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PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

MEDIA

IPC NSW launches Information Governance Agency Self-assessment Tools

The Information and Privacy Commission (IPC) NSW has launched on-line Information Governance Agency Self-assessment Tools for all agencies within New South Wales.

<https://www.ipc.nsw.gov.au/media-releases/ipc-nsw-launches-information-governance-agency-self-assessment-tools>

Australian Electoral Commission finds 87 cases of election ads breaching law

For the first time this election, the AEC was also able to seek civil penalties for breaches of the electoral law. Experts and former insiders have warned the election watchdog is hamstrung by a lack of power, past court decisions, resourcing and the increasingly complex challenges posed by social media.

<https://www.theguardian.com/australia-news/2019/may/22/australian-electoral-commission-finds-87-cases-of-election-ads-breaching-law>

Drink and drug driving reforms

From 20 May 2019 new penalties and license suspensions came into force for lower range drink driving offences, and for driving with the presence of an illicit drug.

<https://www.revenue.nsw.gov.au/news-media-releases/drink-and-drug-driving-reforms>

Auditor on board with board lessons

The Australian National Audit Office (ANAO) has published the key messages it found in a series of audits examining the effectiveness of governance boards in four corporate Commonwealth entities.

<https://www.anao.gov.au/work/audit-insights/board-governance>

Cyber Security NSW

A new office, Cyber Security NSW, has been established within the Department of Customer Service to cement the leadership and coordination role needed to enhance cyber security and decision-making across the NSW Government. Mr Chapman said Cyber Security NSW will strengthen ties across other NSW Government departments, other states and territories, and the federal government, identifying and harnessing best practice in cyber security.

<https://www.finance.nsw.gov.au/about-us/media-releases/cyber-security-nsw>

Children's Rights in relation to the digital environment

On 16 May 2019, the Law Council made a submission to the United Nations Committee on the Rights of the Child (UN Committee) regarding a proposed General Comment on Children's Rights in Relation to the Digital Environment.

<https://www.lawcouncil.asn.au/media/news/childrens-rights-in-relation-to-the-digital-environment>

Bipartisanship, consultation needed to develop effective national integrity commission model

The Law Council of Australia wholly supports the establishment of a national integrity commission but believes consultation, collaboration and bipartisanship is needed for a functional and effective model to come to fruition.

<https://www.lawcouncil.asn.au/media/media-releases/bipartisanship-consultation-needed-to-develop-effective-national-integrity-commission-model>

Lessons learned during first 12 months of Notifiable Data Breaches scheme

Data breaches involving personal information may be prevented through effective training and enhanced systems, analysis of the first 12 months of mandatory notifications reveals.

<https://www.oaic.gov.au/media-and-speeches/news/lessons-learned-during-first-12-months-of-notifiable-data-breaches-scheme>

PUBLISHED - ARTICLES, PAPERS, REPORTS**Board governance**

[ANAO: 17 May 2019](#)

This edition of audit insights outlines key messages from a series of recent audits examining the effectiveness of governance boards in four Corporate Commonwealth entities.

Notifiable Data Breaches scheme: 12-month insights report

[Office of the Australian Information Commissioner: 13 May 2019](#)

Entities regulated by the Privacy Act should review this report and use the learnings to enhance their prevention and response strategies for the benefit of all Australians. One of the key messages taken from this inaugural review of the Notifiable Data Breaches (NDB) scheme is that entities must put individuals first.

Three AIJA publications have been added to the AIJI website

These are:

[The Jury Project 10 Years On-Practices of Australian and New Zealand Judges](#)

by Professor Jonathon Clough et al

This is a valuable follow-up to earlier work undertaken by Professor Clough for AIJA

[A History of Public Information Officers in Australian Courts: 25 Years of Assisting Public Perceptions and Understanding of the Administration of Justice \(1993 - 2018\)](#)

by Associate Professor Jane Johnston

[The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice](#)

by Dr Liz Richardson, Dr Genevieve Grant and Dr Janina Boughey

CASES

[Spence v Queensland \[2019\] HCA 15](#)

Is section 302CA of the Commonwealth Electoral Act 1918 (Cth) invalid (in whole or in part and, if in part, to what extent) because it is beyond the Commonwealth's legislative power?

Answer: The section is wholly invalid.

Constitutional law (Cth) – Powers of Commonwealth Parliament – Federal elections – Severance – Where s 51(xxxvi) in application to ss 10 and 31 of Constitution conferred legislative power on Commonwealth Parliament with respect to federal elections – Where Commonwealth Parliament enacted s 302CA within Div 3A of Pt XX of Commonwealth Electoral Act 1918 (Cth) – Where s 302CA relevantly conferred authority on person to make, and on "political entity" to receive and retain, gift not prohibited by Div 3A provided that gift or part of it was "required to be, or may be" used for certain purposes relating to federal elections

– Where s 302CA provided for displacement of such authority in circumstances including where State or Territory electoral law required gift or part of it to be kept or identified separately to be used only for purpose of State, Territory or local government election – Whether Commonwealth legislative power with respect to federal elections exclusive or concurrent – Whether s 302CA within scope of Commonwealth legislative power with respect to federal elections – Whether possible to sever s 302CA to preserve part of its operation within scope of Commonwealth legislative power.

Constitutional law (Cth) – Inconsistency between Commonwealth and State laws – Gifts to political parties – Where Queensland Parliament passed amendments to Electoral Act 1992 (Qld) and Local Government Electoral Act 2011 (Qld) prohibiting property developers from making gifts to political parties that endorse and promote candidates for election to Legislative Assembly and local government councils – Whether Queensland amendments inconsistent with s 302CA or framework of Pt XX of Commonwealth Electoral Act – Whether s 302CA invalid for infringing principle in *University of Wollongong v Metwally* (1984) 158 CLR 447; [1984] HCA 74.

Constitutional law (Cth) – Implied freedom of communication about governmental and political matters – Where amendments to Electoral Act 1992 (Qld) substantially replicated provisions in Election Funding, Expenditure and Disclosures Act 1981 (NSW) upheld in *McCloy v New South Wales* (2015) 257 CLR 178; [2015] HCA 34 – Whether amendments invalid for infringing implied freedom.

Constitutional law (Cth) – Relationship between Commonwealth and States – Doctrine of inter-governmental immunities – Whether implication expounded in *Melbourne Corporation v The Commonwealth* (1947) 74 CLR 31; [1947] HCA 26 operates reciprocally to protect States and Commonwealth from impermissible interference by law of one polity with operations of government in another – Whether s 302CA invalid for contravening *Melbourne Corporation* principle – Whether Queensland amendments invalid for contravening *Melbourne Corporation* principle.

[Onley v Commissioner of the Australian Federal Police;](#)
[Menon v Commissioner of the Australian Federal Police;](#)
[Anquetil v Commissioner of the Australian Federal Police](#)

CONSTITUTIONAL LAW – application of state laws to Commonwealth statutory scheme – whether state law was a law governing the exercise of federal jurisdiction – application to set aside orders made ex parte under the *Proceeds of Crime Act 2002* (Cth) – whether orders may be set aside under *Uniform Civil Procedure Rules 2005* (NSW), r 36.16 CRIME – *Proceeds of Crime Act 2002* (Cth), s 39 – orders made for appellants to provide sworn statements in relation to interests in property – whether orders could extend to include interests of companies of which the appellants were directors – whether orders should be set aside.

[Police Association of New South Wales v State of New South Wales \[2019\] NSWSC 587](#)

ADMINISTRATIVE LAW – judicial review – non-reviewable actions – open to decision-maker to regard transfer of police officer as non-disciplinary – no error of law demonstrated – summons dismissed
STATUTORY INTERPRETATION – privative provisions – ss 88 and 213 of Police Act 1990 (NSW) – insufficiently clear to exclude judicial review
STATUTORY INTERPRETATION – meaning of “non-disciplinary transfer” in Police Act 1990 (NSW) – whether adverse financial impact on officer determinative – relevance of extrinsic materials – whether transfer “non-disciplinary” is informed by Commissioner’s reasons and context in which transfer is ordered – loss of allowances not determinative where no change in rank or grade.

[Roads and Maritime Services v Farrell; Roads and Maritime Services v Northcott; Roads and Maritime Services v Le Thorn; Roads and Maritime Services v Touba; Roads and Maritime Services v Culpán; Roads and Maritime Services v Hooper \[2019\] NSWSC 552](#)

ADMINISTRATIVE LAW – Judicial Review – orders sought under s 69 of the Supreme Court Act 1970 (NSW), quashing orders made by the Local Court under s 221B of the Road Transport Act 2013 (NSW), removing licence disqualifications – whether defendants were entitled to make an application for removal of licence disqualification given s 221D of the Road Transport Act 2013 (NSW) – whether the Local Court had power to order the removal of defendants’ licence disqualifications – Local Court acted without jurisdiction – whether reasons given inadequate – whether the Court’s discretion to refrain from making orders under s 69 of the Supreme Court Act 1970 (NSW) should be exercised – orders made by the Local Court removing licence disqualifications are quashed
TRAFFIC LAW AND TRANSPORT – Traffic law – Offences – Licence disqualifications
COSTS – Party/Party – Appeals – Suitors’ Fund – costs as agreed or assessed.

[Rogers v The Independent Liquor and Gaming Authority \[2019\] NSWSC 548](#)

JUDICIAL REVIEW – stay of decision below – public interest – triable issue – serious prejudice – economic loss – vulnerability to criminal process in absence of stay – stay granted.

[DKG v Commissioner of Police \[2019\] NSWSC 523](#)

ADMINISTRATIVE LAW – Judicial review – Reviewable decisions – Decisions to which judicial review legislation applies – decisions under an enactment – application for permission for a person on a child protection offender register to leave Australia – whether Supreme Court has jurisdiction to hear proceedings for judicial review of decision relating to permission – Criminal Code (Cth), s 271A.1(3)
WORDS AND PHRASES – “competent authority” – Australian Passports Act 2005 (Cth) s 12 and Criminal Code Act 1995 (Cth) s 271A.1(3)(a) – competent authority in NSW is NSW Commissioner for Police.

[Lin v Roads and Maritime Services \[2019\] NSWCATOD 79](#)

ADMINISTRATIVE REVIEW – bus driver authority – driving offences – dishonest in filling out application form – whether of good repute and fit and proper person to be the driver of a public passenger vehicle.

[Taylor v Mid-Coast Council \[2019\] NSWCATAD 92](#)

ADMINISTRATIVE REVIEW – Government Information (Public Access) – application for review by person aggrieved by decision to refuse to release information – public interest considerations.

[DRT & DRS v NSW Trustee and Guardian \[2019\] NSWCATAD 88](#)

ADMINISTRATIVE LAW – review under section 62 NSW Trustee and Guardian Act 2009 (NSW) – NSW Trustee and Guardian – interests and welfare of protected person – whether to sell a protected persons property – financial management order.

[ZJJ v ZJK \[2019\] NSWCATAP 126](#)

ADMINISTRATIVE LAW – mandatory considerations – whether Tribunal failed to have regard to views of subject person
ADMINISTRATIVE LAW – irrelevant considerations – whether subject person’s history of placements in aged care facilities constituted an irrelevant
ADMINISTRATIVE LAW – procedural fairness – refusal to grant an adjournment – whether proceeding to conduct the hearing in absence of a party constituted a denial of procedural fairness – whether Tribunal failed to take such measures as are reasonably practicable to ensure that the appellant had a reasonable opportunity to be heard.
STATUTORY INTERPRETATION – meaning of “services” in section 14(2)(d) of the Guardianship Act 1987
ADMINISTRATIVE LAW – whether decision was “legally unreasonable”: Minister for Immigration and Citizenship v Li [2013] HCA 18; 249 CLR 332.

ADMINISTRATIVE LAW – whether Tribunal gave adequate reasons for its decision.

IN PRACTICE AND COURTS

[Commonwealth Ombudsman: Defence Force Retirement and Death Benefits \(DRFDB\)](#)

The Ombudsman is undertaking an own motion investigation into the administration of the Defence Force Retirement and Death Benefits (DRFDB) scheme, specifically the issue of commutation. Please complete this form and return to the Office by 30 June 2019. Forms must be emailed no later than 30 June 2019.

Thinking big: The Australian Constitution as a law reform project

As part of the ALRC’s *Where next for law reform?* project the ALRC is encouraging Australians to think big. Arguably the most significant law reform initiative would be to revise the constitution. We have prepared a short paper to start the [conversation](#).

Have your say by taking the [survey](#)

Current Senate Inquiries**Standing Committee of Privileges**

[Development of a foreign influence transparency scheme to apply to parliamentarians](#)

Standing Committee on Regulations and Ordinances

[Parliamentary Scrutiny of Delegated Legislation](#) - The Senate has granted an extension of time for reporting until 3 June 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 12 April 2020. Access the [terms of reference](#) and the [inquiry page](#) for further information.

AHRC: Commission calls for public submissions

The AHRC has released an issues paper for '*Free and Equal: An Australian conversation on human rights*' has called for public submissions. Submissions are open until 12 July 2019. See the [issues paper](#).

Law Council of Australia Submissions

20 May 2019 - [Modern Slavery Act 2018: Draft Guidance for Reporting Entities](#)

16 May 2019 - [Children's Rights in Relation to the Digital Environment](#)

14 May 2019 - [Review of Model Defamation Provisions](#)

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. 20.2019](#), 20 May 2019

LEGISLATION**Proclamations commencing Acts**

[Crimes Legislation Amendment \(Victims\) Act 2018 No 88](#) (2019 - 201) published LW 24 May 2019.

Regulations and other miscellaneous instruments

[Crimes \(Sentencing Procedure\) Amendment \(Victim Impact Statements\) Regulation 2019](#) (2019 - 208) - published LW 24 May 2019.

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

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