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ISSUE 63



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### MEDIA

#### ICAC seeks comment on lobbying conduct and regulation in NSW

The NSW ICAC is seeking public input as part of a new investigation it is conducting into the regulation of lobbying, access and influence in NSW (Operation Eclipse), releasing a discussion paper, Enhancing the democratic role of direct lobbying in NSW. <https://www.icac.nsw.gov.au/media-centre/media-releases/2019-media-releases/icac-seeks-comment-on-lobbying-conduct-and-regulation-in-nsw>

#### Resourcing, consultation key to improve family law

The Law Council of Australia has today issued a media release stating that it will carefully consider recommendations by the Australian Law Reform Commission's Family Law for the Future – An Inquiry into the Family Law System report (available here) but warned immediate solutions are required to ease pressures on the Family Court and Federal Circuit Court. <https://inbrief.nswbar.asn.au/posts/cdb25a7c087884e2216dfe142601df74/attachment/LCA%20family%20law.pdf>

#### Review into the Framework of Religious Exemptions in Anti-discrimination Legislation

The Morrison Government has commissioned the Australian Law Reform Commission (ALRC) to undertake a comprehensive review of the framework of religious exemptions in anti-discrimination legislation across Australia. <https://www.attorneygeneral.gov.au/Media/Pages/Review-into-the-Framework-of-Religious-Exemptions-in-Anti-discrimination-Legislation-10-april-19.aspx>

#### Australian Law Reform Commission Review of the Family Law System

The Australian Law Reform Commission's (ALRC) final report into the Family Law System has been publicly released after being tabled in Federal Parliament today. <https://www.attorneygeneral.gov.au/Media/Pages/Australian-law-reform-commission-review-of-the-family-law-system-10-april-19.aspx> The final report, as well as further information about the review, is available on the [ALRC's website](#).

#### OAIC: Statement on stoptheretirementtax.com

On 13 February 2019 the OAIC commenced preliminary inquiries in relation to the actions of Mr Tim Wilson MP and Wilson Asset Management (International) Pty Ltd, in respect of alleged interferences with privacy related to the handling of personal information collected through the 'stoptheretirementtax.com' website. On the basis of the OAIC's preliminary inquiries, the Commissioner has formed the view that there is no jurisdiction to investigate Mr Wilson's actions. <https://www.oaic.gov.au/media-and-speeches/statements/statement-on-stoptheretirementtax-com>

#### State wide justice advocacy for people with cognitive impairment

One of the State's most experienced advocacy organisations for people with an intellectual disability will operate a new \$10 million service funded by the NSW Government to protect the rights of people with cognitive impairment who come into contact with the criminal justice system. <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/statewide-justice-advocacy-for-people-with-cognitive-development.aspx>

#### Royal Commission Commencement Welcomed

The Australian Human Rights Commission welcomes the commencement of the Royal Commission into Violence, Abuse, Neglect and Exploitation of people with disability. The Commission also welcomes the appointment of Disability Discrimination Commissioner. <https://www.humanrights.gov.au/news/stories/royal-commission-commencement-welcomed>

#### OAIC Statement: Aussie Farms

On 6 April 2019, Aussie Farms Incorporated (Aussie Farms) was prescribed as an organisation regulated by the Privacy Act 1988. Organisations regulated by the Privacy Act have obligations to handle personal information in accordance with the Australian Privacy Principles (APPs). The Office of the Australian Information Commissioner (OAIC) is conducting inquiries with Aussie Farms to establish whether or not they are operating in compliance with the Privacy Act. <https://www.oaic.gov.au/media-and-speeches/statements/aussie-farms>

### Law Council's Call to Parties focused on access to justice, strengthening integrity and legal profession

The Law Council of Australia today released its 2019 Federal Election: Call to Parties, which highlights the key areas of legislative reform in need of improvement for the betterment of the Australian community, its democracy and the legal profession. <https://www.lawcouncil.asn.au/media/media-releases/law-councils-call-to-parties-focused-on-access-to-justice-strengthening-integrity-and-legal-profession>

### LCA: Livestream laws could have serious unintended consequences, chilling effect on business

Proposed amendments to criminal legislation to deal with the livestreaming of violent material on social media could have serious unintended consequences and should not be rushed through the parliament. Law Council President, Arthur Moses SC, said while steps should be taken to ensure social media is not weaponised to promote hatred and violence, proper consultation must occur to ensure fair and effective legislation. <https://www.lawcouncil.asn.au/media/media-releases/livestream-laws-could-have-serious-unintended-consequences-chilling-effect-on-business>

### LCA: \$20m funding increase, single national legal assistance mechanism do little to address huge 'justice deficit'

The Law Council of Australia has slammed the Federal Government's abysmal legal assistance funding increase of less than \$20 million in the 2019-20 Budget, which falls well short of the additional \$310 million per year needed to provide adequate access to justice to Australians at risk. <https://www.lawcouncil.asn.au/media/media-releases/20m-funding-increase-single-national-legal-assistance-mechanism-do-little-to-address-huge-justice-deficit>

## PUBLISHED - ARTICLES, PAPERS, REPORTS

### [20 policies to fix Australia](#)

Proposed policies include withdrawing from the Paris Agreement, reducing the corporate tax rate, privatising the ABC, and legalising nuclear power. 2

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

This inquiry explored the ability of consumers and small businesses to exercise their legal rights through the justice system, and whether there are fair, affordable and appropriate resolution processes to resolve disputes with financial service providers.

### [State of the data and digital nation](#)

This report provides an overview of the main data and digital transformation initiatives being implemented in Australia by the Commonwealth, state and territory governments. It features case studies of successful projects in areas including health, human services, community engagement, ID services, biodiversity and more.

### [Second interim report: Freedom of religion and belief, the Australian experience](#)

This report examines some of the perceived problems associated with the reconciling of the exercise of freedom of religion with other human rights. It considers solutions and legislative reforms.

### [Public sector digital transformation: a quick guide](#)

In broadly chronological order, this Quick Guide provides brief background information on a variety of recent and current initiatives in the Australian federal public sector associated with 'digital transformation', as well as links to relevant sources of information.

## CASES

### [Clubb v Edwards; Preston v Avery \[2019\] HCA 11](#)

So much of the appellant's appeal from the judgment of Magistrate Bazzani made on 11 October 2017 as has been removed into this Court is dismissed.

Constitutional law (Cth) – Implied freedom of communication about governmental or political matters – Where s 185D of Public Health and Wellbeing Act 2008 (Vic) and s 9(2) of Reproductive Health (Access to Terminations) Act 2013 (Tas) prohibit certain communications and activities in relation to abortions within access zone of 150 m radius around premises at which abortions are provided – Where appellants engaged in communications and activities in relation to abortions within access zone – Whether communications and activities in relation to abortions are communications about governmental and political matters – Whether provisions effectively burden implied freedom – Whether provisions imposed for legitimate purpose – Whether provisions reasonably appropriate and adapted to that purpose – Whether provisions suitable, necessary and adequate in balance.

Constitutional law (Cth) – Implied freedom of communication about governmental or political matters – Severance, reading down and disaplication – Where appellant charged and convicted of offence against s 185D of Public Health and Wellbeing Act 2008 (Vic) – Where it was not contended that appellant's conduct involved political communication – Where substantial overlap with issues raised in proceedings in relation to interstate Act – Whether s 185D able to be severed, read down or partially disapplied so as to have valid operation in respect of appellant – Whether appropriate to proceed to determine constitutional validity of s 185D.

### [State of New South Wales v Holschier \(No 4\) \[2019\] NSWSC 393](#)

MEDIA AND COMMUNICATIONS – Open justice – access to court files – application for access – restricting access does not prevent accurate reporting in an open court.

### [ZKK v ZKL \[2019\] NSWCATAP 81](#)

ADMINISTRATIVE LAW – adequacy of reasons

### [Bellamy v Transport for NSW \[2019\] NSWCATAD 54](#)

Administrative Law – access to government information - cabinet material – whether reasonable grounds for withholding information established - commercially confidential information – reasonableness of searches.

### [DNM v NSW Ombudsman \[2019\] NSWCATAP 77](#)

APPEAL – whether application under Government Information (Public Access) Act 2009 is invalid because it is a request for “excluded information” - statutory interpretation – meaning of “excluded information” in Government Information (Public Access) Act 2009, Sch 2, cl 2.

## IN PRACTICE AND COURTS

### Attorney-General’s Department Appointments

#### [Appointments to the Administrative Appeals Tribunal](#)

Seven new appointments and eight reappointments to the Administrative Appeals Tribunal

#### [Appointment of Disability Discrimination Commissioner](#)

Mr Ben Gauntlett has been appointed as Australia’s new Disability Discrimination Commissioner at the Australian Human Rights Commission for a five year term.

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

Mr Stewart Anderson QC and Ms Wendy Abraham QC have been appointed as judges of the Federal Court of Australia.

#### [Appointments to the Defence Force Discipline Appeals Tribunal](#)

5 April 2019 - The Hon Justice Paul Le Gay Brereton AM RFD and the Hon Justice Peter Martin Barr have been appointed to the Defence Force Discipline Appeal Tribunal (the Tribunal).

### Casenote: Communications and activities in relation to abortions within access zone

Yesterday the High Court published its reasons for judgment in the matters of [Clubb v Edwards; Preston v Avery](#) [2019] HCA 11. It is a long decision and the court seems to have departed from its recent trend towards single judgments or few judgments. However all members of the Court ultimately dismissed the appeals, with differing approaches. The appellants engaged in communications and activities in the access zone, contrary to the legislation, but argued that the communications were about government or political matters and the legislation breached an implied freedom of communication about such matters.

### [ALRC Review of the family law system](#)

Attorney-General, Christian Porter, has today publicly released the Australian Law Reform Commission’s (ALRC) final report into the Family Law System after it was tabled in Federal Parliament today. <https://www.abc.net.au/news/2019-04-10/family-court-powers-should-be-given-to-states-alc-review-finds/10988862>

### [ALRC Review into the framework of religious exemptions in anti-discrimination legislation](#)

The Morrison Government has commissioned the Australian Law Reform Commission to undertake a comprehensive review of the framework of religious exemptions in anti-discrimination legislation across Australia. <https://www.news.com.au/lifestyle/gay-marriage/the-religious-freedom-issue-that-scott-morrison-doesnt-want-to-deal-with/news-story/b228c47537099afa70d9c184e0f1a49f>

### ALRC Inquiries

[New ALRC Inquiries](#) – 11 April 2019

[Family Law Inquiry - Final Report Released](#) – 10 April 2019

### [Practice Direction - Family Court of Australia](#)

See the attached the following Practice Direction: Family Court of Australia - Practice Direction No 1 of 2019 – Applications for Leave to Appeal.

### [Law Council of Australia: Fortnightly update](#)

The LCA have today (12 April 2019) published their fortnightly newsletter.

### [Law Council of Australia: 2019-20 Federal Budget Overview](#)

On Tuesday, 2 April 2019, representatives of the Law Council of Australia attended the Federal Budget ‘lock-up’. The Law Council has prepared a summary of key announcements of interest to the legal profession.

### Current Senate Inquiries

#### [Parliamentary Scrutiny of Delegated Legislation](#)

On 3 April 2019, the Senate granted an extension of time for reporting until 3 June 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](http://www.pcc.gov.au).

### [HCA Bulletin 2019](#)

High Court of Australia Bulletin [2019] HCAB 02

### 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. 14/2019, 8 April 2019](#)  
[Issue No. 13/2019, 1 April 2019](#)

### [AAT: New AAT Privacy Policy](#)

The AAT's Privacy Policy outlines the AAT's practices when handling personal information. The AAT recently released a new Privacy Policy with updated information.

### [AAT: Revised Child Support Review Directions](#)

The revised Directions for reviews of Child Support decisions are now available.

### [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.

## NSW

### [NSW Justice: 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.

### [Amendments to the Uniform Civil Procedure Rules: No 90: rules 49.19 and 49.20](#)

These rules deal with applications to review directions, certificates, orders, decisions and other acts of a registrar. The amendment provides that decisions of the registrar of the court under clause 11 (1) of the Civil Procedure Regulation 2017 are not reviewable by a court under Division 4 of Part 49 of the Rules. Furthermore, the contents of rules 49.19 and 49.20 have been rearranged to make it easier to locate the limitations to the review power.

### [ICAC Discussion Paper: Enhancing the democratic role of direct lobbying in NSW](#)

The NSW ICAC is seeking public input as part of a new investigation it is conducting into the regulation of lobbying, access and influence in NSW (Operation Eclipse). The discussion paper is appended to an introductory paper, The regulation of lobbying access and influence in NSW: a chance to have your say, which also explains how to make a submission. The closing date for consultation is 24 May 2019.

### [ICAC: Operation Dasha public inquiry witness list - week beginning 1 April 2019](#)

Witness list for the Operation Dasha public inquiry into allegations concerning the former Canterbury City Council, week beginning 1 April 2019. Please note that this list is subject to change.

### [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.

### **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 31 May 2019. Information about making a submission may be found on our website: [Making a submission](#).

## LEGISLATION

### Commonwealth

#### Acts

#### [Criminal Code Amendment \(Sharing of Abhorrent Violent Material\) Act 2019](#)

10 April 2019 - Act No. 38 of 2019

#### [Foreign Influence Transparency Scheme Amendment Act 2019](#)

09 April 2019 - Act No. 32 of 2019

#### Bills

#### [Criminal Code Amendment \(Sharing of Abhorrent Violent Material\) Bill 2019](#)

Finally passed both Houses 04 April 2019 Assent Act no: 38 2019 05 April 2019. This Bill will make amendments to the Criminal Code Act 1995 to introduce new 3 offences to ensure that internet, hosting or content services are proactively referring abhorrent violent material to law enforcement, and that hosting and content services are expeditiously removing abhorrent violent material that is capable of being accessed within Australia.

#### [Foreign Influence Transparency Scheme Amendment Bill 2019](#)

Finally passed both Houses 03 April 2019 Assent Act no: 32 2019 05 April 2019. Amends the Foreign Influence Transparency Scheme Act 2018 to: amend the definition of 'communication activity' to capture a person that produces information or material on behalf of a foreign principal for the purpose of the information or material being distributed to the public; provide that a person's belief about the intention of a foreign principal may be taken into account when determining the purpose of an activity; provide that the reporting obligations under the foreign influence transparency scheme apply to persons that are liable to register, but who have not yet actually registered; extend the obligation to make disclosures in registrable communications activity to any person who undertakes a registrable communication activity on behalf of a foreign principal (not just to those who are already registered); and make technical amendments to certain offence provisions.

## Regulations

### [Privacy Amendment \(External Dispute Resolution Scheme\) Regulations 2019](#)

These regulations amend the Privacy Regulation 2013 to extend the prescription of energy or water utilities in the Australian Capital Territory, for the purposes of subparagraph 21D(2)(a)(i) of the Privacy Act 1988, until 1 January 2020.

### [Ombudsman Amendment \(National Preventive Mechanism\) Regulations 2019](#)

09/04/2019 - These regulations amend the Ombudsman Regulations 2017 to confirm the roles and functions of the Office of the Commonwealth Ombudsman under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### [Administrative Appeals Tribunal Amendment \(Family Assistance Law Review Fees\) Regulations 2019](#)

This instrument amends the Administrative Appeals Tribunal Regulation 2015 to expressly clarify that a fee is payable in relation to an application to the Administrative Appeals Tribunal for AAT single review.

### [Privacy Amendment \(SA NT DataLink\) Regulations 2019](#)

These regulations amend the Privacy Regulation 2013 to prescribe the Department for Health and Wellbeing (an authority of South Australia) as an organisation under the Privacy Act 1988.

### [Privacy Amendment \(Protection of Australian Farms\) Regulations 2019](#)

These regulations amend the Privacy Regulation 2013 to prescribe Aussie Farms Inc as an organisation for the purposes of the Privacy Act 1988. Subsection 7(1A) applies in relation to acts done, and practices engaged in, after the commencement of the Privacy Amendment (Protection of Australian Farms) Regulations 2019 (whether in relation to personal information collected before or after that commencement).

### [Marriage \(Celebrant Professional Development\) Amendment Statement 2019](#)

This instrument amends the Marriage (Celebrant Professional Development) Statement 2019 by adding two new activities to the list of celebrant development activities.

## NSW

### Regulations and other miscellaneous instruments

[Administrative Arrangements \(Administration of Acts—General\) Order 2019](#) (2019-157) — published LW 2 April 2019

[Administrative Arrangements \(Administrative Changes—Ministers\) Order 2019](#) (2019-158) — published LW 2 April 2019

[Administrative Arrangements \(Administrative Changes—Public Service Agencies\) Order 2019](#) (2019-159) — published LW 2 April 2019

[Parliamentary Remuneration Amendment \(Leader of the Opposition\) Regulation 2019](#) (2019-160) — published LW 2 April 2019

[Supreme Court \(Corporations\) Amendment \(No 14\) Rules 2019](#) (2019-161) — published LW 5 April 2019

[Uniform Civil Procedure \(Amendment No 89\) Rule 2019](#) (2019-162) — published LW 5 April 2019. The object of this Rule is to amend the Uniform Civil Procedure Rules 2005 to provide for notifying occupiers when interstate judgments for possession of land are registered in NSWs

[Uniform Civil Procedure \(Amendment No 90\) Rule 2019](#) (2019-163) — published LW 5 April 2019. The object of this Rule is to amend the Uniform Civil Procedure Rules 2005 to provide that decisions of the registrar of the court under clause 11 (1) of the Civil Procedure Regulation 2017 are not reviewable by a court under Division 4 of Part 49 of the Rules, and to make other consequential changes

## KEY CONTACTS

### PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with the appropriate expertise and achieving maximum efficiency.

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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](mailto: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

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