

Editors' Note

Dear readers,

We are thrilled to present you with this, CAMLA's **bonus edition** of the Communications Law Bulletin. Conscious as we are that you have been unable for months to meet face-to-face for CAMLA seminars and networking events, we thought we would do our bit to increase the connection between our members by publishing an extra edition of the CLB this year. This is among the raft of other initiatives on which the CAMLA Board and Young Lawyers Committee are continuing to work hard to help the membership #stayconnected through all this. If the Pulitzers had a prize for thoughtfulness, it still probably wouldn't go to us. But it's nice of you to say.

Speaking of CAMLA's other corona-initiatives, our friends at **Baker McKenzie** hosted a brilliantly informative CAMLA webinar, '**Contracts, Cancellations and Coronavirus in the Tech-Media Industry**'. The wonderful team at **McCullough Robertson** hosted a **workplace relations** webinar dealing with the legalities and practicalities around standing down employees, the requirements under the *Broadcasting and Recorded Entertainment Award 2010*, alternatives to standing employees down, and various other employment law issues related to the unfolding coronavirus shutdown. On 25 June 2020, CAMLA and Ashurst hosted the excellent **Prepublication 101** webinar featuring **Larina Alick**, Executive Counsel at Nine, **Marlia Saunders**, Senior Litigation Counsel at News Corp Australia, **Prash Naik**, General Counsel Doc Society, and **Leah Jessup**, Business & Legal Affairs Executive at Endemol Shine Australia. Organised by CAMLA Young Lawyers as a valuable introduction into prepub by some of the best in the business, this webinar was widely attended and gratefully received. These webinars are being made available to members to be enjoyed via the CAMLA website, placing CAMLA comfortably among the most game-changing content streaming platforms to launch in Australia in the last decade.

Speaking of webinars and game-changing content streaming platforms, another webinar is on its way. This one will address the future of Australian screen content following the release of the **Supporting Australian Stories on our Screens Options Paper**. The webinar, hosted by Baker McKenzie at 1:30-2:30pm on Thursday 2 July 2020, will feature some of the leading voices from within that discussion, including the ACMA's **Fiona Cameron** (co-author of the Options Paper), **Bridget Fair** (CEO, Free TV) and **Emile Sherman** (the Academy Award winning and nominated producer for *The King's Speech* and *Lion*).

Still focusing on the streaming platforms (not an altogether unfamiliar activity for me over the last few months), nbn's **Jessica Norgard** profiles **Netflix's** Director of Production Policy (APAC), **Deb Richards**. On top of that, Minters' **Kosta Hountalas** comments on the **USYD v ObjectiVision** case and the implications it can have for commercialising IP. Baker McKenzie's **Liz Grimwood-Taylor** talks us through the ongoing consultation around changes to the *Online Safety Act*. Ashurst's **Nina Fitzgerald**, **Eoin Martyn**, **Caroline Christian** and **Jasmine Collins** help us to understand copyright ownership where material is created by artificial intelligence. McCullough Robertson's **Beck Lindhout** and **Robert Lee** provide a useful chart to clarify defamation law in a social media context. HWL Ebsworth's **Teresa Torcasio**, **Laura Young** and **Chantelle Radwan** summarise the **ACCC v Trivago** ruling. Corrs' **Michael Do Rozario**, **Simon Johnson** and **Bianca Collazos** tell us why it's time to stop force-feeding cookies to users, following a recent GDPR ruling by the CJEU. And Bakers' **Adaena Sinclair-Blakemore** explains the significance of the recent **Roberts-Smith v Fairfax** judgment on journalists' sources.

With great thanks to all our contributors, we hope you enjoy this edition as much as we have!

Ashleigh and Eli

- b) the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.
- 3) An order under subsection (2) may be made subject to such terms and conditions (if any) as the court thinks fit.

Section 126K(1) shields a journalist and their employer from having to disclose their sources where

a journalist made a promise to an informant not to disclose the informant's identity. However, subsection (2) introduces a public interest test which enables a court to order that the privilege does not apply where the public interest in disclosure outweighs any likely adverse effect of the disclosure. This rule replaces the old common law rule, called the "newspaper rule", and creates a rebuttable presumption that a journalist does not need to disclose their sources' identities.²

3. Facts of the case

Roberts-Smith commenced defamation proceedings against Fairfax and three individual journalists (Nick McKenzie, Chris Masters and David Wroe) after articles published in August 2018 revealed the allegations of war crimes and an allegation of domestic violence against him. These allegations, which Roberts-Smith has vehemently denied, were borne out of an internal Australian Defence Force investigation which

² See Joseph Fernandez and Mark Pearson, 'Shield Laws in Australia: Legal and Ethical Implications for Journalists and their Confidential Sources' (2015) 21 *Pacific Journalism Review* 61.