The biggest news from the past fortnight is the postal survey returning a ‘yes’ vote for Same Sex Marriage. The eyes of the nation are watching the Parliament closely to see if legislation is introduced as the next stage of the process.

Legislation the next hurdle for marriage equality

Lawyers have underscored the importance of ensuring same-sex marriage legislation does not limit anti-discrimination protections. After the same-sex marriage postal survey returned a 61.6 per cent ‘yes’ vote, all eyes turned to Canberra for the next stage of the process. https://www.lawyersweekly.com.au/wig-chamber/22261-legislation-the-next-hurdle-for-marriage-equality

LCA: It’s a ‘yes’ for marriage equality! Now for legislation that does not discriminate

With the ‘yes’ vote now confirmed, Parliament must move swiftly to introduce legislation that legalises marriage equality while preserving important anti-discrimination protections for LGBTI Australians. https://www.lawcouncil.asn.au/media/media-releases/it-s-a-yes-for-marriage-equality-now-for-legislation-that-does-not-discriminate

LCA: New Bill an extraordinary winding back of anti-discrimination laws under cover of same-sex marriage


MEDIA

Opal Card False Imprisonment Case Overturned By NSWCA

In State of New South Wales v Le [2017] NSWCA 290, the NSW Court of Appeal (“the Court”) has overruled a decision by the NSW District Court that saw a man stopped by transport police awarded damages of $3201 for ‘false imprisonment’. The Court found that “the officers were justified in the steps they took in stopping and detaining the respondent” [at 23] and allowed the appeal. http://www.smh.com.au/nsw/court-overturns-3000-damages-award-over-opal-card-false-imprisonment-20171116-gzmfl2e.html

High Court’s decision to dismiss Hollie Hughes shows the constitution needs updating Analysis

About one in six workers in Australia would be deemed ineligible to run for Parliament under the current rules, including teachers, police officers, nurses, doctors, public servants. http://www.abc.net.au/news/2017-11-16/analysis-section-44-constitution-needs-updating/9154540

Funding for local solutions to local crime

Local businesses, councils and community groups with grassroots solutions to crime in their local communities have the chance to apply for up to $250,000 each in grant funding. Attorney General Mark Speakman and Minister for Police Troy Grant announced. http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/funding-local-solutions-to-local-crime.aspx

Council and dog advertising under spotlight: NSW

Margaret Crawford, the NSW Auditor-General, recently tabled a new report titled ‘Government Advertising: Campaigns for 2015-16 and 2016-17’, placing a spotlight on two campaigns that garnered significant media attention. The report makes four recommendations that aim to help agencies comply with existing requirements and improve transparency where the need to commence advertisement is deemed to be ‘urgent’ under the Government Advertising Act 2011. http://wwwaudit.nsw.gov.au/news/government-advertising-campaigns-2015-16-2016-17
eSafety office fronts Facebook pilot

The Office of the eSafety Commissioner has joined Facebook in an international pilot program to prevent intimate images of people being posted online without their consent. https://esafety.gov.au/about-the-office/newsroom/media-releases/facebook-and-esafety-office-partner-to-protect-australians-online

CASES

Caratti v Commissioner of the Australian Federal Police [2017] FCAFC 177

ADMINISTRATIVE LAW – appeal from orders substantively dismissing application for judicial review pursuant to the Administrative Decisions (Judicial Review) Act 1997 (Cth) and s 39B of the Judiciary Act 1903 (Cth) in relation to the decision to issue search warrants under s 3E of the Crimes Act 1914 (Cth) CRIMINAL LAW – practice and procedure – search warrants.

Australian Competition and Consumer Commission v Apple Pty Ltd (No 2) [2017] FCA 1329

PRACTICE AND PROCEDURE – leave to amend concise statement – whether proposed amended concise statement pleaded material facts to support alleged contraventions of ss 18 and 29(1)(m) of the Australian Consumer Law –Competition and Consumer Act 2010 (Cth), Sch 2, Australian Consumer Law, ss 18 and 29.

Australian Competition and Consumer Commission v Morid Pty Ltd [2017] FCA 1308

CONSUMER LAW – contraventions of the Competition and Consumer Act 2010 (Cth) and Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth) (Franchising Code) – breaches of cl 8(1) and cl 9(1) of the Franchising Code for failing to create a complying disclosure document and for the distribution of that non complying disclosure document – where contraventions admitted – where parties agree that the insolvency of two predecessor franchisors was “relevant business experience” which pursuant to the Franchising Code must be disclosed – principles applicable to imposition of a pecuniary penalty, declarations and injunctive relief – appropriateness of agreed orders and declarations.

Australian Competition and Consumer Commission v Meriton Property Services Pty Ltd [2017] FCA 1305

CONSUMER LAW – misleading or deceptive conduct – conduct liable to mislead the public as to the nature, characteristics or suitability for their purpose of services – where respondent carried on serviced apartment business – where respondent’s properties listed on the TripAdvisor website – where respondent participated in system called Review Express to solicit reviews from guests who had stayed at properties – where respondent masked email addresses of guests who had complained – where respondent withheld email addresses of guests where there had been a major service disruption – whether respondent’s conduct had effect of reducing the number of negative reviews – whether respondent’s conduct likely to mislead or deceive – whether respondent’s conduct liable to mislead the public as to the nature, characteristics or suitability for purpose of accommodation services

EVIDENCE – hearsay – business records – where respondent subscribed to online service that collected and analysed guest reviews from the internet – where respondent accessed the service and prepared reports containing such data – whether representations in reports covered by business records exception to hearsay rule - Competition and Consumer Act 2010 (Cth), s 139B, Sch 2.

Liem v Republic of Indonesia [2017] FCA 1303

EXTRADITION – application for judicial review under s 39B of Judiciary Act 1903 (Cth) – seeking review of Minister’s decision to issue notice under s 16 of Extradition Act 1988 (Cth) upon concluding that applicant was an “extraditable person” within meaning of s 6 of Extradition Act 1988 (Cth) – seeking review of magistrates’ decision that applicant was eligible for surrender as being a nullity – asserted incapacity of material to establish Minister’s conclusion that applicant was “accused of having committed the offences” – asserted failure by Minister to properly consider whether applicant was not “accused of having committed the offences” due to insufficient material – alleged denial of procedural fairness – held: open to Minister to conclude that applicant was “accused of having committed the offences” and thus an “extraditable person” – held: material before Minister sufficient to base conclusion – held: no denial of procedural fairness due to no obligation arising - held: magistrate’s decision therefore not a nullity – held: judicial review application dismissed

EXTRADITION – statutory appeal under s 21 of Extradition Act 1988 (Cth) challenging orders of magistrate that applicant was eligible for surrender to Indonesia under s 19(9) of Extradition Act 1988 (Cth) – alleged error by magistrate in considering police investigators report to be part of statement of conduct – alleged error by magistrate in concluding dual criminality requirement was satisfied – alleged error by magistrate in holding Indonesia to have provided requisite statement of conduct – held: no issue in police investigators report forming part of statement of conduct – held: no error in holding dual criminality to be satisfied – held: no error in holding statement of conduct provided to be satisfactory – held: statutory appeal dismissed

Corporations Act 2001 (Cth), s 184; Extradition Act 1988 (Cth), ss 5, 6, 7, 10(3), 12, 15, 16, 17, 19, 21; Judiciary Act 1903 (Cth), s 39B.

Pascale v City of Parramatta [2017] NSWCATAD 332

COSTS - Administrative Law - GIPA Act - Whether special circumstances established - Settled how costs approached.

Transcon Holding Pty Ltd t/as Sydney Multicultural Child Care Services v Secretary, Department of Education [2017] NSWCATAD 333

ADMINISTRATIVE LAW- Education and Care Services National Law - cancellation of provider approval - breach of condition of approval – Objects and Principles of National Law – Children – Childcare Services – Administrative review jurisdiction – correct and preferable decision - whether the Tribunal should uphold the decision or substitute a decision – correct and preferable decision is to confirm the decision of the Regulatory Authority.
AAT Bulletin

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions

Issue No. 46/2017, 13 November 2017
Issue No. 45/2017, 6 November 2017

High Court of Australia (17 November 2017)

NOTICE - Reference by the Senate to the Court of Disputed Returns - MR STEPHEN PARRY (See attached file).
NOTICE - Reference by the Senate to the Court of Disputed Returns - MS JACQUI LAMBI (See attached file).

Election funding and disclosure in Australian states and territories: a quick guide

Damon Muller; Parliamentary Research Paper Series 2017-
This Quick Guide summarises the often complex funding and disclosure laws in each Australian state and territory for the purpose of comparison

Law Council Submissions

03 November 2017— Law Council.

NSW

Supreme Court of NSW: Updated forms for costs assessment

Updated costs assessment forms have recently been published on the Supreme Court website. From 1 January 2018 the registry will only accept these costs assessment forms for processing.

The High Court’s decision in Brown v Tasmania

Tom Gotsis; NSW Parliamentary Research Service: 06 November 2017 - This e-brief discusses the High Court’s decision in Brown v Tasmania and its implications for protest law in NSW.

ICAC: Prosecution briefs with the DPP and outcomes

Prosecution briefs with the DPP and outcomes - last updated 09 November 2017.

LEGISLATION

COMMONWEALTH

Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017

16/11/2017 - This Bill requires the Attorney-General to oblige Commonwealth litigants to act as model litigants, in line with current practice. It establishes a process by which the Commonwealth Ombudsman can investigate complaints regarding contraventions of these obligations, and requires the Ombudsman to include details of these complaints in annual reports. It empowers a court to order a stay of proceedings and, if it is satisfied of a contravention, to make any order it considers appropriate.
Marriage Amendment (Definition and Religious Freedoms) Bill 2017
16/11/2017 – This Bill amends the Marriage Act 1961 (Cth) to remove the restrictions that limit marriage in Australia to the union of a man and a woman. The Bill will allow two people the freedom to marry in Australia, regardless of their sex or gender. The Bill also recognises foreign same-sex marriages in Australia. The requirements for a legally valid marriage otherwise remain the same under the Marriage Act. Public Governance, Performance and Accountability Amendment (Executive Remuneration) Bill 2017

16/11/2017 – This Bill seeks to establish caps on the remuneration paid to senior executives in the Commonwealth public service as well as annual reporting requirements regarding this remuneration.

ACTS

Freedom of Information Act 1982

Regulatory Powers (Standardisation Reform) Act

REGULATIONS

High Court Amendment (Fees) Rules 2017
10/11/2017 - These rules amend Schedule 2 of the High Court Rules governing the schedule of fees for work done or services performed.

NSW

Proclamations commencing Acts

Regulations and other miscellaneous instruments


Bills introduced Government – 17 November 2017
Terrorism (High Risk Offenders) Bill 2017

Non-Government – 17 November 2017
Privacy and Personal Information Protection Amendment (Notification of Serious Violations of Privacy by Public Sector Agencies) Bill 2017

Bills revised following amendment in Committee – 17 November 2017
Electoral Bill 2017
Statute Law (Miscellaneous Provisions) Bill (No 2) 2017

Bills passed by both Houses of Parliament – 17 November 2017
Rural Crime Legislation Amendment Bill 2017
Statute Law (Miscellaneous Provisions) Bill (No 2) 2017

For the full text of Bills, and details on the passage of Bills, see Bills.
Thomson Geer is delighted to offer access to NSW Government to its Legal Help Desk on our usual terms of engagement and as set out below.

**Scope**

We are pleased to be able to work collaboratively with NSW Government to offer the following services (at no charge):

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- the opportunity to ‘brainstorm’ or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
- advice regarding potential transactions – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate.

(Help Desk Services)

Please note that the Help Desk Services are only available in respect of any matter which is currently unallocated i.e. to this firm or any other firm.

**Key Contact and Help Desk Process**

You can access the Help Desk by:

(a) Calling 02 8248 5810; or

(b) Emailing legalhelpdesk@tglaw.com.au

Once relevant details are received from you (whether that be by email or over the phone) it will be directed to the appropriate Thomson Geer Partner, Special Counsel or Senior Associate. The Help Desk number and email address will be monitored during normal business hours (9.00 am to 5.00 pm (EST), Monday to Friday).

Thomson Geer will use its best endeavours to provide the Help Desk Services within one business day of the query being logged.