Bartier Perry LAWYERS

Government CONNECT

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Inside this issue

Welcome

Welcome to our first Government Connect publication following the announcement of the new NSW Government's Legal Panel. On behalf of our cluster partners and the wider firm, thank you for your continued trust in us – we are excited and energised by our reappointment as a key legal partner to the NSW Government.

What is different this time round with Government Connect is that we have articles outside employment and industrial relations. We were successful in our other teams – Commercial, Construction, Property and Land and Environment – being appointed to the panel. Our new teams to the panel look forward to developing relationships with you all.

This Government Connect issue addresses topics ranging from what happens when employees fight at work, to the subtleties around compulsory land acquisition and dispute resolution clauses in contracts between Government bodies and private contractors. I hope you find them informative and helpful – if you have suggestions for future articles, we would love to hear them.

At Bartier Perry, our focus is firmly on our clients, our people and our community. If you haven't already seen the latest CEO Update from Riana Steyn, I encourage you to look it over. Like many organisations, we are increasingly aware of our obligations around environmental, social and governance (ESG) practices and policies. This year, our participation in the Australian Legal Sector Alliance's annual reporting highlighted where we are performing well and where improvements can be made.

Some of the ESG work I'm most proud of includes our pro bono legal contribution improvement last financial year with a significant increase in hours across the firm. So far this year, we have made further increases to our pro bono hours and are doing work for some amazing organisations and people. Another initiative I'm particularly pleased about is our support of Maari Ma Health, who recently distributed COVID vaccines to Indigenous Peoples in remote communities in far western NSW.

To all our agency clients, we look forward to working with you as you continue your work for the people of NSW. If there are specific value adds we can provide you with, or if you would like to chat about any of the subjects in this issue, please reach out to myself or any of our NSW Key Team listed on the back page.

James Mattson

FIGHTING IN THE WORKPLACE – IT'S MORE THAN JUST WHO PUNCHED WHO

JAMES MATTSON

It is fairly well known that fighting in the workplace will justify dismissal. Fighting is unsafe and destroys confidence and workplace relationships. But, like most rules, there are exceptions and these can be difficult for employers to navigate.

In *Sheridan v Health Secretary in respect of the Illawarra Shoalhaven Local Health District* [2021] NSWIRComm 1043, the NSW Industrial Relations Commission examined some of those exceptions in deciding whether a dismissal for fighting was justified. The Commission also provided useful guidance on allegation writing and decision-making.

The facts

Mr Sheridan and Mr Young were security guards at a hospital. They had a poor working relationship but rarely worked together until a fateful night shift on 27 September 2019.

During the transfer of a patient, the patient tried to escape and Mr Young reacted by grabbing the patient. Feeling that Mr Sheridan had not assisted him, he exchanged words with him. As the men were walking back after completing the transfer, Mr Young swore at Mr Sheridan, who said something back. Mr Young then approached and swung a punch at Mr Sheridan. It was not clear if the punch connected or not.

Mr Sheridan stepped back and put his hands up ready to fight. As Mr Young turned and walked away, Mr Sheridan approached from behind and swung punches at Mr Young's head. Maybe there was an upper cut or two. Nursing and other staff separated Mr Young and Mr Sheridan. As Mr Young retreated again, Mr Sheridan pursued him and another altercation occurred.

The hospital dismissed both Mr Young and Mr Sheridan. Mr Sheridan challenged his dismissal as unfair.

Fighting

In the absence of extenuating circumstances, fighting in the workplace can be grounds for dismissal. However, it has been said in earlier decisions that *"merely participating in a fight will usually be insufficient to justify summary dismissal."* To assess culpability, any examination of the dismissal should determine who was the aggressor, whether the employee was doing more than defending themselves, and whether they were provoked into a fight by the other party.

Any extenuating circumstances?

Mr Sheridan's first line of defence was that he was merely defending himself; Mr Young attacked him. Mr Sheridan said that after the first blow he suffered a concussion and could not remember anything else.

When shown the CCTV footage of his attack on Mr Young, Mr Sheridan stated that his poor relationship with Mr Young, which he characterised as being bullied over the years, caused him psychological suffering and that he had entered a 'fight or flight' mode, which explained his subsequent actions. Those actions, he said, were involuntary.

Both the hospital and Mr Sheridan had their own experts, each at odds. How was the contest resolved?

The hunted becomes the hunter

There was no doubt that Mr Sheridan and Mr Young did not like each other. But given they were rarely rostered to work together, that could not justify Mr Sheridan's disproportionate response on that night shift. Mr Sheridan's attempt to blame the hospital for not addressing his concerns with Mr Young did not *"exonerate Mr Sheridan from his conduct that evening,"* the Commission said.

The CCTV footage, supported by eyewitness accounts, was damning in conveying that Mr Sheridan took matters into his own hands. *"While I would not go so far as to suggest that Mr Sheridan was waiting for an opportunity to 'have a go' at Mr Young, the impression arising from all of the evidence, including the CCTV footage, is that he was certainly willing to take the opportunity when it was presented,"* the Commission found.

Mr Sheridan argued he had no memory of the fight. Yet he told the nurses immediately after the fight that he was not going to stand by and take Mr Young's actions. When offered the opportunity to go home, Mr Sheridan said he was fine. These actions demonstrated an awareness of his actions during the fight.

In these circumstances, Mr Sheridan's claim of concussion and memory loss was not credible. Given his limited interaction with Mr Young, particularly in the lead-up to the night of the fight, the Commission also found that Mr Sheridan's conduct was not brought about by any predisposition towards a "fight or flight" response due to any psychological condition. In cross-examination, Mr Sheridan's expert psychologist accepted that this explanation was only a theory, not a fact. That is, it was equally likely that Mr Sheridan simply decided to get Mr Young once Mr Young made the first move.

The Commission concluded:

> *Viewed in the context of all of the evidence, the incident appears to have been the culmination of ongoing resentment between Mr Sheridan and Mr Young. This is demonstrated by Mr Young's initial aggressive and violent confrontation of Mr Sheridan, and Mr Sheridan's arguably more aggressive and violent retaliation. Rather than Mr Sheridan's response being a manifestation of his underlying emotional and psychological condition, which might reduce his accountability, I consider that Mr Young's assault was for Mr Sheridan a step too far and he determined, to paraphrase his words, "not to stand there and take it".*

As there were no "extenuating circumstances", the dismissal was found to be fair.

> "It is fairly well known that fighting in the workplace will justify dismissal. Fighting is unsafe and destroys confidence and workplace relationships. But, like most rules, there are exceptions and these can be difficult for employers to navigate."

Lessons

In this case, the hospital did not rely solely on the CCTV footage, but also obtained direct evidence from witnesses. It looked at events before and after the fight, and this was critical to understanding the fight's context. Mr Sheridan's actions and words immediately after the fight indicated he suffered no ill-effects from the fight. This evidence demonstrated he knew what he was doing, which rendered his expert witness testimony useless.

Despite this, the decision was almost found to be unfair. Seven allegations were made against Mr Sheridan, drawing on his conduct in not assisting Mr Young with the patient, his words to Mr Young, and his getting involved in the physical altercation. Allegations were duplicated; for example, it was stated that Mr Sheridan had engaged in a "verbal altercation" (allegation 4), a "physical altercation" (allegation 5) and had otherwise "acted in a way... that was verbally and physically aggressive" (allegation 6). The termination letter stated that all these allegations justified dismissal.

That left the hospital in a precarious position when the allegations about the lack of assistance to Mr Young with the patient were not proven, and the allegation of a verbal altercation was not established. The Commission then questioned whether the hospital would have dismissed him absent those four allegations; the number of allegations suggested that the fighting alone would not justify dismissal. The Commission astutely observed, *"the seriousness of an employee's misconduct, if established, and whether that misconduct justifies termination of their employment, is not measured by the number of allegations against them, but by the gravity of their conduct."*

A further learning here is that employers would be better to focus on the essence of the misconduct. Where multiple allegations are made, it is wise to consider if the allegations alone would justify dismissal. This would allow a fall back if some allegations are not proven at hearing.

Conclusion

Ultimately, the decision provides reassurance for employers seeking to take decisive action against inappropriate behaviour at work. Just as an employer needs to prove alleged misconduct, an employee needs to persuasively establish extenuating circumstances if they are to successfully appeal a dismissal.

EXPERT DETERMINATION UNDER GC21 – ALTERNATIVE DISPUTE RESOLUTION CAN CREATE DISPUTES

DAVID CREAIS

Because disputes are common in construction projects, most construction contracts contain alternative dispute resolution (ADR) clauses requiring disputes to be resolved by processes such as mediation, arbitration and expert determination.

The main purpose of ADR is to save time and money and to keep matters out of Court, away from public scrutiny. However, sometimes ADR provisions themselves are the cause of disputes.

New South Wales Government GC21 Edition 2 is the form of contract usually employed by NSW Government agencies for construction contracts valued at $1 million or more, or of lower value but with complex contractual requirements.

Recently, the NSW Supreme Court had occasion to consider the meaning of the standard ADR clause in that contract. The decision (*CPB Contractors Pty Ltd v Transport for NSW*) suggests that a change to the provision might be warranted.

Background

The predecessor to Transport for NSW, Roads and Maritime Services, had contracted CPB Contractors (CPB) to carry out widening of the M1 Pacific Motorway from Tuggerah to Doyalson. The contract was in the form of GC21.

In carrying out the work, CPB accumulated excess non-contaminated spoil. Transport issued CPB with instructions to remove the spoil to a location on Kooragang Island.

CPB claimed that it was entitled to be paid extra for this work, but Transport disagreed.

In keeping with the ADR provisions of the contract, the dispute was referred for expert determination. The expert determined that CPB was not entitled to further payments.

CPB then commenced Court proceedings seeking payment for these claims and others. Transport sought a stay of the proceedings in relation to the claims determined by the expert, stating that under cl 71 of the contract, CPB had agreed to accept the determination as "final and binding".

The argument

Subclause 71.8 of GC21 states:

> *".8 Neither party may commence litigation in respect of the matters determined by the **Expert** unless the determination:*
>
> *.1 does not involve paying a sum of money; or*
>
> *.2 requires one party to pay the other an amount in excess of..."*

CBP contended it was not bound by the expert's determination because:

1. the expert made no determination for the purposes of cl 71 of the contract because there was a "deficiency or error" in the determination that meant the expert did not make "a determination in accordance with the contract"
2. alternatively, assuming a valid determination had been made, it did not "involve paying a sum of money".

This article is only concerned with the second of those contentions.

The question was whether in stating that CPB had no right to further compensation, the expert made a determination that "does not involve paying a sum of money" for the purpose of cl 71.8.1 of the contract.

CPB submitted that where the issues involve a claim for payment of money, a determination that no money is payable is, in effect, a dismissal or rejection of the claim and does not and cannot involve "paying" a sum of money.

Transport, on the other hand, submitted that:

1. the determination "involved" the issue that was referred to the expert
2. the issue "involved" a claim for money
3. the use of the word "involve" in cl 71.8.1 and "requires" in cl 71.8.2 must mean it was intended that those words have different operation
4. the use of the word "involve" rather than "requires" in cl 71.8.1 suggests it is directed to circumstances where the issue does not involve a claim for money, an example being an issue as to the proper construction of the contract.

The judgment

Stevenson J accepted Transport's submission and held that in the context in which "involve" is used in cl 71.8.1, it does not mean "require". That the words "involve" and "requires" are used in the same clause must mean those words are to have different meanings.

The context was that the intent of the clause appears to be that determination of relatively small claims should be binding, whereas parties are free to litigate claims where the determination "requires" one party to pay the other more than the stipulated sum.

His Honour cited Gleeson JA in *Lahey Constructions Pty Ltd v State of New South Wales* who observed, of cl 71.8.2:

> *"An arbitrary threshold of $500,000 has been chosen by the parties for what might be described as minor claims, which following an expert determination, are subject to the preclusion of litigation".*

However, Stevenson J pointed out that: "the clause, and cl 71.8.1 in particular, works awkwardly in a case where the determination is that a money claim is refused or, in effect, dismissed."

This was illustrated by the competing contentions of the parties; namely:

a. on Transport's case, a dismissal of a money claim is binding no matter how **big** the claim is because cl 71.8.1 is not engaged and cl 71.8.2 operates on the amount of the determination, not the amount of the claim

b. on CPB's case, a dismissal of a money claim is not binding no matter how **small** the claim is, because no sum of money is payable.

Neither of these formulations is entirely consistent with the intention of the clause as postulated by his Honour or the Court of Appeal; that is, to ensure that determination of relatively small claims are binding, whereas the parties are free to litigate more significant claims.

Despite this, Stevenson J felt that a reasonable business person would understand cl 71.8 to mean that a determination of a money claim that leads to the amount payable being less than the stipulated sum (including if the payable sum is zero) is final and binding.

He reasoned that a determination that dismisses a claim for money does "involve" "paying a sum of money" in the sense that it "concerns" a claim to pay a sum of money, and rejects that claim.

CPB's claims regarding the expert's determination were therefore stayed.

Key take-aways

Subject to any different interpretation by the Court of Appeal, the meaning of the word "involves" in cl 71.8.1 is settled so that cl 71.8.1 is only relevant to determinations that are not in respect of money claims.

Similarly, the interpretation of cl 71.8.2 as leaving as final and binding a determination of a money claim that awards an amount less than the stipulated sum, including nothing, is settled. This applies even if the amount of the **claim** may have exceeded the stipulated sum.

That interpretation of cl 71.8.2 is not consistent, however, with the object of the clause in precluding litigation of only minor **claims** following an expert determination, as described by both the Court of Appeal in *Lahey Constructions* and Stevenson J in *CPB Contractors*. In fact, in *CPB Contractors* CPB's claim before the expert was for some $8.2 million dollars. Had the claim succeeded before the expert, the determination would not have been binding since the stipulated sum was $500,000.

Clearer drafting of the clause would have prevented litigation over the meaning of a provision whose very object was to prevent litigation.

> "Because disputes are common in construction projects, most construction contracts contain alternative dispute resolution (ADR) clauses requiring disputes to be resolved by processes such as mediation, arbitration and expert determination."

THE LATEST ON LAND ACQUISITION MATTERS IN THE LAND AND ENVIRONMENT COURT

DENNIS LOETHER

As always, a flurry of decisions have recently emerged from the Land and Environment Court regarding claims for compensation under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* **(JTC Act)**. We provide the following updates on a couple of those decisions.

Reinstatement costs and Section 56(3)

The Trustee for Whitcurt Unit Trust v Transport for NSW [2021] NSWLEC 82

This decision offers helpful insights into how the Court is likely to approach claims for reinstatement.

The Applicant, Whitcurt, conducted a golf driving range business on land owned by the Inner West Council. In March 2020, the land was acquired by Transport for NSW.

The Applicant sought compensation for the compulsory acquisition of its leasehold interest in the land under section 66 of the JTC Act. The claim rested on three bases:

- as disturbance under s55(f) for relocation of the business elsewhere
- as market value under s56(3) for reinstatement of business elsewhere
- as special value under s55(b)/57.

Key findings of the Court were:

1. The lost interest that gives rise to a claim for compensation ceases to exist on the date of acquisition. While loss need not be assessed only at the date of acquisition, the interest for which loss may be payable is fixed by that date. At the date of acquisition, the Applicant held a tenancy terminable on two months' notice and the likelihood of an extension of the lease and the attitude of the lessor are irrelevant.
2. At the date of acquisition, the critical infrastructure was owned by Council as the landlord. The Court held that in assessing the nature of the interest in land where compensation was sought for relocation costs, it was highly relevant to ask who owns the chattels and fixtures. In this case, the Applicant owned only the moveable chattels. The Court held that the Applicant's efforts to secure alternative premises and the costs of establishing a golf driving range had no role in relation to section 59(1)(c) relating to financial costs reasonably incurred for relocation.
3. The Applicant's interest must be considered in relation to its actual leasehold interest and what equipment it owned at the date of acquisition. The Applicant's claim for fitout and business relocation costs could not succeed as that would not be compensating the Applicant for its disturbance loss.
4. No loss of profits arose during business relocation.
5. Given the limited leasehold interest of the Applicant, the Court rejected the Applicant's claim for special value and market value under section 56(3).

The Applicant would only be entitled:

- as to reinstatement of interest lost, the cost of obtaining a leasehold tenure of two months
- as to relocation, the cost to relocate the items identified in the tenant's property under the lease together with other moveables such as stock and light equipment.

We wait to see what approach the Court will take in future applications. This decision highlights the inherent difficulties confronted when dealing with the vexed issue of compensation on the basis of reinstatement. Here, the dispossessed owner was largely unsuccessful.

“As always, a flurry of decisions have recently emerged from the Land and Environment Court regarding claims for compensation under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* **(JTC Act)**. We provide the following updates on a couple of those decisions.”

Apportioning market value

G Capital Corporation Pty Ltd v Transport for NSW [2021] NSWLEC 44

In G Capital, the Court was asked to consider how to apportion market value in relation to acquired land that was subject to a contract for sale.

This case involved three separately owned properties in Camperdown, acquired for the WestConnex project. Each owner had entered into a contract to sell their property, but none of the sales had been completed at the time of acquisition.

The Valuer General apportioned market value between the vendor and the contracted purchasers.

The three vendors were related interests of a Mr Gertos, and the three purchasers were related interests of a Mr Pamboris.

In addition to the contract for sale, a separate deed executed by all vendors and purchasers required the three transactions to be completed simultaneously.

TfNSW also lodged a cross claim against one of the Pamboris interests (Portman Securities) over the properties at 166-172 Parramatta Road Annandale into which it had entered a contract for sale. The cross claim sought to recover the difference between the amount paid plus statutory interest, versus the amount (to be determined by the court) of the actual market value compensation entitlement.

The hearing was conducted in two phases.

1. The first concerned market value matters.
2. The second related to a claim for the payment of stamp duty based on the market value of the land compulsorily acquired from that entity by each of the purchasers.

1. *Consideration of market value matters:*

- Portman Securities entered into a contract for sale with Marsden Developments Pty Ltd, the owner of 166-172 Parramatta Road, Annandale.
- For Portman Securities to have a compensable market value interest in Parramatta Road, it would need to demonstrate that all three properties could have settled in one line, as the deed mandated.
- The Court held that Portman Securities had no entitlement to compensation for its equitable interest and that the appropriate compensation determination for that interest was nil. The result is that the full market value compensation, as determined by the Valuer General, is to be paid to the Gertos entities and not apportioned between it and Portman Securities (the vendor and contracted purchaser, respectively).

2. *Consideration of cross claim*

- The Court held that it had jurisdiction and power to make an order, as sought by TfNSW, for the recovery of the compensation paid to Portman Securities, as that entity had no entitlement to compensation. Therefore, the Court upheld TfNSW's cross claim.
- Pursuant to s48(5) of the JTC Act, Portman Securities was ordered to repay $7,915,000 to TfNSW, being the amount paid as compensation for market value under s55(a). That said, Portman Securities was entitled to disturbance costs under s55(d).

Disturbance issues

- The entities that entered into the contract for sale claimed they were entitled to disturbance costs based on the stamp duty that would be payable if a property of the same market value was to be purchased.
- The Court stated that section 59(1)(f) is no longer available for claims like the ones made by the three purchasers.
- While the buyers claimed disturbance under s59(1)(d), the Court held that something tangible (not merely the concept of ownership) must be relocated for such an entitlement to arise. Therefore, the claims for stamp duty equivalent payments were dismissed.

The decision was notable and should help acquiring authorities better understand the Court's scope of jurisdiction. Having found that there should be no compensation to Portman Securities for its equitable interest, the Court was satisfied that TfNSW should succeed on its cross claim.

CRYPTOCURRENCIES – LOVE THEM OR FEAR THEM, THERE'S NO IGNORING THEM

NORMAN DONATO

Are you ready for a surprising fact? One in four Australians hold, or have held, one or more cryptocurrencies.

So says the just released Senate Select Committee report on Australia as a Technology and Financial Centre, adding that this makes Australia one of the world's biggest adopters of cryptocurrencies on a per capita basis.

Whether we should be impressed or concerned by this time will tell. What I can state with confidence – and the backing of the Senate report – is that Australia sorely needs a strong legislative framework around cryptocurrencies in order to both protect people from financial risk and also allow people the freedom to trade in legitimate forms of currency (even if they are not fully understood by all).

The term "cryptocurrency" is actually something of a misnomer. "Currency" in its generally understood usage is legal tender recognised by national laws and regarded as an official unit of money. Those $20 notes and 50 cent coins in your wallet meet that definition, but "crypto" currencies do not. They are forms of tender recognised by some, but not all, individuals and organisations, and not recognised by government agencies in most countries.

This is easily tested by trying to pay your taxes or rates bill with a cryptocurrency.

However, digital currency or payment methods is widely used or recognised, and when a new 'form' pops up, regardless of its status as a legal form or tender, governments must take note and consider the implications of its use. So, it is with cryptocurrencies.

> "As long as cryptocurrencies in Australia exist in their current form, government regulation has little option but to treat them as a form of speculative investment."

China's response has been to ban trading in cryptocurrency while turning something of a blind eye to it. That is, until September this year when its central bank warned that all cryptocurrency trades are not only illegal, but also "seriously endanger the safety of people's assets."

In the wake of this announcement, the price of Bitcoin fell by more than $US2,000 – highlighting the fact that China is one of the world's largest cryptocurrency markets.

One reason for the crackdown is that China has developed a digital version of its currency, the yuan. As stated by website qz.com, "users can make payments by scanning QR codes or using wearable devices, including physical wallets that are embedded with digital yuan chips."

By June this year, around 20 million digital yuan wallets were in existence, and transactions had reached the equivalent of $US5.3 billion.

What China has created is something of a hybrid – a cryptocurrency with a regulatory framework in digital infrastructure wrapped around it. That takes the digital yuan out of the realm of a speculative investment into that of "fiat" currency; that is, something that users can be at least reasonably confident won't wildly fluctuate in value according to the whims of those who trade in it, or the capriciousness of those with the power to issue more of it. It also gives the government a greater ability to bring the use of that form of currency within its fiscal regulatory framework and other forms of regulation of transactions.

As long as cryptocurrencies in Australia exist in their current form (as opposed to the form introduced by China), government regulation has little option but to treat them as a form of speculative investment. And that's exactly what the Senate report recommends, with the overarching aim of "promot[ing] innovation and attract[ing] investment while providing appropriate safeguards for investors and consumers."

Among its 12 recommendations:

- The creation of a Market Licence for digital currency exchanges so that businesses can trade through them with confidence.
- An appropriate regime for custodial and depository services of digital assets. Such regimes already exist for other assets, such as land, and doing the same for digital assets will create real business opportunities for Australia.
- A new Decentralised Autonomous Organisation legal structure to allow legitimate blockchain-based organisations to operate in Australia.
- A review of the Anti-Money Laundering and Counter-Terrorism Financing regulations to ensure they are fit for purpose with regard to digital assets without undermining innovation.

Time will tell whether the committee's recommendations are implemented and, if so, whether they will successfully negotiate the delicate path between protecting investors and allowing people sufficient freedom to take risks and earn potentially large rewards.

Whether states or state agencies will ever accept any type of cryptocurrency as legal tender is still an open question, if not doubtful. By June this year, the only country to recognise Bitcoin as legal tender was El Salvador. The rest of the world is not in a great hurry to do so.

It's to Australia's credit that it is responding to cryptocurrencies as not simply a short-lived fad and, given their widely fluctuating values, as something that could potentially cause investors significant losses. For good or ill, they are indeed a serious phenomenon, and considering how to manage their potential threats while also embracing the opportunities they present is a wise move.

Interested readers can download the full Senate report from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024747/toc_pdf/Finalreport.pdf;fileType=application%2F.pdf

List of Recommendations

The committee recommends that the Australian Government:

1. establish a market licensing regime for Digital Currency Exchanges, including capital adequacy, auditing and responsible person tests under the Treasury portfolio.
2. establish a custody or depository regime for digital assets with minimum standards under the Treasury portfolio.
3. through Treasury and with input from other relevant regulators and experts, conduct a token mapping exercise to determine the best way to characterise the various types of digital asset tokens in Australia.
4. establish a new Decentralised Autonomous Organisation company structure.

The committee recommends that:

5. the Anti-Money Laundering and Counter Terrorism Financing regulations be clarified to ensure they are fit for purpose, do not undermine innovation and give consideration to the driver of the Financial Action Task Force 'travel rule'.
6. the Capital Gains Tax (CGT) regime be amended so that digital asset transactions only create a CGT event when they genuinely result in a clearly definable capital gain or loss.
7. the Australian Government amend relevant legislation so that businesses undertaking digital asset 'mining' and related activities in Australia receive a company tax discount of 10 per cent if they source their own renewable energy for these activities.
8. The Treasury lead a policy review of the viability of a retail Central Bank Digital Currency in Australia.
9. the Australian Government, through the Council of Financial Regulators, enact the recommendation from the 2019 ACCC inquiry into the supply of foreign currency conversion services in Australia that a scheme to address the due diligence requirements of banks be put in place, and that this occur by June 2022.
10. in order to increase certainty and transparency around de-banking, the Australian Government develop a clear process for businesses that have been de-banked. This should be anchored around the Australian Financial Complaints Authority which services licensed entities.
11. in accordance with the findings of Mr Scott Farrell's recent Payments system review, common access requirements for the New Payments Platform should be developed by the Reserve Bank of Australia, in order to reduce the reliance of payments businesses on the major banks for the provision of banking services.
12. the Australian Government establish a Global Markets Incentive to replace the Offshore Banking Unit regime by the end of 2022.

YOUR KEY NSW GOVERNMENT TEAM

Our experienced team of lawyers are dedicated to providing our NSW Government agency clients not only with highest-order legal advice, but with outstanding legal service.

We are delighted to offer our services across the following NSW Government sub panels.

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VALUE ADDED SERVICES

Bartier Perry is committed to a partnership approach with NSW Government. We believe the way to provide best value add services is to work with Agencies to identify opportunities and initiatives that best meet your needs. We invite you to reach out to relationship partner James Mattson or any of our cluster partner contacts to discuss these offerings or to discuss areas where we can add value. We will also ensure we contact you with suggestions (that are outside of the below offerings) as they arise.

Our value add offerings include:

Advice hot-desk

NSW Government agencies can, without charge, contact us to obtain brief advice. Our clients tell us that they value this service which often allows them to address potential issues early.

Attending team meetings

For example, we would welcome attending HR team meetings to not only learn about what is occurring but to be available to answer questions for 15-30 minutes to provide guidance. Similar to a 'hot-desk' but structured to be face-to-face and engaging.

Mentoring program

Agency staff have told us they value the informal mentoring program we have in place. Lawyers, often employed in Local Health Districts or NSW Government employed solicitors, may be working without a supervising lawyer and require hours of supervision to obtain their unrestricted practising certificate. We assist by meeting weekly or fortnightly to review their caseload and make suggestions on strategies and approaches. We align our mentoring approach to the Law Society of NSW's structured mentoring program.

CLE, training and education

We provide our clients with tailored seminars, workshops and executive briefings for senior management on current legislative changes and regulatory issues. Seminars are captured via webcast for regional clients and those unable to attend in person. Videos are then uploaded to our website.

E-Updates on legal reform

We distribute electronic articles on a weekly basis which detail legislative and case law changes and industry developments as they occur, and often before they occur. We encourage our clients to re-publish our articles across their internal communication platforms, as appropriate.

Provision of precedents, library and research facilities

We can provide precedent documents and templates from our library on request. We have an extensive library and subscribe to the three major online resource providers (Thomson Reuters, CCH and LexisNexis). NSW Government agencies may have access to our physical library resources at any time and can conduct research using our online services together with 20 hours per year of complimentary paralegal support.

Secondments and reverse secondments

We understand the provision of secondees is particularly valued and we welcome the opportunity to continue to provide legal secondments to NSW Government Agencies. We would also welcome the opportunity for a reverse secondment for NSW Government Agency staff who may benefit from spending a week (or similar) working in our office alongside one of our senior lawyers.

All articles, upcoming events and past videos can be found under the Insights tab at – www.bartier.com.au

ABOUT BARTIER PERRY

Bartier Perry is, and has always been, a NSW based law firm committed to serving the needs of our clients in NSW.

Our practice has corporate clients from a wide range of industry sectors, and appointments to all levels of government including statutory bodies. With over 80 lawyers, we offer personalised legal services delivered within the following divisional practice areas:

- Corporate & Commercial and Financial Services
- Commercial Disputes
- Property, Environment & Planning
- Insurance Litigation
- Estate Planning & Litigation, Taxation and Business Succession
- Workplace Law & Culture

YOUR THOUGHTS AND FEEDBACK

Thank you for taking the time to read our Government Connect publication. We hope you found it informative.

If you have any comments on this issue, or suggestions for our next issue, we'd love to hear from you.

Please email info@bartier.com.au

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