



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

The amendment to rule 1.9 of the *Uniform Civil Procedure Rules* commenced on 18 April 2019. The amendment makes it clear that when an objection is made to the production of a document on the ground of privilege, access to the document must not be granted unless and until the objection is overruled, and that the production of a document to the court under a claim for privilege does not constitute a waiver of privilege.

[Amendment to the Uniform Civil Procedure Rules - Amendment to rule 1.9](#)

MEDIA

LCA: The Social and Economic Benefits of Improving Mental Health

The first half of the Law Council's submission provides an insight into interactions between mental health and the justice system, informed in part by the findings of the Law Council's 2018 Justice Project. The second half of the submission provided information on how the legal profession itself is addressing mental health, and pointed to initiatives across jurisdictions that seek to identify and respond to mental health concerns within the legal profession. <https://www.lawcouncil.asn.au/media/news/the-social-and-economic-benefits-of-improving-mental-health>

'Results would be catastrophic': judge keeps man who threatened to bomb PM behind bars

A man who said he would bomb prime minister Malcolm Turnbull has become the first person in NSW to be kept behind bars under new terrorism legislation, after a court found he poses an "unacceptable risk" to the community. <https://www.smh.com.au/national/nsw/results-would-be-catastrophic-judge-keeps-man-who-threatened-to-bomb-pm-behind-bars-20190424-p51gqz.html>

Debugging Watergate: interpreting official responses

The Australia Institute has today released analysis of official responses to the Watergate scandal surrounding Murray Darling water purchases, covered by The Project, Guardian and other outlets. The analysis finds that official responses are misleading and in some cases incorrect. <http://www.tai.org.au/content/debugging-watergate-interpreting-official-responses>

Privacy Authorities Australia statement in support of complaint and enforcement cooperation

PAA was established in 2008 to be a forum for the sharing of ideas, developments, resources and knowledge to improve the collective information privacy capability of Privacy Authorities across Australia. Following the success of the Policy Group, PAA has commenced a new initiative directed at improving cooperation in respect of their complaint handling and enforcement work. <https://www.oaic.gov.au/media-and-speeches/statements/statement-in-support-of-complaint-and-enforcement-cooperation>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Commonwealth Orange Book 2019: policy priorities for the federal government](#)

John Daley, Stephen Duckett, Peter Goss, Andrew Norton, Marion Terrill, Danielle Wood, Tony Wood, Brendan Coates; Grattan Institute: 16 April 2019. This report rates Australia's performance against similar countries and proposes policy reforms for schools and universities, hospitals and housing, roads and railways, cities and regions, budgets and taxes, retirement incomes, and climate change.

CASES

[Triabunna Investments Pty Ltd v Minister for Environment and Energy \[2019\] FCAFC 60](#)

ENVIRONMENT LAW — application for judicial review of a referral decision made under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) — where the second respondent lodged a proposal with the Department of Environment and Energy to farm Atlantic salmon on an existing marine lease — where a delegate of the Minister for Environment and Energy decided under s 75 of the Act that the proposed action was not a "controlled action" if undertaken in a "particular manner" within the meaning of s 77A of the Act — where the delegate issued a written notice under s 77(1) of the Act and a statement of reasons under s 77(4) of the Act — where the delegate provided the statement of reasons to the appellants in accordance with s 13 of the Administrative Decisions (Judicial Review) Act 1977 (Cth).

ENVIRONMENT LAW – whether the primary judge erred in finding that the delegate, having made all the necessary findings, did not err in law by failing to include in the notice issued under s 77 of the Act the conclusion that the use of K-Grid and of bundled feed and servicing lines by the second respondent were “particular manner” requirements – whether the primary judge erred in confining the operation of s 77A(1) to matters additional to that which was contained in the second respondent’s original proposal – whether the primary judge erred in finding that the delegate did not err by failing to take into account all “adverse impacts” of the proposed action as required by s 75(2) of the Act – where the primary judge inferred from the delegate’s reasons that the delegate had considered the visual impact of two permanently moored barges – whether the primary judge erred in failing to deal with the appellants’ contentions about how the delegate’s decision addressed the use of bundled feed and servicing lines by the second respondent.

ADMINISTRATIVE LAW – whether the primary judge erred in failing to give adequate reasons for rejecting certain contentions made by the appellants – whether the primary judge erred by mischaracterising and incorrectly describing certain arguments advanced by the appellants.

[Paul v Forestry Corporation of NSW \[2019\] NSWCATAD 68](#)

ADMINISTRATIVE LAW – government information – refusal to deal with application – whether dealing with the application would involve an unreasonable and substantial diversion of resources – whether multiple applications are related Paul v Forestry Corporation of NSW [2019] NSWCATAD 68.

[Gatt v State of New South Wales \[2019\] NSWSC 451](#)

ADMINISTRATIVE LAW – Judicial review – decision by Appeal Panel – workers compensation – grounds for medical appeal – whether Appeal Panel exceeded limitation imposed upon powers – whether committed error of reasoning – did Appeal Panel pose the wrong question – was there denial of procedural fairness – grounds not made out – plaintiff pay costs of defendant .

[Transport for New South Wales v Waters \(No 2\) \[2019\] NSWCATAP 96](#)

ADMINISTRATIVE LAW – personal information – whether appellant’s collection of respondent’s travel data via a Gold Opal Card was reasonably necessary for the appellant’s purpose.

[Office of Environment and Heritage v Scenic NSW Pty Ltd \[2019\] NSWCATAP 87](#)

PRACTICE AND PROCEDURE – joinder- where 3rd parties object to government agency disclosing information under Government Information (Public Access) Act 2009 – where 3rd parties not parties to first instance decision on jurisdiction – whether applicant for access appealed from first instance decision – whether 3rd parties should be joined to the appeal proceeding.

[Thamotharampillai v National Accreditation Authority of Translators and Interpreters Ltd \[2019\] NSWCATAD 60](#)

ANTI-DISCRIMINATION – Where complaint of victimisation declined by President of Anti-Discrimination Board as lacking in substance - Application for leave to proceed with complaint. Whether fair or just to grant leave.

[Cappello v Roads and Maritime Services & Anor. \[2019\] NSWSC 439](#)

ADMINISTRATIVE LAW – legal effect of proposed acquisition notice – statutory authority of Roads and Maritime Service to acquire land under s 177 of Roads Act – source of RMS’s legal authority to acquire land. **STATUTORY INTERPRETATION** – Roads Act 1993 – meaning of s 177 – construed to favour private property rights – statutory power only enlivened after identification of objective purpose of Act – purpose of the Act are to be found in all the provisions of the statute – s 64 marker of a statutory purpose of Roads Act – carry out functions of road authority with respect to proposed tollway – s 71 – road works widely defined – carry out roadwork – s 63 ministerial directions – all functions of road authority, to the fullest extent possible to become responsibility of RMS – proposed acquisition notice authorised by law.

IN PRACTICE AND COURTS

ACCC Consumer Data Right

The Australian Competition and Consumer Commission (ACCC) is seeking [public feedback](#) on the draft rules for the Consumer Data Right (CDR). The CDR will allow consumers to easily access their banking data and have it transferred to their trusted service providers. ACCC is seeking feedback on the approach and positions of the draft rules, including privacy aspects. Please provide your feedback before COB 6 May 2019.

Review of the mandatory data retention regime

The Parliamentary Joint Committee on Intelligence and Security is reviewing the mandatory data retention regime prescribed by Part 5-1A of the Telecommunications (Interception and Access) Act 1979 (TIA Act). Section 187N of the TIA Act provides for the review and requires the committee to report by 13 April 2020. Access the [terms of reference](#) and the [inquiry page](#) for further information. Please provide your feedback before COB 31 May 2019.

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

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

On 2 April 2019, the LCA published their fortnightly newsletter.

[Law Council of Australia: Submissions](#)

Review of the Australian Human Rights Commission Regulations 1989 and the Disability Discrimination Regulations 19.

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.

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. 16/2019, 23 April 2019](#)

[Issue No. 15/2019, 15 April 2019](#)

[2019 COAT National Conference](#)

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

NSW

[Practice Note SC CL 11 \(Supreme Court Common Law Division – Bail\)](#)

Commences on Monday, 3 June. The following applies to bail applications filed prior to 3 June:- Applications filed by Private Practitioners and Legal Aid / ALS (where representation is confirmed) Bail applications filed between now and 31 May will be listed in a call over on or before 3 June. No adjournments will be granted to a call over after 3 June.

[IPC NSW: Open Government information access initiatives](#)

The NSW Information Commissioner, Information and Privacy Commission (IPC) CEO and Open Data Advocate, Ms Elizabeth Tydd, recently released an update on her work on open government initiatives under Australia's second Open Government National Action Plan 2018-20 (OGNAP 2).

[ICAC: Operation Skyline public inquiry directions hearing 29 April 2019](#)

The NSW Independent Commission Against Corruption (ICAC) will hold a short directions hearing in relation to the further progress of the Operation Skyline investigation.

[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.

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

Act compilation

[Administrative Decisions \(Judicial Review\) Act 1977](#)

16/04/2019 - Act No. 59 of 1977, amending an Act relating to the Review on Questions of Law of certain Administrative Decisions Administrative Decisions (Judicial Review) Act 1977.

Regulation

[Foreign Influence Transparency Scheme Amendment \(2019 Measures No. 1\) Rules 2019](#)

This instrument amends the Foreign Influence Transparency Scheme Rules 2018 to prescribe matters for the purposes of sections 30 and 43 of the Foreign Influence Transparency Scheme Act 2018.

NSW

Regulations and other miscellaneous instruments

[Electoral Funding \(Adjustable Amounts\) Amendment \(Public Funding\) Notice 2019 \(2019-177\)](#)

[Electoral Funding \(Adjustable Amounts\) Amendment Notice 2019 \(2019-170\)](#)

[Uniform Civil Procedure \(Amendment No 91\) Rule 2019 \(2019-171\)](#)

KEY CONTACTS

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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

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