

## Editors' Note

In amongst EOFY parties, AFP raids and end of season sales, June also brings to you the mid-year edition of the CLB for 2019.

Much has happened since our April publication, including the recent **Australian Federal Police raids** of the ABC's headquarters in Sydney which caused quite a stir. The raids resulted in wildly divergent views and we have canvassed some of those from high-profile commentators inside, with many thanks to **Marlia Saunders**. On the subject of media rights, CAMLA Young Lawyer representative **Antonia Rosen**, from Bankis, interviews **Larina Alick**, at Nine, on the future of suppression orders and our friends at **Ashurst** get us up to speed on defamation law reform and the recent amendments to s115A of the Copyright Act. Bird and Bird's **Sophie Dawson** provides an insight into the world of violent and abhorrent material and HWL's **Rebecca Lindhout** and **Andrew Miers** look at the recent statistics from the OAIC on data breaches. **Eli Fisher** chats with **Anna Johnston**, privacy guru at Salinger, about all things data. And **Dr Mitchell Landrigan** gives us his thoughts about the Folau/ARU stoush. Despite revving up over Redbubble's use of its copyright, Hells Angels were met with nominal recourse by the Federal Court as discussed by HWL's **Laksha Prasad**.

Further to these developments, both **Jetstar** and **Sony** have felt the early sting of the **ACCC**, both for allegedly making false or misleading representations to consumers on their respective websites regarding refunds and in

Sony's case, replacement or repairs for faulty games. In the world of privacy, **ANU**, **Westpac** and the **Australian Catholic University** have become embroiled in data breach territory.

Following on from our December 2019 edition, **Geoffrey Rush** has been awarded \$2.9million in his defamation case against The Daily Telegraph. It is the largest ever defamation payout to a single person in Australia after the Victorian court of appeal last year significantly dropped the actor **Rebel Wilson's** damages over defamatory articles in Woman's Day magazine. Before you ask, yes, there has been an **appeal** which will be heard August this year. Stay tuned!

In amongst all this action, the CAMLA **Young Lawyers** committee held their annual **networking event** at **MinterEllison**, where the winners of the CAMLA **essay competition** were also announced. CAMLA Young Lawyer representative **Madeleine James** provides her report on the sold-out event. Lastly, save the date - 29 August 2019 - for this year's **CAMLA Cup**. Tickets are now on sale for everyone's favourite trivia night!

For more, read on.

**Eli and Ashleigh**

**\*Correction:** We would like to acknowledge Jess Millner and her article "Stranger Than Fiction: The Truth Behind 'Fake News.'" The author's details were omitted in our April 2019 edition.

or offensive. Section 474.22 makes it an offence to access, publish or transmit child abuse material. And section 474.25 makes it an offence for an internet content provider or internet content host to fail to report child pornography material to the Australian Federal Police within a reasonable time after becoming aware of it.

### What does the Act apply to?

The Act contains offences which apply to internet service providers, content services and hosting services in relation to a failure to remove or report 'abhorrent violent material'.

Material will only be "Abhorrent violent material" if it meets four criteria. First, the material must be in the nature of streamed or recorded audio, visual or audio-visual material.

Second, it must record or stream "Abhorrent Violent Conduct" which is defined to include terrorist acts, murder, attempts to murder, torture, rape and kidnap.

Third, it must be material which reasonable people would regard in all the circumstances as being offensive. As further discussed below, this element of the offence may be construed restrictively in light of the High Court decision in *Monis*.

Fourthly, it must be "produced" by a person (or 2 or more persons) who engaged in, conspired to engage in, attempted to engage in, or aided, abetted, counselled or procured, or who was knowingly concerned in the Abhorrent Violent Conduct. It does not therefore apply in respect of material prepared by journalists (though it may apply in respect of any streaming by a journalist of footage originally produced by a perpetrator of the relevant conduct).

### Failure to report

Section 474.33 makes it an offence for an internet service provider, content service or hosting service (together, the **Regulated Providers**) to fail to refer material to the Australian Federal Police where the relevant person:

- is aware that the service provided by the person can be used to access particular material that the person has reasonable ground to believe is abhorrent violent material that records or streams abhorrent violent conduct that has occurred, or is occurring, in Australia; and
- does not refer details of the material to the Australian Federal Police within a reasonable time after becoming aware of the existence of the material.

It is important to bear in mind that this is not the only offence relating to failure to report crime. For example, under section 316(1) of the *Crimes Act 1900* (NSW), it is a crime punishable by up to 2 years in prison to fail to report a serious indictable offence.

### Failure to remove

Section 474.34 makes it an offence for a person to fail to ensure the expeditious removal of abhorrent violent material from a content service provided by that person.