school to be helpful in some practical aspects of the job, nothing can truly prepare you for that first trial or settlement. I learned how to harness everything I had learned from law school, in my work as a paralegal and my other experiences from student society days. I also found law school to be an individual sport, I found that my knowledge base and skillset often developed more in solo library sessions and one on ones with my textbooks, where I can really sink my teeth into an area and think it all the way through. In practice, there is much more discussion and group work when it comes to problem solving and tasks - not only is this quicker, it is also much easier as we pull from all perspectives and experiences. By being in the room, you not only rely on your knowledge for contributions, but you also develop your own knowledge base from what other people say and contribute.

What advice would you give to law students or recent grads entering their first year of practice?

Whilst there are practical items that should be mentioned in advice to new lawyers and students (mainly reading the cases), the best advice I can give is to lower your expectations of yourself. The truth is every first year is bound to make a mistake - the trick is to own up to it immediately and be part of the solution. This is the best way to learn from it and make sure it isn't repeated. Accepting that a mistake is going to happen doesn't mean you should lower your guard, it means you should be vigilant in making sure it's avoidable and if not, solvable. You are not alone in this profession, and not the only one to make mistakes - asking for help and for a quick chat is often the quickest and most efficient way to not make a mistake in the first place. I have also found that thinking through the task is a good strategy to avoid mistakes - asking 'what is the knock on effect here' or 'what could go wrong on this' are simple ways to turn your mind to a problem before it becomes an issue.

Coffee, Connections & Collegiality

Join other early career lawyers for a monthly coffee catch-up on the last Friday of the month.

More details available on [our website](#).

Early Career Lawyers

Advisory Committee

For early career lawyers looking to engage more deeply with the profession, the Early Career Lawyers Advisory Committee offers a practical and meaningful way to get involved.

The Committee focuses on issues affecting lawyers in their first five years of practice, including career development, workplace culture, wellbeing, and access to professional support. It provides a forum for early career voices to inform the Law Society's work and help shape initiatives that respond to the realities of starting out in legal practice.

Committee membership is an opportunity to collaborate with peers, contribute lived experience to discussions on member engagement and professional development, and build connections across the profession. Members help identify emerging challenges, provide feedback on proposed initiatives, and support programs designed specifically for early career practitioners.

If you would like to get involved contact committee@actlawsociety.asn.au

The contented lawyer

How to survive and thrive as a lawyer

Practical guidance on how to survive and thrive during the first few years of legal practice.

Introduction

Legal practice is tough.

Law School might teach you how to think like an academic lawyer and teach some fundamental legal principles but it cannot prepare you for the reality of legal practice. It is not designed for that, nor should it be.

The first five or so years are the toughest. Coping with competing deadlines, the demands of clients, your employers, bureaucracy, the Judiciary and office politics are just the start. Let alone finding the relevant facts and applying the relevant law!

It would be a rare lawyer that has not at some stage in those years asked themselves, *'Am I ever going to get this caper?'*

When I commenced legal practice almost half a century ago, the main practical legal training before admission was by articles of clerkship. You signed a deed promising to serve one of the partners in the firm as his or her servant and in return got paid 60 percent of the salary of the most junior clerk in the office. I'm not sure if the system would survive the *Modern Slavery Act*.

During my articles, one of the partners asked me to write a short letter of advice to a client. I did so. It was about one page long and I was chuffed at the result. I handed the letter to the partner and sat down in the chair. He took out his trusty red pen and without looking up once proceeded to settle the letter reading out the amendments as he went. He wrote in between the lines and up the margins and eventually started writing on the back of the letter.

The colour drained from my face as I slumped in the chair and asked myself the question. When he had finished, he looked at my ashen face and said, *"If I didn't think you were f.....g worth it I wouldn't waste my f.....g time."*

He told me that I had the skills but they just needed refinement.

But he could have taken the approach that I have occasionally seen but mainly heard about. He could have simply read the letter and thrown it back across the desk and told me to do it better without telling where I was going wrong. He could have berated me for getting a law degree and putting that sort of rubbish in front of him.

But in doing that he would have crushed my spirit. It might have led me to find another legal firm or started me on the path of finding something else to do to earn a living. How would either of those been in the interests of the partner?

If you are a senior lawyer reading this, reflect on that anecdote when settling work. Put yourself in the position of the junior lawyer and ask how you would like to be treated? If you have been poorly treated in the past as a junior lawyer there is no need to perpetuate that attitude.

If you are a junior lawyer reading this, and you are getting consistent feedback that your work is not at a sufficient level and you are not improving, you need to ask yourself the question. Perhaps the law is not for you or at least private legal practice is not for you. Perhaps the area of law in which you practice does not resonate with you or your skill set.

Do not ask the question too early in the piece, but don't leave it longer than five years. It won't get any better and you don't want to be practising law just to pay the mortgage and the school fees. You need to enjoy practising as a lawyer.

A guiding hand is sometimes needed during these early years. After I had been practising for about three or four years, one of my partners (admission to partnership came

early in those days) was perceptive enough to pick up that I was struggling a bit with legal practice and asked how I was going. I was honest enough to say that I was struggling a bit with the demands of clients, the demands of partnership and having confidence in the quality of my legal advice.

He then gave me the best piece of advice that I have ever received as a lawyer. He said, *“Alf, if you haven’t f.....d it up, it is always the client’s problem”*.

Once that pithy advice sunk in, the weight lifted from my shoulders. I did not then spend the rest of my legal career in a state of Zen but those words always helped me keep legal practice in perspective.

The underlying philosophy of that advice enables you to assess the client’s problem and occasionally give advice which the client does not want to hear. It preserves your independence from the problem. If you have taken the client’s position as your own, it is more difficult to do that.

On most occasions, some criticism can be levelled at the conduct of your client in a matter. If you have become the client or have come to align with the client’s position, you become stressed when that position comes under challenge from the other side.

It enables you, in cricket parlance, to play everything with a straight bat. Importantly, it lowers your stress level and enables you to cope with the rigours of legal practice.

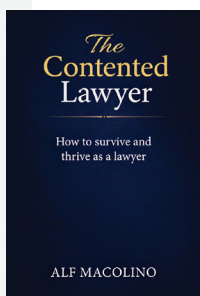


As you can see from those anecdotes, I was fortunate to have had some excellent mentors in my early career, who I should say did not always use the F word in every sentence!

Mentorship is so crucial in being a contented lawyer. The pressures of modern legal practice are such that it is too easy to forget the role that mentorship plays for the benefit of the individual lawyers and for the profession.

Mentorship is not the performance review. It is the gentle enquiry about how things are going. It is the guiding hand of experience as to how to handle a difficult problem. It is giving people confidence to open up without judgement.

When I reflected back about being on both sides of the mentorship equation, I realised that the best mentorship came not from structured monthly meetings but from informal chats over a cup of coffee or behind a closed door where the occasional F word was spoken. The key is to make the time to have a chat.



If you enjoyed reading this article (and even if you didn't!), you might consider buying my recently published book-The Contented Lawyer-How to Survive and Thrive as a Lawyer. You probably won't agree with all of my philosophies on legal practice, but you just might get a different perspective. It is available as a paperback from Vivid Publishing and as an electronic book on the usual electronic publishing websites.

Please visit vividpublishing.com.au/thecontentedlawyer for purchase options.

Look out for the December edition's article 'What does 'Thriving' as an Early Career Lawyer look like to you? By Phil Hansen and Baneen Fatima, members of our Early Career Lawyers Committee.

AUTHOR

Alf Macolino

An Australian lawyer with a career spanning almost half a century, he became a partner at just 23 and practised across commercial law and dispute resolution. His career has spanned a period of profound change-from dictation to shorthand typists to the emergence of artificial intelligence in legal practice.

Beyond his own practice, Alf has brought his trademark humour to the role of editor of The Last Testament, a quarterly publication for wills and estates lawyers.

Recognised in *Best Lawyers* and *Doyle's Guide* for his expertise in property, retirement village, aged care and succession law, Alf combines deep legal knowledge with a genuine commitment to the wellbeing of fellow lawyers.



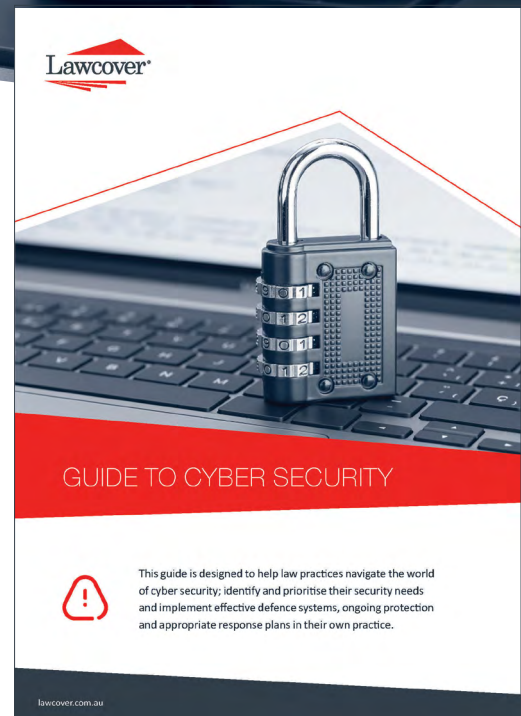
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Guide to Cyber Security

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Celebrating Service, Community and the Law

Law Week is an annual initiative held each May to promote public understanding of the law and its role in society. The ACT Law Society and its partners deliver a diverse program of events that celebrate the legal profession, support the community, and encourage engagement with the justice system.



Held from 22–29 May, Law Week 2026 brought together legal professionals, students and members of the public for a week of education, discussion and community engagement. The week officially commenced with the ACT Law Society's Law Week Awards Gala Dinner, which recognised outstanding service, excellence and leadership across the ACT legal profession while celebrating those who make a meaningful contribution to the community.

Law Week 2026 extended beyond the legal profession to support the wider Canberra community through the ACT Law Society President's annual charity, the Domestic Violence Crisis Service (DVCS). As Law Week coincided with Domestic and Family Violence Prevention Month, fundraising initiatives throughout the week helped raise awareness of domestic and family violence while supporting DVCS's vital work assisting victim survivors across the ACT region.

Through a diverse program of professional development, public education and community events, Law Week highlighted the important role lawyers play in supporting access to justice, upholding the rule of law and strengthening public confidence in the legal system.



Law Week 2026 served as an important reminder of the law's role in everyday life and the legal profession's ongoing commitment to service, community engagement and access to justice. Through education, recognition and collaboration, the week strengthened connections between the profession and the community it serves.

KEY EVENTS

- **The Blackburn Lecture** explored the evolution and significance of the Independent Children's Lawyer (ICL). Marking the 50th anniversary year of the Family Court of Australia, The Honourable Justice Di Simpson of the Federal Circuit and Family Court of Australia (Division 1) reflected on the development of the ICL scheme and its ongoing role in ensuring children's voices and best interests are represented in family law proceedings.
- **The Women in Law Breakfast**, hosted by the ACT Bar Association Women Barristers Committee, brought together members of the profession to celebrate and discuss women's leadership in law. Guest speaker Kellie Friend, CEO of Toora Women, shared insights into supporting vulnerable women and the importance of leadership, advocacy and community impact.
- **Litigating the Human Rights Act**, presented in partnership with the ACT Bar Association and the ACT

Human Rights Commission, featured leading human rights expert Kylie Evans KC. The session explored areas of legal practice where the Human Rights Act remains underutilised and encouraged practitioners to consider new opportunities for human rights-based advocacy.

- **Law Talks**, the ACT Law Society's inaugural mentoring event, connected early career lawyers with experienced practitioners for an evening of mentoring, career insights and professional networking. The event fostered meaningful conversations in an inclusive and supportive environment, helping participants build connections and navigate the early stages of their legal careers.
- **ACT Courts and Tribunal community events** welcomed students and members of the public to engage directly with the justice system through mock jury empanelments, educational court tours, the popular *You Be the Judge* interactive experience, and a local justice exhibition showcasing legal and community organisations.



LAW WEEK AWARDS GALA DINNER 2026



Recognising Excellence, Leadership and Service

Law Week 2026 officially commenced with the ACT Law Society's Law Week Awards Gala Dinner, held on 22 May at the National Museum of Australia. The event brought together members of the legal profession, judiciary, government representatives and community leaders to celebrate service, leadership and excellence across Canberra's legal community.



L-R: Peter Cain MLA; Chiaka Barry, MLA;
ACT Law Society President Vik Sundar;
Aunty Violet Sheridan.

The Gala Dinner marked the presentation of the 2026 Law Week Service Awards and Emerging Lawyer of the Year Awards. The evening celebrated individuals whose dedication and leadership have made a significant contribution to the legal profession and the broader community.

In recognising the award recipients, ACT Law Society President, Vik Sundar highlighted the values of integrity, service and leadership that underpin the legal profession and acknowledged the outstanding calibre of nominations received.

A highlight of the evening was the presentation of the President's Award for Outstanding Service to Andrew Giddings. Mr Sundar described Andrew as embodying the values represented by the award through his longstanding commitment to community service, improving access to justice and strengthening the profession through his extensive contributions to the ACT Law Society and the broader legal community.



Lawcover is proud to be the primary provider of professional indemnity insurance, claims and risk management education to ACT law practices. We remain focused on continuing to provide enduring insurance protection and claims prevention support to ACT lawyers, while assisting the ACT Law Society in promoting best practice of the law.



SERVICE AWARD RECIPIENTS 2026

ANDREW GIDDINGS

President's Award for Outstanding Service

Recognised for his sustained commitment to supporting vulnerable children, families and the broader Canberra community. Through his professional practice, extensive contributions to the governance of the ACT Law Society, and continued service in the face of significant personal adversity, Andrew has exemplified integrity, empathy and public-minded leadership.

JOANNE TWIBLE

Award for Contribution to the Legal Profession and Community

Recognised for her longstanding leadership and advocacy in retirement villages and aged care law. Through more than a decade of contributions to legislative reform and tireless community education, Joanne has strengthened protections for vulnerable older people, improved public understanding of legal rights, and enhanced trust in the legal profession.

ANA ANZANI

Award for Contribution to Access to Justice and Legal Empowerment

Recognised for her exceptional dedication to improving access to justice and advancing legal empowerment. By establishing her own practice to expand pro bono services, and through her unwavering advocacy for children, migrants, refugees and victim-survivors of violence, Ana has demonstrated a profound commitment to ensuring access to justice is not limited by financial means.

The Society also recognised two exceptional early-career practitioners.

2026 EMERGING LAWYER OF THE YEAR AWARD

XIAO LIN KING

Award for Legal Excellence and Leadership in the Coronial Jurisdiction

Recognised for her outstanding work on complex inquests, compassionate engagement with families, and commitment to mentoring and systemic improvement. Through her work, Xiao Lin has demonstrated maturity, sound judgement and dedication to public service well beyond her years.

CAROLINE DOHERTY

Award for Professional Judgement, Independence and Leadership

Recognised for her exceptional professional judgement, independence and leadership potential. Alongside her high-quality legal practice in complex matters, Caroline has demonstrated a strong commitment to mentoring, ethical practice, and expanding access to affordable and pro bono legal services.

The Gala Dinner also provided an opportunity to acknowledge members reaching significant professional milestones, including those marking 40 and 50 years since admission to the profession. Their dedication and contribution to the legal community over many decades served as a powerful reminder of the profession's enduring commitment to service.

The Law Week Awards Gala Dinner remains one of the ACT Law Society's most significant annual events, recognising the achievements of legal professionals who continue to strengthen the profession, support the community and uphold the values at the heart of the law.

The ACT Law Society was pleased to once again partner with Lawcover as the major sponsor of the Law Week Awards Gala Dinner, and acknowledges its valued support in celebrating excellence, leadership and service across the ACT legal profession.

Top L-R: Service Award recipients 2026: Joanne Twible; Ana Anzani; Andrew Giddings; Caroline Doherty; Xiao Lin King.

40 and 50 Years of Service recipients with ACT Law Society President Vik Sundar: Bill Stefaniak; Bronwyn McNeil; Joanne Rees; Vik Sundar; Suzanne Howarth; Vicki Stylianou; Bruce Clarke



Member services

RESOURCES FOR PRACTITIONERS

Professional spaces for hire

*Looking for a modern, professional space to meet clients, run training sessions or hold mediations? Our purpose-built rooms offer flexible layouts, full AV, secure online booking. Members get the first two hours free on all meeting rooms.**



SPACES INCLUDE:

- **M1:** 6-person meeting room
- **M2:** 14-person room with 55" video conferencing display
- **M3:** 5-person meeting room
- **Boardroom:** Seats 24 with a 98" video conferencing display
- **Training rooms:** Up to 72 people, full AV, roving mics + breakout areas

*excludes training rooms + after-hours hire.



Further information about room hire is available [here](#).

AML/CTF

Do you understand your obligations?

For the most up to date information and resources visit the Society's [AML/CTF hub](#).

SPECIALIST CONNECT LINES

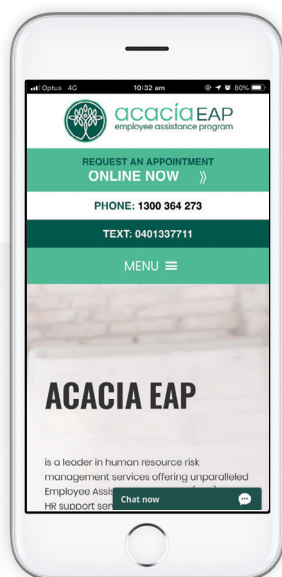
First Nations
1300 520 373

LGBTIQA+
1300 214 958

Domestic and Family
Violence
1800 879 163

Culturally and
Linguistically Diverse
1300 533 904

Disability and Carers
1300 561 043



acaciaEAP
employee assistance program

Acacia EAP

The Law Society has a contract with Acacia Connection to provide a confidential counselling program (called an employee assistance program, or EAP) for its members.

Acacia Connection operates 24 hours a day.

An employee assistance program is a confidential counselling and support service to help members deal with personal or work related problems in a positive way.

Acacia will provide confidential counselling services to people who approach them and identify themselves as members of the ACT Law Society or an immediate family member. The program involves short term counselling of up to three hours of counselling per member per year.

The services provided through the program will remain confidential and independent of the Law Society. The Society will not request, and will not be entitled to be told, any particulars of individual members who have used the service.

Below are some of the areas where members may benefit from accessing the counselling service:

- Relationship and marriage difficulties
- Family and parenting related issues
- Managing grief or loss
- Family illness
- Depression and anxiety
- Stress management
- Addictions
- Work related issues
- Financial Support Service – helps with managing financial difficulties and budgeting
- And any other issues you may be faced with in your work or personal life.

It's easy to connect with EAP Download our App



1. Use the QR code to access our website.
2. Save our website to your homescreen.
3. Open the icon  and 'Chat Now' from the green panel at the bottom of the screen.

Member event

MEMBERS' MEET-UP

Trivia Night

Our annual Trivia Night held in June once again brought together members of the ACT legal profession for an evening of friendly competition, laughter and fundraising.

From legal landmarks and current affairs to pop culture surprises and obscure facts, teams put their knowledge to the test in pursuit of trivia glory, all while supporting the Domestic Violence Crisis Service ACT (DVCS), the Society's chosen charity for 2026.

DVCS is a non-government, not-for-profit organisation committed to providing specialist domestic and family violence support services to anyone in the ACT region. As a specialist domestic and family violence service, we draw on evidence and research to best inform our service delivery. We are here to support people, both during and after crisis situations. We work to prevent and respond to violence and abuse, building safer futures for adults, children and young people impacted by domestic and family violence.

A huge congratulations to all teams who participated and helped make the evening such a success. Most importantly, thank you to everyone who attended, donated and contributed to the night. Events like these showcase the strength of our legal community and the positive impact we can make when we come together to support worthy causes.

We are incredibly grateful to our event sponsors, Nexia Australia, Elliott Gray and SPA Australia, whose support helped bring the event to life. We also extend our thanks to the many local businesses that generously donated raffle prizes.



ELLIOTT GRAY



1st



2nd



3rd

Congratulations to our winning teams!

1ST PLACE

Socceroos 5 USA Nil
APOLLO LAW

2ND PLACE

Maliganis Edwards Johnson
MEJ

3RD PLACE

GG Well Played
GLASS GOODWIN



Member event

2026 New Lawyers Gala Ball

The ACT Law Society's Early Career Lawyers Committee hosted its Annual New Lawyers Gala Ball at the Hyatt Hotel Canberra, bringing together emerging practitioners, law students and legal professionals for a night of celebration, networking and connection.

The Society gratefully acknowledges the support of The College of Law and Moray & Agnew, whose sponsorship helped make the 2026 New Lawyers Gala Ball a success.



Guests enjoyed an evening of great company while also supporting the Domestic Violence Crisis Service (DVCS) through a fundraising raffle. Thanks to the generosity of attendees and prize donors, the raffle contributed to DVCS's important work supporting individuals and families affected by domestic and family violence in our community.



Upcoming events

MEMBERS' MEET-UP

Members Lunch

Thursday 17 September

Step away from your desk and join fellow members for a long lunch at Briscola Italian. Enjoy a delicious three-course meal, great conversation and the opportunity to connect with colleagues from across the profession. proudly supported by [Nexia Australia](#), [Elliott Gray](#) and [SPA Australia](#), tickets are heavily subsidised, with a limited number of \$25 tickets available for new lawyers and students.

[REGISTER HERE](#)



End of Year Party

Thursday 26 November

Don't miss this excellent opportunity to connect with peers, build valuable relationships within the legal community, and celebrate the successes of the year.

Have your say

We're planning future networking and social events and would love your input. Complete our quick survey to let us know what events, formats and opportunities you'd like to see from the ACT Law Society. Your feedback will help shape a calendar that reflects the interests and needs of our legal community.

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The College of Law ACT team was delighted to sponsor the New Lawyers Gala Ball and enjoyed reconnecting with many of our PLT alumni community. Thank you to the New Lawyer Committee and the Law Society's events team for bringing us together to celebrate and connect. Where's next? The College of Law provides the unique [LLM \(Applied Law\)](#) program across a broad range of practice areas.



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High Court Judgments

JUNE 2026 / AUGUST 2026

COURTS

Judicial disqualification: Reasonable apprehension of bias

In *SunshineLoans Pty Ltd v Australian Securities and Investments Commission* [2026] HCA 8 (18 March 2026), the High Court (Gageler CJ, and Gordon, Edelman, Steward, Gleeson, Jagot and Beech Jones JJ) unanimously dismissed an appeal from the Full Court of the Federal Court of Australia.

This appeal arose from regulatory proceedings brought by the Australian Securities and Investments Commission (ASIC) over contraventions of the *National Consumer Credit Protection Act 2009* (Cth) over prohibited fees in relation to their small amount credit contracts.

Evidence was given by a Mr Powe on behalf of SunshineLoans. After the conclusion of the liability proceedings, the appellant sought orders that the judge recuse himself from hearing the penalty proceedings.

SunshineLoans argued that there were two bases – a broader basis that there was apprehended bias as to liability against SunshineLoans and a narrower basis against further evidence that may be given by Powe.

The trial judge rejected the broader basis argument but recused himself on the narrower basis. The matter was appealed to the Full Court of the Federal Court, which rejected both grounds and remitted the matter to the trial judge for determination of penalty.

In interpretation of the test “if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide”, per the Full Court of the High Court of Australia’s decision in *Ebner v Official Trustee in Bankruptcy*,¹ The High Court held:

“The correct application requires: ‘(1) identification of the factor which it is said might lead a judge to resolve the question other than on its legal and factual merits; (2) articulation of the logical connection between that factor and the apprehended deviation from deciding that question on its merits; and (3) assessment of the reasonableness of that apprehension from the perspective of a fair-minded lay observer’ (at [1]).

The High Court quoted the trial judge’s assessment of Powe, stating that “Ultimately, his evidence was not credible in the face of the objective evidence, and he was also not a witness who tried to give his evidence in an honest manner” (at [26]).

ASIC appealed to the Full Court of the Federal Court. The High Court held that no apprehended bias arose.

CONSTITUTIONAL LAW

Migration: Conditions on bridging visas

In *EGH19 v Commonwealth* [2026] HCA 7 (18 March 2026), the High Court (Gageler CJ, and Gordon, Edelman, Steward, Gleeson, Jagot and Beech Jones JJ) by majority answered in the affirmative that the relevant section was inconsistent with Chapter III of the Constitution and ordered costs against the commonwealth. There were six separate judgments given, with Gageler CJ and Gleeson J giving a joint judgment.

In response to the High Court’s decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137 (NZYQ), the commonwealth parliament made changes to the *Migration Act 1958* (Cth). It also enacted the *Migration Amendment (Bridging Visa Conditions) Act 2023* (Cth) and the *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023* (Cth). These effectively created two statutory regimes that would restrict the liberty of an NZYQ-affected person under a Bridging (Pending Removal) Visa (BVR).

These two regimes would require one of:

- an ankle bracelet and a curfew
- community supervision
- a detention order.

Failure to comply with either the curfew or monitoring conditions would result in a mandatory minimum one-year prison sentence up to a maximum of five years.

EGH19 is a citizen of Papua New Guinea and arrived in Australia in 2000, aged 11 years. He was convicted of murder as a juvenile in 2006 and served a prison sentence until 2018 when he was released from prison, but he was taken into immigration detention in 2022.

He was then convicted of domestic violence and intimidation and, in April 2024, received a three-month sentence for those offences. He was later sentenced in July 2024 to an 18-month sentence with a 10-month non-parole period. His visa was subsequently cancelled. Upon release, he was taken into immigration detention but, on the basis that there was no real prospect of his removal from Australia becoming practicable in the reasonably foreseeable future, he was granted a BVR visa.

As such, EGH19 is person who was affected by the decision in *NZYQ* (an NZYQ-affected person) and brought a special case challenging the constitutionality of the new measures.

The High Court cited *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs*,² quoting Dicey,³ that the individual is “‘ruled by the law, and by the law alone’ and ‘may ... be punished for a breach of law, but ... for nothing else’” (at [18]). There were two questions in the special case, both answered in the affirmative.

1. “To the extent cl 070.612A(1) of Sch 2 to the *Migration Regulations 1994* (Cth) authorises the imposition of condition 8620 on a Bridging R (Subclass 070) visa, is that clause invalid because it exceeds the power conferred by s 504 of the *Migration Act 1958* (Cth) when that power is construed subject to Ch III of the *Constitution*?”
2. “To the extent cl 070.612A(1) of Sch 2 to the *Migration Regulations 1994* (Cth) authorises the imposition of condition 8621 on a Bridging R (Subclass 070) visa, is that clause invalid because it exceeds the power conferred by s 504 of the *Migration Act 1958* (Cth) when that power is construed subject to Ch III of the *Constitution*?”

PRIVATE INTERNATIONAL LAW

Arbitration – Foreign state immunity

In *CCDM Holdings LLC v India* [2026] HCA 9 (8 April 2026), the High Court unanimously dismissed an appeal from the Full Court of the Federal Court of Australia.

The facts related to a bilateral investment treaty that the Republic of India and the Republic of Mauritius entered into in 1998, which was in force between 2000 and 2017.

The bilateral investment treaty allowed for several arbitration options, including ad hoc, under modified UNCITRAL Rules.⁴

In 2012, three Mauritian investors commenced proceedings in the Permanent Court of Arbitration under the modified UNCITRAL Rules. Their claim arose from their status as shareholders in an Indian company, Devas Multimedia Private Limited, which in 2005 had entered into an agreement to lease part of an electromagnetic spectrum on two satellites from Antrix Corporation Limited, an Indian state-owned company. The purpose was for Devas to then utilise the electromagnetic spectrum to provide broadband wireless internet and audio-video calls throughout India. This agreement was annulled by the Republic of India.

The Mauritian investors claimed that the policy decision amounted to an expropriation of their investments in India and, accordingly, a breach of their agreement.

The appellants are the assignees and substituted as parties for the group of Mauritian investors who had obtained an arbitral award in excess of US\$111 million in the Netherlands against the Republic of India (at [1]).

The question for the Court whether the Republic of India's act of ratification of the New York Convention amounted to a waiver of the foreign State immunity from jurisdiction (at [2]).

The *Foreign States Immunities Act 1985* (Cth) states per s10(1) that “[a] foreign State is not immune in a proceeding in which it has submitted to the jurisdiction in accordance with this section” per s10(2) “by agreement or otherwise” (at [3]).

The primary judge at the Federal Court level held that the Republic of India had waived its immunity under ss10(1) and 10(2). The Full Court held that, even on the assumption that the waiver had occurred, it was only limited to commercial law matters arising under the laws of the Republic of India. The Arbitral award did not fall into this category, so would not apply.

The High Court cited *Spain v Infrastructure Services Luxembourg Sàrl* (2023) 275 CLR 292, stating that it is a “political principle that those who are independent and autonomous cannot, except by consent, exercise authority over, or establish an external source of authority over, others of independent and autonomous status” (at [26], [32]).⁵

On the presumption of state immunity by reason of ratification of the New York Convention:

“The starting point in assessing whether the presumption of foreign State immunity is overcome in the New York Convention is that the text of the Convention contains no express reference to foreign State immunity. So too there is limited and potentially conflicting consideration of foreign State immunity in the travaux préparatoires to the New York Convention. This is an inauspicious start for any submission that ratification of the New York Convention was a clear, unmistakable, and unequivocal waiver of foreign State immunity” (at [35]).

The High Court dismissed the appeal with costs.

CONSTITUTIONAL LAW

Implied freedom – Cap on political donations

In *Hopper v Victoria* [2026] HCA 11 (15 April 2026), the High Court unanimously answered questions of law in a special case and ordered that the State of Victoria pay the costs of the proceedings.

The questions were:

1. “Is Pt 12 of the *Electoral Act 2002* (Vic), operating with the nominated entity exception in para (j) of the definition of “gift” in s 206(1) of the *Electoral Act 2002* (Vic), invalid (in whole or in part and, if in part, to what extent) because it impermissibly burdens the implied freedom of political communication, contrary to the Commonwealth Constitution?”
2. “What, if any, relief should be granted to the plaintiffs?”

The High Court referred to the three-part test for laws affecting the implied freedom of political communication, citing *Babet v Commonwealth* (2025) 99 ALJR 883, *Farmer v Commonwealth* (2025) 99 ALJR 1408 (at [1421]) and *Ravbar v Commonwealth* (2025) 99 ALJR 1000:

1. “Does the impugned law effectively burden freedom of communication about governmental or political matters in its terms, operation or effect?”
2. “Is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?”
3. “Is the impugned law reasonably appropriate and adapted to advance that purpose in a manner that is compatible with the maintenance of that constitutionally prescribed system of government?” (at [27]).

The plaintiffs had stood for election in the 2022 Victorian state election, under the definition of the s206 of the *Electoral Act 2002* (Vic) and, as such, were bound by Part 12 of the *Electoral Act*.

Part 12 had been introduced in an amendment in 2018 with:

“A stated purpose of the 2018 Amendment Act was to ‘enhance the integrity of the electoral system by prohibiting political donations from certain sources and introducing a political donations disclosure and reporting scheme’” (at [7]).

The purpose of the amendment was to minimise the influence of single donors by capping most political donations at \$4,000 (indexed each year). The High Court cited the explanatory memoranda, which stated that it “will ensure a level playing field and provide equal participation in the electoral process, reducing the potential for those with ‘deep pockets’ to try and exert greater influence” (at [42]).

There were several conditions imposed under the amendment, including the eligibility criteria. Prior to the amendment, the only cap was of \$50,000 for the operators of certain casinos and gambling licensing holders. In contrast, one plaintiff submitted that their donations from Climate 2000 would have been between \$50,000 and \$200,000.

The State of Victoria submitted that the cap was ameliorated by public funding, but the High Court rejected that argument on the basis that the public funding provided by the *Electoral Act*: “(i) is not necessarily equivalent to the amount a registered political party or candidate might otherwise have raised by way of political donations prior to the imposition of the general cap, (ii) is generally paid in arrears; and has no impact on the burden in respect of regulated persons and entities other than registered political parties or independent candidates who satisfy the eligibility criteria” (at [33]).

The eligibility criteria required that entities must have been appointed prior to 1 July 2020. Only three major parties – Labor, Liberal and the National Party – had appointed their entities prior to the eligibility date. In addition, they all had significant holdings.

The High Court held that severing only the problematic time limitation or other related provisions in Pt 12 was unworkable, as the provisions were too interconnected. As a result, the Court declared Pt 12 of the *Electoral Act* wholly invalid.

ENDNOTES

¹ (2000) 205 CLR 337 at 344 [6].

² (1992) 176 CLR 1 at [27]–[28].

³ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn), 1959, page 202.

⁴ *United Nations Commission on International Trade Law Arbitration Rules* (1976) uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration.

⁵ Quoting *Li v Zhou* (2014) 87 NSWLR 20 at 30 [37], in turn referring to Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (1st edn), 2000, Manchester University Press, pages 124 and 145.

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The full version of these judgments can be found at austlii.edu.au. Numbers in square brackets refer to a paragraph number in the judgment.



Federal Court Judgments

JUNE 2026 / AUGUST 2026

GREENWASHING

Landmark judgment on private greenwashing claim against Santos for climate-related disclosures

In *Australasian Centre for Corporate Responsibility v Santos Ltd* [2026] FCA 96 (17 February 2026), *Markovic J* considered claims by a non-governmental organisation (ACCR) that Santos had engaged in misleading or deceptive conduct in contravention of s1041H of the *Corporations Act 2001* (Cth) and ss18 and 33 of the Australian Consumer Law (ACL).

Background

As *Markovic J*'s opening paragraph states:

“‘Greenwashing’, a term coined relatively recently, occurs when a company makes itself, its products or services appear more environmentally friendly, sustainable or ethical than they are in fact. It is that concept which is at the heart of this proceeding” (at [1]).

The case is the first ruling on a private greenwashing action against an Australian company regarding climate and sustainability-related claims.

Santos had made representations in an Investor Day Presentation in December 2020, its 2020 Annual Report, and its 2021 Climate Change Report, which ACCR alleged were misleading or deceptive, or likely to mislead or deceive. Statements included:

- “Santos is a leading supplier of natural gas, a fuel for the future, providing clean energy ...”
- “Santos will grow its clean fuels capability ...”
- “Santos will continue to be a leading clean fuels company at the forefront of the energy transition to a lower-carbon future.”
- “Santos is a clean fuels business that will transition from natural gas to hydrogen ...”
- multiple references to “zero emissions hydrogen”
- presenting a Net Zero Roadmap as “a realistic, doable plan”
- that Santos had a “clear pathway to net zero emissions by 2040 ...” (at [202], [213], [501], [530]).

In an action seeking declaratory and injunctive relief, ACCR alleged (at [5]) that, through these statements coupled with various omissions (at [503]), Santos represented that:

1. It is a producer of “clean energy” and that natural gas provides “clean energy”, when in fact gas is not “clean”, and Santos is a heavy emitter of greenhouse gases (GHG).
2. It has a credible and clear plan, based upon reasonable assumptions, to reduce Scope 1 and 2 GHG emissions by 26–30

per cent by 2030 and achieve “net zero” by 2040 (collectively, the Targets), utilising a Net Zero Roadmap. ACCR alleged Santos did not disclose that the 2030 targets and roadmap did not account for additional Scope 1 and 2 emissions associated with proposed carbon capture and storage (CCS) and hydrogen produced from natural gas (blue hydrogen). ACCR also alleged Santos did not disclose a range of unreasonable qualifications and assumptions to reduce or offset Santos’s GHG emissions.

3. It can, in future, deliver “zero-emissions” or “clean” hydrogen, and hydrogen with “no emissions in its production”, but the production of blue hydrogen generates material additional emissions.

Findings

In a 260-page judgment, *Markovic J* roundly rejected the ACCR’s allegations.

The judgment provides a detailed summary of the evidence, including reference to the development of Santos’ Clean Energy Strategy (at [143]–[149]), Santos’ CCS project and ambitions (at [173]–[200]), and development and content of the Targets and Net Zero Roadmap (at [222]–[449]).

In summarising the evidence, her Honour placed little to no weight on the expert evidence adduced by ACCR in many instances (at [60], [66], [75]–[81]) and generally accepted Santos’s expert evidence (at [89], [92], [100]–[103], [114]). Her Honour also accepted the credibility of Santos’ lay witnesses (at [46]–[49]) and rejected the proposition that contemporaneous documents as to what grounds Santos had to make the statements should be preferred (at [38]).

After summarising the applicable legal principles (at [462]–[468]), *Markovic J* addressed two preliminary questions. As representations as to future matters are taken to be misleading if they are made without reasonable grounds (at [463]), the first preliminary issue was whether the Targets were future matters. Santos submitted that its statements were not representations as to future matters but were representations that Santos had set a target that it intended to pursue (at [472]). *Markovic J* rejected that contention, concluding that the statements were inherently about future matters and conveyed an expression about where Santos expected its emissions to be in future (at [475]). Much of the evidence was therefore directed to whether Santos had reasonable grounds for making the representations.

The second preliminary question was around the characteristics of the target audience. The legal principles applicable to

determining whether conduct directed to the public or a part of the public breaches s18 of the ACL require consideration of the likely effect of the conduct on the ordinary and reasonable members of the relevant class of persons to whom the conduct was directed (at [456]–[458]). ACCR submitted that there was no single hypothetical person and the Court should objectively attribute characteristics and knowledge to one or more hypothetical persons (at [481]). ACCR submitted that the audience is not homogenous or uniform, but encompasses a diverse range of the investing public, large and small, and sophisticated and unsophisticated (at [486]). In contrast, Santos rejected a test that involved isolating several hypothetical people and submitted the Court should attribute characteristics and knowledge to a single hypothetical person (at [482]). Santos submitted that the target audience was a specific subset of investors, a “particularly interested and educated investor” who is “relatively sophisticated” (at [484]), situated in a context of “heightened concern, both within financial markets and more generally” about global warming (at [489]), and “would have understood that the Targets were long-term, uncertain and subject to factors outside of Santos’ control” (at [492]).

Markovic J rejected that the target audience was as specific a subset of investors as contended for by Santos, but not as broad as that submitted by ACCR (at [493]). Her Honour summarised six characteristics to be attributed to the members of the target audience, which while not assuming scientific training, included “a sufficient interest in anthropogenic climate change and global warming ... but have varying levels of knowledge about and interest in them”, “understand that there is an ongoing energy transition to reduce reliance on fossil fuels and thus emissions” and “understand that long-term strategic objectives, which may be set by companies operating in the oil and gas sector, such as Santos, at the time, may be achieved in a variety of ways and would expect the pathway to achieve those objectives to change as circumstances change” (at [499]).

Her Honour placed significant emphasis on the context in which the impugned statements were made.¹ Consider in context, Markovic J found that the statements did not convey the representations alleged by ACCR or that they were liable to mislead (at [528], [563], [851]). Her Honour found, for example, that “the 2020 Annual Report used ‘clean’ to convey that ‘natural gas’ was cleaner than coal and diesel, not to convey that natural gas had no GHG emissions on consumption” (at [519]) and “the description by Santos of it as a ‘clean fuels company’ was made in the context of its statements about the ‘transition to a lower-carbon future’ and ‘the transition from natural gas to hydrogen’ ... and spoke of Santos’ future aims” (at [521]).

Targets and the Net Zero Roadmap

Markovic J observed that Santos used “emphatic language ... about a “realistic, doable” plan and ... that its transition roadmap was “clear and credible” and that Santos has “a clear, tangible pathway” to reach the Targets (at [580]). However, she concluded that the roadmap “implicitly and explicitly expressed a level of uncertainty” (at [604]). Given the characteristics, her Honour attributed to the target audience, she accepted Santos’s submission that a reasonable member of that audience would understand the long range Targets involved assumptions about matters beyond Santos’s control and would not think that Santos had substantiated a range of future scenarios and undertaken detailed economic or market analysis (at [607]–[608]). Her Honour also rejected allegations that Santos had made positive misrepresentations that it had identified a series of steps that were sufficient to achieve the 2030 Target and the Net Zero Roadmap, and the target audience would understand the plan was not inflexible (at [825]–[833]).

In assessing whether Santos had reasonable grounds for making the various future statements, her Honour found in Santos’s favour. Regarding Santos’s emissions baseline, Markovic J rejected ACCR’s submissions that the lay witness evidence revealed reliance on an unreasonable and “absurd” direction from a senior manager, who was not made a witness in the proceedings, that GHG emissions should be depicted as remaining flat despite internal predictions of increased production (at [631], [634], [645]). Her Honour reasoned that growing production without growing emissions was answered by Santos’s “intention, ability and incentive to replace production with lower CO₂ opportunities” (at [646]). Her Honour also rejected ACCR’s arguments that Santos made speculative and unreasonable assumptions about the level of market share hydrogen would occupy in the future to deliver its forecast reduction in emissions, despite accepted technical limitations for delivering hydrogen in sufficient quantities (at [703], [710]). Her Honour determined “it was reasonable for [Santos] to investigate options for the transport of hydrogen ... with the expectation that a technically and commercially viable solution could be identified” (at [732]).

Regarding Santos assuming it would obtain 100 percent of carbon credits of its hydrogen customers despite no mechanism existing, her Honour accepted “it was reasonable for Santos to consider that a methodology to obtain [carbon credits] from supplying blue hydrogen would develop by 2040” (at [742]) as the “Government could introduce a new regulatory scheme providing carbon credits” (at [741]). Similarly, Markovic J found that Santos had a reasonable basis for predicting it would achieve a large quantity (1.5 MtCO₂e) of emissions reductions from CCS expansion, contrary to ACCR’s submissions that they were developed without

any reasoned calculation or assessment of any existing CCS opportunities (at [772]).

Having determined that the ACCR failed to make out any of its allegations, the claim was dismissed and ACCR ordered to pay Santos' costs of the proceeding.

ACCR has announced its intention to appeal.

ADMINISTRATIVE LAW / MIGRATION LAW

Protection visa – Identity evidence

In *LPDT v Minister for Immigration and Citizenship* [2026] FCA 332 (24 March 2026), the Court determined an appeal from a decision of the Federal Circuit and Family Court (Div 2), where the primary judge dismissed a review application.

The former Administrative Appeals Tribunal (Tribunal) had affirmed the decision not to grant the appellant a protection visa, primarily because it did not accept that the appellant was who he claimed to be.

The appellant made three arguments in the appeal:

1. The Tribunal “failed to consider an essential integer” of the appellant’s claims or evidence supporting that claim, “namely that he was able to previously avoid detection by Vietnamese authorities because he crossed the land border into Vietnam”, while now “he would be detected at the airport if he were removed from Australia” (appeal grounds 1 and 1A) (at [2]). This ground was rejected on the basis that the Tribunal’s reasoning made it unnecessary for it to refer to this claim. Hill J held it was “not necessary for the Tribunal to refer to the claim about how the Appellant had managed to enter Vietnam (and the supporting evidence)” because the Tribunal rejected the factual premise that the appellant “was the subject of an arrest warrant at all” (at [29]).
2. The Tribunal failed to consider various material provided by the appellant that, if accepted, corroborated his claimed identity (appeal ground 2) (at [2]). This evidence included:
 - a fingerprint analysis report
 - translated statements from six members of the appellant’s family
 - Vietnamese birth certificates of the appellant’s children, naming the appellant as their father
 - a family record book, naming the appellant
 - a translated Vietnamese missing person certificate naming the appellant (at [7]).

The Court acknowledged the case law that, “[i]n principle, it is possible that a visa applicant’s credibility could be so weakened that the decision-maker may well treat what is proffered as

corroborative evidence as of no weight because ‘the well has been poisoned beyond redemption’ ... However, in practice, a decision-maker is likely to commit jurisdictional error if it fails to give weight to apparently supporting material from an independent source, without explaining why that material has not been preferred” (at [33]). Hill J held that, in this case, the Tribunal’s reasoning did not provide any reasons for rejecting the apparently corroborative identity evidence provided by the appellant (at [34]). The Court allowed the appeal based on appeal ground 2.

3. The Tribunal’s reasons for not accepting that the appellant is the person he claimed to be were illogical or irrational, particularly the Tribunal’s reliance on “documented inconsistencies” in the appellant’s identity (appeal ground 3). This ground was rejected by the Court (at [40]–[45]).

CRIMINAL LAW / ADMINISTRATIVE LAW

Interim control order application – threshold of risk – conditions

In *Staunton v MHK* [2026] FCA 546 (4 May 2026), the Court heard an application for an interim control order (ICO) in relation to MHK, who was soon to be released from prison after serving 11 years for a terrorism offence.

MHK pleaded guilty in 2016 to a charge of doing an act in preparation for, or planning, a terrorist act, contrary to s101.6(1) of the Criminal Code (at [30]). The offending occurred when MHK was aged 17 years.

The order, made under s104.4 of the Criminal Code,² would impose conditions on MHK for 12 months following his release, which included requiring him to wear an electronic monitoring device and enabling the Australian Federal Police to monitor his communications and internet usage.

The main question to be determined was whether the Court was satisfied on the balance of probabilities that the conditions proposed in the draft ICO were reasonably necessary, as well as reasonably appropriate and adapted, for one of the purposes under s104.4(1)(d) of the Criminal Code (at [2]). The two key issues were:

- “whether there is a real or ongoing risk of MHK committing a terrorist act (or providing support for or facilitation of a terrorist act, or of the engagement in a hostile activity in a foreign country) on his release, if an ICO is not made” (at [42a])
- “whether the proposed conditions (individually and in combination) are a proportionate means of addressing that risk, having regard also to their impact on MHK” (at [42b]).

The Court summarised the general principles for the making of an ICO (at [22]–[27]). Section 104.4 does not contain an express threshold of risk.³ However, MHK correctly accepted “that the notion of risk is inherent in the requirements of ss104.4(1)(c) and (d) ...” (at [24]).

Hill J accepted MHK’s submission that “it is not enough to point to a merely theoretical possibility; at the same time, the test of real and reasonable risk, or ongoing risk, does not require the Court to be in a position to identify with specificity what the person will do if a control order [or ICO] is not made ...” (at [25]).

As to whether there was a real or ongoing risk, the Court held that the circumstances of MHK’s offending “strongly support the need for some sort of supervisory controls being placed on MHK once he is released. Given those circumstances, the Court would require a high degree of assurance that there was no longer a real or ongoing risk of MHK reverting to the behaviours and attitudes that led to his original offending ...” (at [62]).

MHK gave evidence by affidavit. The Court accepted the genuineness of his statements in his affidavit as a statement of his current thinking. “However, this does not mean that the risk of backsliding was only a ‘theoretical possibility’” (at [65]). Further, MHK’s behaviour is, “of necessity, untested in the community” (at [66]). Hill J accepted MHK has demonstrated positive behaviours, particularly moving away from extremist thinking (at [77]). However, the Court concluded that “there is a real and ongoing risk of MHK committing a terrorist act if he is released without some form of supervisory controls” (at [78]).

The Court said:

“Given the severity of his offending (admittedly now some time ago), the level of risk that exists is sufficient to justify controls being placed on him for the first 12 months of his re-entry into the community. If the Applicant applies for the ICO to be confirmed, MHK will have the opportunity to give evidence about his time in the community then” (at [79]).

A second hearing was listed to be heard in August 2026 as to whether the ICO should be confirmed.

ENDNOTES

¹ At [38], [510], [521], [522], [527], [578], [828].

² Criminal Code in the Schedule of the *Criminal Code Act 1995* (Cth) pt 5.3 div 104 s104.4.

³ Compare the requirements for making a continuing detention order or extended supervision order – see ss105A.7(1)(b) and 105A.7A(1)(b) of the Criminal Code.

PRACTICE AND PROCEDURE / APPEALS

Sex discrimination – leave to intervene or appear as amicus

In *Giggle for Girls Pty Ltd v Tickle* [2026] FCAFC 64 (15 May 2026), the Full Court heard an appeal that involved the construction and application of provisions of the *Sex Discrimination Act 1984* (Cth).

The Sex Discrimination Commissioner was granted leave to appear as amicus curiae on the appeal and cross-appeal (at [6]). The Full Court determined several other applications for leave to intervene and appear as amicus curiae.

After addressing the relevant principles (at [173]), Perry J (with whom Abraham and Kennett JJ agreed at [255]) gave reasons:

- for dismissing the applications by the Australian Christian Lobby to appear as amicus and the Free Speech Union for leave to intervene or appear as amicus (at [174]–[180])
- for granting leave to the Lesbian Action Group to intervene subject to certain conditions (at [181]–[185])
- for granting the application by Equality Australia to intervene on a limited basis (at [186]–[188]).

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The full version of these judgments can be found at austlii.edu.au. Numbers in square brackets refer to a paragraph number in the judgment.



ACT Supreme Court Judgments

AUGUST 2026

PROFESSIONAL ETHICS

Passing the torch: failure to maintain a possessory lien over a client's file

The passing of a client file from one law firm to another is a process often frustrated by claims of outstanding or unpaid costs. Conflict inevitably arises where a firm claims a possessory lien over a client file. Such was the case in *Al-Baalawi v Bros Constructions ACT Pty Ltd* [2026] ACTSC 239 (*Al-Baalawi*).

Procedural background

In *Al-Baalawi*, the primary proceeding concerned a dispute between the applicant, Mr Al-Baalawi, and various entities including his employer, for breaches of duty of care and statutory breaches resulting in both physical and psychological injuries.¹

The applicant initially engaged a law firm on a “no win, no fee basis”². However, the applicant’s solicitors subsequently terminated the retainer, citing a concern that the applicant had lost confidence in his representation and no longer trusted their advice.³

The applicant proceeded to engage new representation, who sought a copy of the original file from the previous solicitors. The applicant’s former solicitors asserted a “right to retain the file pending payment of their costs and disbursements or the entry of a satisfactory agreement concerning those costs and disbursements”.⁴

Decision of the Court

The question before the Court was whether the assertion of a possessory lien by the applicant’s former solicitors was misconceived. The Court concluded that such a lien did not arise on the facts at the time of the application and ordered that the client file be handed over to the applicant’s new representation.⁵

The Court noted the well-established principle that a possessory lien may be exercised until a client has paid the reasonable costs owed to the solicitor.⁶ However, it was held that availability of the lien turned, at least in part, on which party terminated the retainer.⁷

In the immediate case, the Court considered that the applicant and his former representation had reached an “impasse” as to the progression of the proceedings.⁸ This was so even though the applicant expressed a desire to retain his representation. Crucially, it was not found relevant whether the applicant’s alleged unreasonableness had led to the termination.⁹ Rather, it was the interests of justice considerations arising from the solicitor’s termination that were determinative.¹⁰ The termination and subsequent possession of the file impacted upon the ability for the applicant’s litigation to progress.

In making its decision, the Court also considered the terms of the purported lien, which was “exercisable until all monies ‘due to the firm have been paid’”.¹¹ Because of the “no win, no fee” nature of the retainer, and because the litigation was yet to conclude, the firm was found not to be presently entitled to any monies. Consequently, the lien did not arise while the litigation remained on foot, and the Court ordered the file be handed over for the duration of the proceedings.¹²

Conclusion

While the facts of *Al-Baalawi* are specific, the case serves as a cautionary tale. Solicitors who are looking to maintain possession of a client’s file following termination of a retainer should carefully consider the terms of their retainer and costs agreement, and the circumstances in which the retainer ends. It is also important for solicitors to continually look for ways to uphold the values of the profession, including both interests of justice and fairness to their current and former clients.

ENDNOTES

¹ *Al-Baalawi v Bros Constructions ACT Pty Ltd* [2026] ACTSC 239 (Muller J) (*Al-Baalawi*), [1].

² *Al-Baalawi*, [16].

³ *Al-Baalawi*, [18].

⁴ *Al-Baalawi*, [8].

⁵ *Al-Baalawi*, [23].

⁶ *Al-Baalawi*, [9].

⁷ *Al-Baalawi*, [9]–[15].

⁸ *Al-Baalawi*, [21].

⁹ *Ibid.*

¹⁰ *Al-Baalawi*, [22].

¹¹ *Ibid.*

¹² *Al-Baalawi*, [22] – [23].

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The full version of these judgments can be found at austlii.edu.au. Numbers in square brackets refer to a paragraph number in the judgment.



Family Court Judgments

AUGUST 2026

CHILDREN

Contravention – Paternal grandmother “aided and abetted” father’s forcible abduction of the children from mother in a foreign country – Appeal from sentence of four months imprisonment dismissed

In *Paige & Bellanger* [2026] FedCFamC1A 59 (9 April 2026) the Full Court (Aldridge, Austin & Curran JJ) heard a paternal grandmother’s appeal from orders of Judge O’Shannessy, sentencing her to a term of imprisonment for her complicit contravention of parenting orders.

Final parenting orders were made in August 2021. The mother took the children to Africa. In January 2022, the father obtained warrants from an African court for the arrest of the children, mother and maternal family. The mother’s care was restored following her release from custody, but the children were then forcibly removed from her care by the paternal family on 15 March 2022.

After an 11 day contravention hearing, the paternal grandmother was sentenced to four months imprisonment and restrained from departing Australia until the youngest child attained majority ([26]).

As to the grandmother’s appeal, the Full Court said (from [90]): “... The primary judge summarised how the appellant, by her words and actions, aided and abetted the father to forcibly abduct the children from the mother...

(...)

[99] ... [T]he appellant was not personally bound by the parenting orders... but she was certainly not powerless to encourage her son to comply with the orders...

(...)

[107] ... The appellant aided and abetted the father to forcibly abduct the children from the mother... It is not to the point the appellant was not personally bound by the orders because she was bound by law to observe the orders... Her actions... showed serious disregard for the father’s obligations... She was not a passive bystander. The primary judge found the appellant... ‘encouraged the [father] to remove the children’ ... accomplished by the father wrenching them from her and abducting them by use of motorcycles... The consequence of her complicity was to enable the father’s continuing retention of the children from the mother with impunity.”

The appeal was dismissed. No costs order was made as the mother did not comply with a procedural order that required her to file and serve a costs schedule before the hearing.

Orders for Aboriginal child to live with kinship mother and for her to have sole decision-making responsibility upheld – No error in trial judge’s evaluative assessment of unacceptable risk

In *Hronn & Tracey* (No 2) [2026] FedCFamC1A 56 (1 April 2026) the Full Court (Aldridge, Altobelli & Kari JJ) heard an appeal from parenting orders made by Schonell J in relation to a child “X” born in 2016.

X was an Aboriginal child. The appellant Ms Hronn was not of Aboriginal descent and had cared for X since 2022. She previously lived in Town N, then moved 1,700km to Town C. The first respondent, Ms Tracey lived in Town N which was a remote community of 400 people ([1]-[3]). Under the kinship system, X was considered to be her son ([14]).

Ms Hronn relied upon a child safety assessment conducted by child protection officers, who assessed a substantiated risk of sexual abuse if X was returned to Town N ([52]-[53]).

At first instance, Schonell J ordered that X live with Ms Tracey and that she have sole decision-making responsibility for X as a kinship mother. The Court found that while the magnitude of harm was high, the likelihood of risk was low (so not an unacceptable risk) ([69]). Ms Hronn appealed.

The Full Court said (from [45]):

“Whilst the outcome as to a finding of unacceptable risk is binary – there either is or is not such a risk – we consider that it is an evaluative decision. The judge must take into account the likelihood of the risk occurring, the nature of the risk itself, which may vary from slight to fatal, and any protective measures against the harm occurring. It is the weighing of these various factors that results in it being an evaluative decision.

[46] It must be remembered... the Court is concerned with the possibility of harm occurring and the possible nature and effects of the harm, having regard to the whole of the evidence in drawing its conclusion.

(...)

[70] Having regard to the weight of the evidence recorded in the primary judge’s reasons, we are quite unable to say that his Honour’s weighing of [the child safety report] and his conclusions as to unacceptable risk were unreasonable or plainly wrong.”

The appeal was dismissed.

PROPERTY

Wife's non-financial contributions could also be classified as family welfare contributions and would not attract less weight

In *Shehu & Vicario* [2026] FedCFamC1A 49 (24 March 2026) the Full Court (Aldridge, Williams & Jarrett JJ) heard an appeal by the estate of the deceased husband from a decision of the Supreme Court of New South Wales.

At first instance, the Court found the husband and wife commenced a relationship in 2010 and separated in October 2020. The wife's family law proceedings were transferred to the Supreme Court as there were other proceedings involving the estate ([5]-[6]).

The Supreme Court ordered that the \$153 million asset pool be divided 72.5:27.5 in favour of the deceased husband's estate. Both parties appealed.

The estate argued that the Court erred when finding that the wife made significant non-financial contributions by acting as an "executive wife" and that the contributions assessment was plainly wrong ([24]-[25]).

The Full Court said (from [27]):

"There is no doubt that the wife, on her own or with the assistance of the husband, organised many social occasions, lunches, dinners, parties and travel involving the husband's business associates. (...)

(...)

[38] ... [I]t is implicit in the submissions of the estate that if the wife's contributions were to the welfare of the family and not indirect contributions to property, they would... attract less weight. We entirely reject such a proposition.

[39] It is an incorrect, and now out-dated, notion that contributions to the family carry less weight or value than contributions to property or income.

[40] In *Rolfe and Rolfe* [1979] FamCA 65 ... Evatt CJ emphasised that homemaker and parenting contributions were to be treated in a substantive and not token manner. That aspect of her Honour's reasoning was expressly approved by Wilson J in *Mallet v Mallet* [1984] HCA 21 ... [which] makes clear, the nature and quality of all of the contributions must be assessed. Labelling them as being to the welfare of the family does not diminish them, whatever they may be."

The estate's appeal was allowed in respect of a discounting of capital gains tax. The Full Court re-exercised discretion and divided the asset pool 80:20 in favour of the husband's estate.

PROCEDURE

Apprehended bias – Retired Family Court judge appeared as counsel in proceedings – Recusal by current judge

In *Tanit* [2026] FedCFamC1F 171 (17 March 2026), Brasch J conducted a case management hearing in a property matter. At the hearing, a former justice of the Family Court of Australia appeared on behalf of the respondent.

After her Honour noted that she had appeared before the former justice as a barrister, the Court referred to *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63 and said (from [22]):

"[The] ... 'double might test' asks whether a fair-minded lay observer might reasonably apprehend that the decision-maker *might* not bring an impartial mind to the resolution of the issue they are to decide.

(...)

[27] There is ... a logical connection between a former Justice of this Court appearing before this same Court and the objective apprehension. Frankly, from the perspective of the fair-minded lay observer... they might reasonably apprehend, notwithstanding the time out provision in the Bar Rules that:

(a) The husband, for whom the former Justice acts, has, to use the vernacular, 'the inside running'...

[28] Or the reasonable observer may apprehend the flip side:

(b) Will the Court favour the wife so as to avoid looking like the Court is not favouring the former Justice and thus his client?

(...)

[32] ... I have formed the view that the administration of justice requires that justice must not only be done but be seen to be done, and, public confidence in the independence, impartiality and integrity of the judiciary must be maintained. ...

(...)

[34] It is not necessary for me to resolve ... what the reasonable bystander may make of a former judge appearing in the same Court from which their service gave rise to the receipt of a judicial pension.

(...)

[36] Finally, what would ... the reasonable bystander make of case law or authorities which the former Justice may urge upon me – but of which he was the author?

(...)

[38] ... I am satisfied that a reasonable fair-minded lay observer, cognisant of all relevant facts... might reasonably apprehend I might not bring an impartial and unprejudiced mind to the hearing of the subsequent de facto threshold hearings, and I will recuse myself from the proceeding."

PROPERTY

Husband's property adjustment proceedings were an abuse of process as they were "to acquire evidence about the wife's financial transactions for collateral use in" ongoing Chinese litigation

In *Peng & Zhang* [2026] FedCFamC1A 83 (13 May 2026) the Full Court (Austin, Harper & Christie JJ) heard a husband's appeal from orders of Hartnett J that dismissed his property adjustment application as an abuse of process.

The wife lived in Australia. The husband lived in China. They separated in 2019. The parties had been involved in matrimonial proceedings in China before the husband commenced proceedings in Australia in 2023 ([2]-[4]). Hartnett J dismissed the husband's application, concluding that it was "not a bona fide attempt to invoke the jurisdiction of an Australian court to adjudicate the parties' rights in respect of the wife's Australian property". The husband appealed.

The Full Court said (from [24]):

"The Australian proceedings were not 'entirely calculated' to secure property adjustment relief for the husband in respect of the wife's Australian property because they were instead calculated to acquire evidence about the wife's financial transactions for collateral use in the ongoing Chinese litigation ...

[26] It is well accepted that, if a litigant would not have commenced or maintained a cause of action but for an ulterior or collateral purpose which is unrelated to the subject matter of the litigation, then an abuse of process is established. For that purpose, the 'predominant' purpose is the relevant criterion (*Williams v Spautz* [1992] HCA 34 ...).

(...)

[29] Here... the husband did not institute the Australian proceedings to secure relief... He only did so to utilise the Australian forensic tool of interlocutory financial disclosure to obtain documents he could then hopefully use to his advantage as evidence in the ongoing Chinese proceedings. The husband's predominant purpose was therefore not to prosecute the proceedings for their proper purpose, as the primary judge found..."

The appeal was dismissed and the husband was ordered to pay the wife's costs on a party/party basis, fixed at \$80,837.90.

Court erred as primary judge conflated the task of identifying whether trust assets were property of the parties with the question of whether those assets should be taken into account in the exercise of discretion – Husband's interests in intergenerational management trusts were property

In *Caldwell* [2026] FedCFamC1A 81 (11 May 2026) the Full Court (Christie, Strum & Brasch JJ) heard a wife's appeal from a decision of Carew J, which held that the husband's interests in discretionary trusts to facilitate the intergenerational management of the family business, were not property of the parties within the meaning of s 79 of *the Act*.

Christie & Brasch JJ said (from [26]):

"[The husband's] ... capacity to control the trustee gives the husband effective control of the trusts. ... [T]he husband's present voting rights permit him to control the trust, and ... it is not necessary for the husband to have taken the action necessary to assume control. What is material is that... there is no impediment to him so doing, that is, he has effective control.

(...)

[53] ... [T]he respondents... contend that because the husband... needs to take steps to exercise his control... then the Court could not conclude that he presently has control. This overcomplicates the situation. As we sit here – the husband may vote in a manner which gives him effective control. No more is required.

(...)

[56] ... [T]he primary judge conflated the issue of assessment of the contributions of the parties with the question of whether the trusts were property... The question of dealings with trust property may be relevant if the case involves an argument about sham, but not otherwise, and the issue of the origin of the trust assets is one which goes to the consideration of contributions...

(...)

[92] Where... the relevant trust deeds permit the husband to confer a benefit upon himself, it is difficult to conceive of a circumstance in which his act in conferring a benefit upon himself would offend the proper purpose rule."

The majority concluded that the appeal should be allowed. The Court declared that the trusts were property for the purpose of s 79 of *the Act* ([2]). Dissenting, Strum J concluded that "none of the trusts and/or trust assets are property within the meaning of s 79 and ... that the appeal [should] be dismissed." ([103]).

Litigation funding orders are to be founded in evidence that establishes the reasonableness of the sum sought – Such applications should not be routinely filed as they are only for the benefit of financially precarious litigants, not lawyers

In *Mihova* [2026] FedCFamC1A 79 (7 May 2026) the Full Court (Aldridge, Austin & Christie JJ) heard a husband's appeal from orders of Schonell J.

The orders required the husband to pay \$2.1 million to the wife's solicitors for her legal fees and dismissed his application for a release of funds to pay his living expenses and legal fees. The husband argued that the \$2.1 million amount for the wife's legal fees was erroneously excessive, notwithstanding that he also sought the same amount be released to pay his legal fees ([11]).

The Full Court said (from [14]):

"Litigation funding orders need to be founded in evidence which establishes the reasonableness of the sum sought, even if that does not require the production of itemised accounts ... (*Salvage & Fosse* [2020] FamCAFC 144 ...). ... [I]t necessarily involves an imprecise and somewhat general quantification of the amount to be paid. ... [I]t should be emphasised that applications for litigation funding orders should not be routinely filed as they are only for the benefit of litigants in precarious financial positions, not for the benefit of lawyers...

[15] ... [B]ecause the husband had challenged the amount sought by the wife as being unreasonable, it was necessary for his Honour to address the issue. He did not. ...

(...)

[19] It must be remembered that although the orders are expressed as costs orders, any inequality in the amount can be taken into account at the hearing under s 79(5) of the Act.

[20] The husband submitted that the orders proposed by the wife would see her getting more for litigation funding than he was and that this was contrary to the point of such funding which is to 'level the playing field. Levelling the field is not the same as equality of payments. ..."

The appeal was allowed and orders made permitting the husband to make payment to his solicitors, provided that the amount paid for legal fees did not exceed \$2,281,448.40. An order was made for the husband to pay \$1,952,378 to the wife for her legal costs in the proceedings.

No error by trial judge excluding funds held in husband's solicitor's trust account where outstanding legal fees, work in progress and trial costs would exhaust those funds – Leave entitlements owed to the husband by his own business were not an asset for the purpose of s 79

In *Anselmo* [2026] FedCFamC1A 87 (20 May 2026) the Full Court (Austin, Campton & Christie JJ) heard a wife's appeal from orders made by the Family Court of Western Australia.

As part of the wife's appeal, she contended that money paid to the husband's lawyer for legal fees that were held in trust, were an asset and ought to have been included in the asset pool. She also contended that the husband's leave entitlements were property.

The Full Court said (from [42]):

"... We accept the reasons for judgment do not identify the monies in trust as an existing asset... The respondent had outstanding costs of \$39,371.56 and unbilled work in progress of about \$15,078.80. Together those sums accounted for more than half of the funds held in trust by the respondent's solicitors. The respondent was also obliged to meet the costs of the trial which... would have exhausted the funds in trust. It is somewhat artificial in those circumstances to include the assets when you propose to (appropriately) exclude the liability. It is for this reason that the failure to identify the trust funds is not... material."

Considering the husband's leave entitlements in the business which he owned and operated, the Court continued (from [49]):

"... Such entitlements have ordinarily been considered a potential financial resource: see *Gould & Gould* [1995] FamCA 142 ... In that case a distinction was drawn between a case where a party expects to receive the funds and a case where a party expects to take the leave. In the first case, the court would be persuaded that the entitlements may be a financial resource (not an asset), while in the latter [it] ... might be neither. It will turn on the evidence in each individual case.

(...)

[51] The approach taken by the primary judge was... appropriate..."

The appeal was allowed on a limited basis (only on the assessment of the contribution of the parties). Cost certificates were ordered.

PROPERTY

Litigation lender's application to vary final consent orders that were made 4 weeks before the husband's bankruptcy – Wife (who knew of husband's precarious financial position) restrained from dealing with two of four properties

In *O Pty Ltd v Calvo* [2026] FedCFamC1F 295 (7 May 2026) Austin J heard an application by the husband's litigation lender for injunctive relief against the wife.

Family law proceedings were commenced in May 2024. The husband was advanced \$90,000 from the lender, paid to the husband's lawyers. The husband executed registrable second mortgages over four properties, but they were not registered ([7],[8]).

Final orders were made by consent on 8 July 2025 for the wife to retain all four properties. The husband informed the lender of the orders two weeks after they were made. He was then made bankrupt, having liabilities of approximately \$4.5 million ([10]-[12]).

Austin J said (from [31]):

"The applicant is 'affected' by the final orders... because... it may not be able to recover the debt owed to it (s 79A(4))...

(...)

[35] The wife fails to demonstrate the applicant has no reasonable chance of success in prosecuting the claim for relief under s 79A(1) of the Act because, arguably either:

- (a) there was a miscarriage of justice by the suppression of evidence (s 79A(1)(a)) – being the husband's apparent failure to disclose... the true extent of his enormous liabilities...; or
- (b) the husband has defaulted in carrying out an obligation imposed upon him by the final orders (s 79A(1)(c))...

[36] The registrar was not empowered to make the final orders unless satisfied that... the orders were just and equitable (s 79(2))... The identity and value of the husband's... liabilities were part of the 'circumstances' which bore upon the question of whether the orders adjusting the spouses' property interests were just and equitable...

(...)

[38] It seems unlikely the wife had no inkling of the husband's financial predicament... The wife did not try to explain... how it was just and equitable for her to have received so much property from the husband under the final orders."

The wife's summary dismissal application was dismissed. An injunction was made against the wife disposing of two of her properties. Costs were ordered against the wife fixed at \$12,500.

Wife's application for leave to adduce adversarial evidence was premature as time for the parties to ask questions of the single expert pursuant to rule 7.26(1)(b) had not expired – Non-binding indicative offer is a "mere puff" and inadmissible as evidence of value

In *Finamore (No 3)* [2026] FedCFamC1F 289 (5 May 2026) Strum J heard a wife's Application in a Proceeding to adduce evidence from an adversarial expert with respect to business valuation matters.

The wife adduced evidence from her proposed adversarial expert and also relied upon a "Non-Binding Indicative Offer" ("NBIO"), purportedly for the acquisition of the business ([21]).

Strum J said (from [21]):

"... Although styled an 'offer', [the NBIO] ... is nothing of the sort. Rather, it is an invitation to treat or a mere puff...

[22] If the NBIO were the basis of the wife's application, she would likely be unsuccessful. It is settled law that evidence of an offer, even if the NBIO were that, is not admissible as evidence of value.

(...)

[32] Rule 7.26(1)(b) of the Rules provides that a party seeking to clarify the report of a single expert witness may ask questions of that expert within 21 days... Accordingly, the time for either party to ask questions has not yet expired...

(...)

[36] ... Whilst I have the power to... shorten that time... I consider that to do so [would]... deprive the wife... the opportunity to explore this issue... with [the single expert and]... would ... deprive her of procedural fairness...

(...)

[39] Senior Counsel for the husband submits... that the wife should have asked questions of [the single expert]... before bringing her application; however, she is still within time to do so...

(...)

[41] In circumstances where I have determined that the wife and... the husband, should undertake the processes under the Rules for the clarification of the single expert witness' report, I consider the wife's Application in a Proceeding to be premature and therefore I shall strike it out, rather than dismiss it... I shall order that the time for the parties to ask questions of [the single expert]... be extended to commence, and be calculated, from tomorrow..."

No orders were made as to costs.

PROCEDURE & CHILDREN

Four medical expert witnesses ordered to confer (to prepare a list of the issues and as to which the experts agreed and disagreed) then to give concurrent evidence (“in the hot tub”) – Relevant principles

In *Ashdown & Markin* (No 2) [2026] FedCFamC1F 164 (16 March 2026) Wilson J considered the use of expert evidence in parenting proceedings. The mother alleged family violence by the father and also alleged that he suffered from various psychological conditions ([6]).

The proceedings involved expert evidence from three psychologists and one psychiatrist. The conclusions reached by those experts differed significantly ([6]).

After considering the amount of time sequential evidence from each of the experts would take, his Honour asked counsel whether there would be agreement for the evidence to be heard concurrently ([9]).

The Court said (from [10]):

“This court has been slow to embrace the concept of concurrent evidence. Conversely, in the Federal Court of Australia concurrent evidence is commonplace. ...

[11] No fixed method of the adducing of concurrent evidence enjoys universal application. ... One size does not fit all. That said, in this court general principles of procedural fairness apply requiring all counsel to be given a fair opportunity to question all experts. ...

[12] Several days were proposed for the experts to give their evidence by conventional means. ... As with any cross-examination, once a witness is excused from giving further evidence after that witness’s evidence is completed, he or she can only be recalled by agreement or by leave... Unless leave is given in that scenario to recall the first witness and then put to him or her the proposition advanced by the subsequent expert, the judge is left at risk of being misinformed about some aspect of the expert evidence or worse, about the totality of the expert evidence. That is wholly undesirable. It should be avoided wherever possible.

[13] The hot tub operates in such manner as to avoid the risks associated with that scenario.

(...)

[26] The hot tub concluded by the luncheon adjournment on 13 March 2026. The entirety of the experts’ evidence was concluded in one stage within three hours, thereby demonstrating the efficiency of the hot tub process.”

The full version of these judgments can be found at austlii.edu.au. Numbers in square brackets refer to a paragraph number in the judgment.

CHILDREN & SURROGACY

Surrogate failed to hand over child following birth and sought that the child live with her – Interim orders made for the child to live with the intended parents – Declaration of parentage under s 69VA to be determined as a final order

In *Taggart & Gowden* [2026] FedCFamC2F 673 (14 May 2026) Judge Harland heard an application by intended parents in a surrogacy arrangement. The respondent was the surrogate.

The child “X” was born in 2026. Ms Taggart was the intended mother and the second applicant, Mr Miller, was the intended father and X’s biological father. The respondent, Ms Goden was Mr Miller’s sister and the surrogate. All three parties were Aboriginal. The parties entered into an altruistic surrogacy agreement in 2023 ([27]).

Ms Gowden sought interim orders that X live with her, raising risk issues associated with Mr Miller ([50]). The applicants sought orders that the child live with them and a parentage order in favour of Mr Miller.

Judge Harland said (from [24]):

“Mr Miller seeks an interim order declaring him X’s legal parent pursuant to s69VA...

[25] The wording [of s 69VA] is clearly that of a final order not an interim one. I decline to make an interim order regarding parentage.”

After considering the evidence of Mr Miller’s drug and alcohol use and his mental health and Ms Gowden’s traumatic history and involvement with child protection, her Honour concluded (at [77]):

“This is a complex and sensitive matter... I am mindful that [X’s] ... family has suffered intergenerational trauma...

[78] X is very young and vulnerable. He is completely reliant on the adults around him. There are too many unknowns in Ms Gowden’s household currently. ...

[79] Ms Taggart is a protective factor in this matter. She is an educator surrounded by children daily. She does not have any mental health issues. She has also acted protectively when Mr Miller was psychotic and violent. I observe that many people with mental health issues are great parents. It is only relevant in so far as impacts a child’s welfare...

[80] I am satisfied that on balance X should live with Ms Taggart and Mr Miller on an interim basis.”

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