



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

MEDIA

Why Chief Judge Kidd broadcast the Pell sentence

While handing down the six-year jail sentence for Cardinal George Pell, Chief Judge Peter Kidd of the County Court of Victoria explained that the live broadcasting of the sentencing hearing was done in accordance with "transparent and open justice" - something the Law Council of Australia has fully supported. <https://www.lawyersweekly.com.au/wig-chamber/25247-why-kidd-cj-broadcast-the-pell-sentence>

Court challenge shows Coalition's changes open way to developer donations

With the federal election due in May, a high court case will determine whether prohibited donors have been given immunity by changes proposed and passed by the Coalition government. <https://www.theguardian.com/australia-news/2019/mar/16/court-challenge-shows-coalitions-changes-open-way-to-developer-donations>

Alleged terrorists should face 'full force' of Australian laws, says Law Council

The Law Council of Australia have today issued a media release stating 'Australians who have travelled overseas to support terrorist organisations should be allowed back to Australia to face the full force of our laws'. <https://www.lawcouncil.asn.au/media/media-releases/alleged-terrorists-should-face-full-force-of-australian-laws-says-law-council>

SA court highlights interpreter issues in revenge porn case

A judge accepts a woman was blackmailed into staying in a relationship with a man over revenge porn, but found him not guilty of rape charges because her evidence — through an interpreter — could not prove the case beyond reasonable doubt. <https://www.abc.net.au/news/2019-03-15/man-found-not-guilty-of-six-counts-of-rape/10900214>

Australia Post rules out video performance 'monitoring' of staff amid union row

Australia Post has categorically ruled out the use of its extensive CCTV network to monitor the performance of its employees following a row with the powerful Communications Electrical and Plumbing Union (CEPU) over how surveillance systems can be used in the workplace. <https://www.itnews.com.au/news/australia-post-rules-out-video-performance-monitoring-of-staff-amid-union-row-520522>

High court native title award of \$2.53m may open floodgates

The high court has ordered the Northern Territory government to pay \$2.53m in compensation to a group of native title holders, in a landmark ruling establishing a significant precedent for future compensation claims. It is the first time the high court has considered the monetary value of native title and associated compensation for the removal of land rights. <https://www.theguardian.com/australia-news/2019/mar/13/northern-territory-ordered-to-pay-253m-to-native-title-holders-in-legal-first>

Data breach reports soar under new laws

More than 800 data breaches were reported last year following introduction of the Notifiable Data Breaches scheme. Australian Information Commissioner Angelene Falk says the legislation has been a success, but she urges companies to continue making progress. <http://www.insurancenews.com.au/local/data-breach-reports-soar-under-new-laws>

NSW Information Commissioner and Open Data Advocate leads state and territory commitment on Open Government information access initiatives

The NSW Information Commissioner, Information and Privacy Commission (IPC) CEO and Open Data Advocate, Ms Elizabeth Tydd, today released an update on her work on open government initiatives under Australia's second Open Government National Action Plan 2018-20 (OGNAP 2). <https://www.ipc.nsw.gov.au/media-releases/media-release-nsw-information-commissioner-and-open-data-advocate-leads-state-and-territory-commitment-open-government-information-access-initiatives>

Family Violence Law Help Website Launched

Australians affected by domestic and family violence now have access to a new national website offering comprehensive and trusted legal information, to inform them about their legal rights, and where to get help. The website emphasises the importance of seeking early legal advice and will empower people through access to critical information. <https://www.attorneygeneral.gov.au/Media/Pages/Family-Violence-Law-Help-Website-Launched-11-Mar-2019.aspx>

Foreign Influence Transparency Scheme - Registration Grace Period Ends 10 March 2019

Time is running out for people who are required to register for the Foreign Influence Transparency Scheme to get their registrations lodged. Attorney-General, Christian Porter, said the FITS for the first time will inform all Australians about the level and nature of foreign influence in Australia's national and governmental processes. <https://www.attorneygeneral.gov.au/Media/Pages/Foreign-Influence-Transparency-Scheme---Registration-Grace-Period-Ends-10-March-2019.aspx>

Law reform, cultural change and honesty critical to combat sexual harassment in the legal profession

Cultural and structural change is as vital as legislative reform to combat sexual harassment in Australian workplaces and the legal profession, according to the Law Council of Australia. <https://www.lawcouncil.asn.au/media/media-releases/law-reform-cultural-change-and-honesty-critical-to-combat-sexual-harassment-in-the-legal-profession>

Lives are being destroyed' – legal assistance funding needs urgent review, huge budget boost

The dire state of legal assistance funding in Australia has been highlighted as a matter of critical importance in the Law Council of Australia's 2019-20 Pre-Budget Submission, with a boost of at least \$310 million a year required to address critical gaps in the system. <https://www.lawcouncil.asn.au/media/media-releases/lives-are-being-destroyed-legal-assistance-funding-needs-urgent-review-huge-budget-boost>

PUBLISHED - ARTICLES, PAPERS, REPORTS

APH Research Publications - [Digital technology, the electoral system and the Parliament: a quick guide](#)

[Insights from reports tabled October to December 2018](#)

This edition of audit insights focuses on quality in the public sector. Quality is an important concept that can be applied to all areas of government business Insights from reports tabled October to December 2018.

[Use and acceptance of biometric technologies in 2017](#)

Russell G. Smith, Alexandra Gannoni, Susan Goldsmid; Australian Institute of Criminology: 04 March 2019 Biometrics makes use of people's unique biological characteristics to identify them when dealing with government and business. This paper presents results from a public survey, conducted in 2017, which indicated generally high levels of previous exposure to biometrics and increasing willingness to use biometric technologies.

[Seven ways the government can make Australians safer – without compromising online privacy](#)

Damien Manuel;The Conversation: 28 February 2019 If the next government is serious about protecting Australian businesses and families, here are seven concrete actions it should take immediately upon taking office, suggests Damien Manuel.

[Chief Justice Kiefel AC, 'Aspects of the relationship between the law, economic development and social change and the importance of stability'.](#)

Delivered at 2019 Queensland Bar Association Conference, Brisbane, on 2 March 2019.

CASES

[Reece Walters and Great Barrier Reef Marine Park Authority \(Freedom of information\) \[2019\] AICmr 9](#)

Freedom of Information – Whether disclosure could cause damage to the international relations of the Commonwealth – Whether disclosure would divulge any information or matter communicated in confidence by a foreign government or an international organisation to the Commonwealth – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether disclosure of personal information is unreasonable – Whether contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 33(a)(iii), 33(b), 47E(d), 47F and 55D(1).

[Federal Treasury Enterprise \(FKP\) Sojuzplodoimport v Spirits International B.V. \(No 6\) \[2019\] FCA 337](#)

PRIVILEGE – application for production of unredacted documents – whether cross-claimants waived legal professional privilege over redacted portions of documents produced under notices to produce – where entire documents would otherwise attract legal professional privilege. PRACTICE AND PROCEDURE – application for suppression and non-publication order – whether order necessary for proper administration of justice – where order sought over portions of documents originally redacted on claim of legal professional privilege – where order originally sought on interim basis Federal Court of Australia Act 1976 (Cth) ss 37AE, 37AF, 37AG, 37AI.

[Zidar v NSW Department of Justice \(Office of the General Counsel\) \[2019\] NSWCATAD 38](#)

ADMINISTRATIVE LAW – application to use a recording device to record hearing – application for McKenzie friend to sit at the Bar Table – summons for witness to give evidence set aside.

[Kallin Pty Ltd v Independent Liquor and Gaming Authority \[2019\] NSWCATAD 36](#)

ADMINISTRATIVE LAW – liquor licensing – overall social impact of granting licence - whether detrimental to wellbeing of local or broader community.

[Local Democracy Matters Incorporated v Infrastructure NSW; Waverley Council v Infrastructure NSW \[2019\] NSWLEC 20](#)

Judicial review – challenge to Minister for Planning’s grant of development consent to concept development application including Stage 1 demolition of Sydney Football Stadium – no failure to comply with mandatory public exhibition period – no failure to comply with Sydney Local Environmental Plan 2012 concerning design excellence – no failure to comply with State Environmental Planning Policy 55 Remediation of Land.

[Ghasemi v NSW Department of Corrective Services \[2019\] NSWSC 207](#)

ADMINISTRATIVE LAW – alleged error of law and jurisdictional error – Commissioner’s decision not to vary the plaintiff’s prison classification – relevance of his immigration status – powers and functions of Serious Offenders Review Council – allegations including bias and that decision was ultra vires – no ground for relief made out.

[Commissioner of Police v Da Costa-Reidel \(on behalf of Stop Adani Sydney\) \[2019\] NSWSC 198](#)

PUBLIC ASSEMBLY – proposed public protest against the Adani coal mine – application by Commissioner of Police under s 25(1) Summary Offences Act 1988 (NSW) – where the protest followed a major thoroughfare and would disrupt traffic and emergency services – where the proposed procession coincided with the heavily-attended Mardi Gras Fair Day – where the defendant refused to accept alternative routes offered by the Commissioner – prohibition order made COSTS – discretion – general principles – where the plaintiff was successful in its application – where the defendant argued for a costs order based on concepts of public interest – effect of public interest considerations generally.

[Burton v Local Court of New South Wales \[2019\] NSWSC 191](#)

ADMINISTRATIVE LAW – Judicial review – Court Suppression and Non-publication Orders Act 1970 (NSW) – Violation of non-publication orders - Whether the Magistrate erred by not dismissing the charges against the plaintiff – Failure to provide evidence – Abuse of process – Interim order – Whether the interim non-publication order could not have been violated because it was expired.

[Ballas v Department of Education \(State of NSW\) \[2019\] NSWSC 234](#)

ADMINISTRATIVE LAW – judicial review – decision of a delegate of the Registrar of the Workers Compensation Commission as to whether appeal to Appeal Panel should be allowed to proceed – whether error of law – whether jurisdictional error – whether delegate failed to consider submission that “Approved Medical Specialist” took into account irrelevant considerations and failed to take into account relevant considerations – whether delegate erred in deciding that which matters were relevant to the categories in the Psychiatric Impairment Rating Scale (PIRS) was a matter of discretion rather than an application of the Workers Compensation Guidelines.

IN PRACTICE AND COURTS

Law Council of Australia Submissions

[Counter-Terrorism \(Temporary Exclusion Orders\) Bill 2019](#)

Attorney General Court Appointments

[Appointments to the Family Court of Australia and Federal Circuit Court of Australia](#)

[Appointments to the Family Court of Australia](#)

[Appointments to the Federal Circuit Court of Australia](#)

Current Senate Inquiries

[National Integrity Commission Bill 2018 \[Provisions\]](#),

[National Integrity \(Parliamentary Standards\) Bill 2018 \[Provisions\]](#), and [National Integrity Commission Bill 2018 \(No. 2\)](#)

The Senate has referred both Bills to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 5 April 2019.

[Resolution of disputes with financial service providers within the justice system](#)

On 14 February 2019, the Senate referred the resolution of disputes with financial service providers within the justice system matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 8 April 2019.

[Review of Model Defamation Provisions: Discussion paper](#)

The purpose of defamation law is to balance protection from reputational damage with freedom of speech, and the release of information that’s considered public interest. Each state and territory enacted legislation to implement the provisions to ensure greater national consistency. The Review of Model Defamation Provisions Discussion Paper includes specific questions about the Model Defamation Provisions for your consideration; however, you are invited to comment on any other matters related to the provisions. Submissions close on 30 April 2019. The Model Defamation Provisions are available on the Australasian Parliamentary Counsel’s Committee website at www.pcc.gov.au.

[Family Law Amendment \(Family Violence and Cross-examination of Parties\) Act 2018](#)

Commenced on 11 March 2019. The amendments protect victims of family violence by banning personal cross-examination in certain circumstances in family law proceedings, and requiring instead that cross examination be conducted by a legal representative.

[ACMA Scam project underway](#)

An Australian Government project to reduce harmful scam activity has today released its [Terms of Reference](#). A discussion paper will be released by the ACMA in the coming weeks seeking views from consumers, industry and government.

[ABA Arbitration Inquiry Submission: New Deadline 15 March 2019](#)

The Australian Bar Association (ABA) has asked the Hon Roger Gyles AO QC to inquire into and report on actions that the ABA can take to enhance opportunities for Australian Barristers to practice in International Disputes, with a focus on Arbitration in the Asia. Practitioners are encouraged to provide their views to Mr Gyles by 15 March 2019.

AAT: New procedures for small business taxation applications

There is a new division at the AAT, in operation from 1 March 2019. The Small Business Taxation Division (SBTD) applicants will have a case manager once they have applied to the AAT. They will pay a reduced application fee and, after the hearing process is concluded, decisions will be finalised within 28 days. See the new [practice direction](#) and [guide](#) for small business taxation decisions. Find out more about the new [SBTD](#), including how to apply.

AAT Bulletins 2019

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions
[Issue No. 10/2019, 11 March 2019](#)
[Issue No. 9/2019, 4 March 2019](#)

[Combating Child Sexual Exploitation Legislation Amendment Bill 2019](#)

On 14 February 2019, the Senate referred the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 22 March 2019.

[2019 COAT National Conference](#)

The 2019 Council of Australasian Tribunals (COAT) National Conference will be held 6 – 7 June in Melbourne.

Current Consultations

[Review of the Telecommunication and Other Legislation Amendment \(Assistance and Access\) Act 2018](#)

Parliamentary Joint Committee on Intelligence and Security. This review is in addition to two separate statutory reviews, amendments to include a review due to commence by April 2019.

[Freedom of Speech Legislation Amendment \(Censorship\) Bill 2018, Freedom of Speech Legislation Amendment \(Insult and Offend\) Bill 2018](#)

Freedom of Speech Legislation Amendment (Security) Bill 2018. On 3 December 2018, the Senate extended the committee's reporting date to 8 March 2019.

NSW

[NSW Sentencing Council: Victims' involvement in sentencing Report](#)

The NSW Attorney General asked us to conduct a review of victims' involvement in the sentencing process. The Council transmitted the Report: [Victims' Involvement in Sentencing](#) to the Attorney General on 1 March 2018.

[NSW BOSCAR Publications](#)

NSW Recorded Crime Statistics quarterly update December 2018.

[NCAT: Apply online for earlier hearing date](#)

Parties can [apply online](#) for most NCAT Consumer and Commercial Division applications. These include applications for tenancy, social housing, consumer claims, home building and residential communities (12 March 2019)

[Operation Skyline public inquiry to resume Monday 18 March 2019](#)

The ICAC Operation Skyline public inquiry into allegations concerning the Awabakal Local Aboriginal Land Council will resume on Monday 18 March 2019 at 10:00am.

[Public Consultation: Review of Model Defamation Provisions](#)

The Defamation Working Party is seeking feedback on defamation law in Australia, to assess how the legal principles apply in the digital age and identify areas for national reform. Submissions close on 30 April 2019
[Review of Model Defamation Provisions](#).

NSW LRC: Open Justice Review - Court and tribunal information: access, disclosure and publication

The Attorney General has asked us to review the operation of suppression and non-publication orders and access to information in NSW courts and tribunals. See the [Terms of reference](#). The deadline for preliminary submissions is Friday 31 May 2019. Information about making a submission may be found on our website: [Making a submission](#)

[Amendments to Local Court Practice Note Civ 1](#)

His Honour Judge Henson, Chief Magistrate has amended Practice Note Civ 1. In addition to the requirements for expert evidence the amendments consolidate this practice note with the Online Court Practice Note. This practice note will commence on and from 15 March 2019.

LEGISLATION

Commonwealth

[Electoral and Referendum Amendment \(Modernisation\) Regulations 2019](#)

These regulations amend the Electoral and Referendum Regulation 2016 to remove the voluntary qualification checklist provisions with respect to the candidate nomination form. The regulations also correct a number of minor formatting and footnote errors in the Senate ballot-paper Form E. Electoral and Referendum Amendment (Modernisation) Regulations 2019

Bills

[Electoral Legislation Amendment \(Modernisation and Other Measures\) Bill 2018](#)

Amends the: Commonwealth Electoral Act 1918 to: make completion of a qualification checklist compulsory in relation to candidate nominations; enable candidates to lodge their nominations and certain other documents electronically; and allow a senior Australian Electoral Commission staff member rather than a senior Divisional Returning Officer to be on the Redistribution Committee for the Australian Capital Territory; and Commonwealth Electoral Act 1918 and Referendum (Machinery Provisions) Act 1984 to amend various aspects of voting and scrutiny processes. Progress Assent Act no: 2 Year: 2019 01 March 2019

[Parliamentary Service Amendment \(Post-election Report\) Bill 2018](#)

Amends the Parliamentary Service Act 1999 to change the deadline for publishing the post-election report of election commitments, which is prepared and published by the Parliamentary Budget Office (PBO), from before the end of 30 days after the end of the caretaker period for a general election to the later of either 30 days after the end of the caretaker period for the general election to which the report relates or 7 days before the first sitting day of either or both Houses of the Parliament after the general election to which the report relates. Progress Assent Act no: 4 Year: 2019 01 March 2019.

KEY CONTACTS

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HELP DESK SERVICES

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

SUB-PANEL APPOINTMENTS

Thomson Geer are appointed to the following NSW Government sub-panels:

1(c) Major commercial matters (incl. ICT)

2(a) Commercial and contractual matters

4(a) Employment and industrial relations law

4(f) Discrimination

6(b) General litigation and dispute resolution

6(c) Debt recovery