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Update Summary

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FEDERAL OFFENCES

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Federal Offences

The commentary in this service has been updated.

Stephen Odgers SC has added new and amended annotations to the following:

Criminal Code Act 1995

- The analysis in *Allison v The Queen* (2021) 362 FLR 445 has been followed in *R v Delzotto* [2022] NSWCCA 117 at [60]–[66] and in *Hurt v The Queen* [2022] ACTCA 49 at [190]–[191]. See [CC.474.22A.20].

Gerry Nash has added new and amended annotations to the following:

Corporations Act 2001 (Extracts)

- In determining whether conduct is oppressive, the relevant question is whether, objectively, in the eyes of a commercial bystander, there has been conduct that is so unfair that reasonable directors who consider the matter would not have thought the decision fair. See [CORPS.232.20].
- Inserted commentary on s 588G – Director’s duty to prevent insolvent trading by company. See [CORPS.588G.20] – [CORPS.588G.240].
- Added commentary in relation to procedural irregularity, with reference to cases including *Tayeh v Commonwealth* [2020] FCA 1323. See [CORPS.1322.10].
- An interested person may seek an order declaring that any act, matter or thing purported to have been done is not invalid by reason of any contravention of the provisions of the *Corporations Act 2001* (Cth) or a provision of the constitution of a corporation. See [CORPS.1322.20].

Competition and Consumer Act 2010 (Extracts)

- Updated commentary concerning misleading or deceptive conduct constituted by a contractual promise or warranty, with reference to cases including *Li v Liu* [2022] NSWCA 67. See [CACA.SCH2.4.20].
- Whether the impugned conduct, viewed as a whole, has a sufficient tendency to lead a person exposed to the conduct into error is considered with reference to cases including *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* (2020) 278 FCR 450) and *RB (Hygiene Home) Australia Pty Ltd v Henkel Australia Pty Ltd* [2022] FCA 1042. See [CACA.SCH2.18.20].
- Added commentary in relation to *Li v Liu* [2022] NSWCA 67 concerning a misleading statement made by one party to a conspiracy to import illegal drugs made to another party to that conspiracy. See [CACA.SCH2.18.40].

Migration Act 1958 (Extracts)

- The focus of any extension of time application under s 476A is considered with reference to *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 96 ALJR 819. See [MA.476A.30].
- That the tribunal's failure to afford an applicant procedural fairness does not necessarily involve jurisdictional error is discussed with reference to *Nathanson v Minister for Home Affairs* (2022) 96 ALJR 737. See [MA.500.30].
- In *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 96 ALJR 819, the plaintiff's visa was cancelled "on the basis of matters that included the Minister's suspicion that the plaintiff had been or was a member of the Comanchero outlaw motorcycle gang". See [MA.501.20].
- The power to revoke under s 501CA(4)(A) arises only where the person makes representations in accordance with the invitation of the Minister. See [MA.501CA.20].
- Added new commentary discussing cases in which a decision not to cancel the visa cannot be revisited, with reference to *Minister for Immigration and Border Protection v Makasa* (2021) 270 CLR 430 and *Wilson v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 924. See [MA.501CA.30].
- That the decision-maker is required to "read, identify, understand and evaluate the representations", and "have regard to what is in the representations"; but "the weight or persuasive authority" to be attributed to them is a matter for the decision-maker is considered in regard to *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 96 ALJR 497.

Mirko Bagaric has added new and amended annotations to the following:

Extradition Act 1988 (Annotated)

- A failure to comply with the requirement can invalidate an extradition approval (*Pauga v Chief Executive of Queensland Corrective Services (No 6)* [2022] FCA 1096). See [EXA.19.60].
- In *Matson v Attorney-General (Cth)* [2022] FCA 790 it was held that the Attorney-General has the power to revoke a surrender decision even after that determination has been made See [EXA.22.20].
- In *Matson v Attorney-General (Cth)* [2022] FCA 461 it was held that s 22 does not require the Attorney-General to take into account Indigenous heritage in making extradition decisions and hence the principle in *Love v Commonwealth* (2020) 270 CLR 152 is not relevant. See [EXA.22.80].

Crimes Act 1914 (Extracts) (Annotated)

- Updated values in table of comparison of interjurisdictional penalty units as outlined in the relevant crimes legislation of each Australian jurisdiction. See [CA.4AA.40].

- In *He v The Queen* [2022] NSWCCA 205 a sentence was overturned for the failure by the sentencing judge to consider one of the discrete factors set out in s 16A. See [CA.16A.80].
- There is no principle that the risk of COVID-19 outbreak in prison should mitigate penalty: *Wass v The Queen* [2022] NSWCCA 143. See [CA.16A.180].
- In *Totaan v The Queen* (2022) 365 FLR 69 a five member bench of the New South Wales Court of Criminal Appeal held that for federal offences the hardship to family does not need to be extreme in order to mitigate penalty. See [CA.16A.460].
- In *R v Delzotto* [2022] NSWCCA 117 it was held that the approach set out in *Bahar v The Queen* (2011) 45 WAR 100 also applies to mandatory minimum penalties prescribed for Commonwealth child pornography offences. See [CA.16A.720].

Ashleigh Harrold has added new and amended annotations to the following:

Commonwealth Places (Application of Laws) Act 1970 (Extracts) (Annotated)

- Updated commentary describing the effect of the Act in regard to *Santos v Director of Public Prosecutions (WA)* (2016) 316 FLR 94. See [CPA.ACT.20].
- Updated commentary as to the application of this Act to State listening and surveillance device legislation, and the admissibility of evidence obtained under such legislation. See [CPA.4.40].
- Section 7 invests State courts with federal jurisdiction in all matters arising under applied legislation. See [CPA.7.20].

Judiciary Act 1903 (Extracts) (Annotated)

- Updated commentary concerning the definition of “matter” in regard to *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 96 ALJR 234. See [JA.30.40].
- New commentary in relation to s 78B which states that where a cause pending in a federal court involves a matter arising under the Constitution or involving its interpretation, it is the duty of the court not to proceed until satisfied that notice has been given to the Attorney-General of the Commonwealth and of the States. See [JA.30.50].
- Section 35A sets out the criteria the High Court may have regard to in considering whether to grant special leave. See [JA.35.40].
- New commentary in relation to final and interlocutory orders. See [JA.35.70].
- Updated commentary concerning the High Court’s recognition of the advantages which Courts of Appeal have in each State, given their knowledge of local conditions and local sentencing practices. See [JA.35.120].
- Updated commentary as to the application of s 39(2) to matters which fall within s 75 or s 76 of the Constitution. See [JA.39.20].

- Updated commentary in regard to *R v Luscombe* (1999) 48 NSWLR 282, in which the New South Wales Court of Appeal held that s 39(2) of the Constitution operates on s 19B(3)(b) of the *Crimes Act 1914* (Cth). See [JA.39.40].
- Added commentary in relation to *The Queen v Ward* (1978) 140 CLR 584 concerning exclusions. See [JA.39.50].
- As set out in *Tucker v McKee* (2022) 402 ALR 254 at [44], a matter can arise under a law of the Commonwealth Parliament within the meaning of s 39B(1A)(c) of the *Judiciary Act 1903* (Cth) in a variety of ways. See [JA.39B.20].
- Section 68 does not operate to insert a provision of State law into a Commonwealth legislative scheme which is “complete upon its face”, where, on proper construction, the federal provisions can be seen to have left no room for the picking up of State law. See [JA.68.40].
- A magistrate's decision to commit for trial for a Commonwealth offence may be reviewed under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) but only in exceptional cases. See [JA.68.80].

