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Update Summary

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FEDERAL OFFENCES

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Gerard Nash has made the following updates to Federal Offences

Chapter 8F Competition and Consumer Act 2010 (Extracts Annotated)

[CACA.SCH2.18.20] Misleading or deceptive

“[C]onduct may be misleading or deceptive even though the respondent did not intend to mislead or deceive and even though the respondent acted honestly and reasonably...However, proof that the respondent intended to mislead may provide some evidence that it was likely to have done so.”: *Global Retail Brands Australia Pty Ltd v. Bed Bath N’ Table Pty Ltd* [2024] FCA 139 per Curiam at [71].

[CACA.SCH.2.21.40] Knowingly concerned in a contravention

SECTION 22 COMMENTARY

[CACA.SCH.2.22.20] May have regard to

SECTION 34 COMMENTARY

CACA.SCH2.34.2020] Misleading as to services

Federal Offences Update

Gerard Nash has made the following updates to Federal Offences

Migration Act 1958

Section 134B > Natural justice and adverse security assessments

SECTION 189 COMMENTARY > [MA.189.20] Lawfulness of detention> updated commentary

Insert legislation- Section 198AA- 198AJ

Insert Section 499

[MA.476A.30] Extension of time- updated commentary

[MA.499.20] Restrictions on discretion of delegate- updated commentary

Insertion of Direction 110 replacing Direction 99

[MA.500.30] Jurisdictional error- updated commentary

Although taking into account criminal conduct of an applicant at a time when he was a juvenile may be erroneous, it will not always constitute jurisdictional error.

[MA501.50] Sentenced to imprisonment of 12 months or more

The fact that offences committed by the applicant at a time when he was a juvenile are mentioned in an AAT decision does not necessarily result in jurisdictional error. See *NHWY v. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] FCA 1680; *NPBP v. Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 1595, both discussed at [MA500.30].

[MA.500.20] Review by the AAT of decisions by the Minister- updated commentary

Jagroop v Minister for Immigration and Border Protection [2016] FCAFC 48

[MA.500.30] Jurisdictional error- updated commentary

[MA501.50] Sentenced to imprisonment of 12 months or more updated commentary

[MA 501A.40] Cancellation under s. 134B updated commentary

CORPORATIONS ACT 2001:

S 183 Commentary> In *ACN 656077020 Pty Ltd v MLI Accounting and Taxation Services Pty Ltd* (CAN 674562915) Dowling J adopted an almost identical list of criteria.

[CORPS.183.40] Interlocutory orders

[CORPS.206B.10] Offence that involves dishonesty

Section 1323 Commentary> updated commentary >As to the circumstances in which ex parte orders may be made freezing the assets of a defendant company see *Kessem (Liquidator), in the matter of GJH Hospitality Group Pty Ltd (in liq). v. Khouzame* [2024] FCA 476 at [23].

Chapter 18 -Part 2 -Australian Citizenship

Revocation of citizenship

Where a person required by the relevant legislation to be of good character at the time of obtaining citizenship is, subsequent to the grant of citizenship, convicted of a serious criminal offence committed in Australia before the grant of citizenship, that citizenship may be revoked. See *Alexander v. Minister for Home Affairs* (2022) 276 CLR 236; *Jones v. Commonwealth* [2023] HCA 34; 97ALR 936. However, in the case of a person who comes to Australia as a child, and while still a child becomes an Australian citizen, he or she is not

subject to the requirement, as a statutory prerequisite to the grant of citizenship by conferral, that he must, at the time of obtaining citizenship, "be of 'good character.'"

[CORPS.180.20] Duty of care and diligence- updated commentary

[CORPS.181.20] Good faith- updated commentary

"The duty to act in good faith in the best interests of a corporation and for a proper purpose are conceptually different duties: *Bell Group Ltd (in liq.) v. Westpac Corporation (No. 9)* [2008] 39 WAR 1; [2008] WASC 239 at [?] (Owen J)":*Hayes(liquidator), in the matter of Container Freight Services Pty Ltd (in liq.) v. Sinadinos* [2024] FCA 885, per Halley J at [33].

[CORPS.182.40] Impropriety- updated commentary

The concept of "impropriety" must be determined having regard to the fundamental obligations arising from the position of a director. In *Cortnay Polymers Pty Ltd v. Deang* [2005] VSCA 318