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PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

LCA Note: Glencore International Ag and Ors v Commissioner of Taxation of the Commonwealth of Australia and Ors

High Court judgment: The Law Council of Australia has issued a note on the decision of the High Court of Australia in *Glencore International Ag and Ors v Commissioner of Taxation of the Commonwealth of Australia and Ors*, which can be found [here](#).

Lawyers fear Australia more open to hacks, leaks after High Court ruling on Glencore

The ATO has also argued that legal privilege only extended as far as protecting such material from being compelled to be handed over during investigations or proceedings, not requiring the return of already leaked material. <https://www.abc.net.au/news/2019-08-15/lawyers-fear-ramifications-of-high-court-ruling-on-glencore-/11414806>

Mining giant loses fight to keep Paradise Papers revelations out of ATO's reach

Australia's biggest coal producer, Glencore, loses a High Court bid to have documents linked to its offshore financial arrangements kept out of reach of the Australian Tax Office (ATO) by invoking legal privilege. <https://www.abc.net.au/news/2019-08-14/glencore-high-court-paradise-papers-ruling/11410228>

Glencore's High Court loss to the Tax Office has some lawyers worried.

Tax Commissioner Chris Jordan says he should be able to access confidential taxpayer information in order to fight a defamation case against him, because if he doesn't, other individuals in dispute with the ATO could launch lawsuits against him. <https://www.abc.net.au/news/2019-08-13/ato-boss-chris-jordan-says-lawsuits-against-him-could-spike/11406224>

MEDIA

Whole-of-Government Legal Services Panel commences

The Morrison Government has launched a new era in the provision of legal services to the Commonwealth, with the commencement of the first Whole of Government

Legal Services Panel. The Panel, comprising more than 60 specialist legal providers from across Australia will provide the bulk of the Commonwealth's external legal services until 2024. <https://www.attorneygeneral.gov.au/Media/Pages/whole-of-government-legal-services-panel-commences-16-august-2019.aspx>

Chatbot to make solving legal issues simple

The NSW Government will invest \$250,000 into designing and building a chatbot that will help vulnerable people solve common legal problems with speed and ease, Attorney General Mark Speakman announced today. Marrickville Legal Centre will pioneer the technology after becoming the first recipient of a grant from the government's new Access to Justice Innovation Fund. <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/chatbot-to-make-solving-legal-issues-simple.aspx>

AFP won't rule out charging journalists in leak investigations

Journalists who published stories based on leaked, highly classified information and were later raided by the Australian Federal Police could still be charged, an intelligence committee hearing is told. <https://www.abc.net.au/news/2019-08-14/police-will-not-rule-out-charging-journalists/11412408>

National security laws should not unduly limit free press, says Law Council

Disclosure of classified intelligence information by journalists and whistleblowers should only be criminalised if it can be proven there is a real threat to national security, says the Law Council of Australia. In its submission to the PJCIS press freedoms inquiry, the Law Council said currently there was a broad scope of journalistic conduct that may be innocuous but could be caught under espionage, sabotage and foreign interference laws. <https://www.lawcouncil.asn.au/media/media-releases/national-security-laws-should-not-unduly-limit-free-press-says-law-council>

Get the balance right on farm trespass laws, says Law Council

Proposed farm incitement of trespass laws would duplicate existing state and territory provisions and could stifle legitimate public debate, says the Law Council of Australia. While the Law Council recognised trespass, property damage and theft was unlawful and could cause harm to farming properties, all jurisdictions already had laws criminalising the incitement of such conduct. <https://www.lawcouncil.asn.au/media/media-releases/get-the-balance-right-on-farm-trespass-laws-says-law-council>

It doesn't make sense': Judge blasts rule behind Opal Tower class action delay

A multi-million-dollar class action by owners of units in the notorious Opal Towers against the NSW Government faces a month-long delay due to a historical practice note a Supreme Court judge says "doesn't make sense". <https://www.abc.net.au/news/2019-08-09/sydney-opal-tower-class-action-lawsuit-proceedings-delayed/11398794>

LSC: Draft Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019

The Legal Services Council has released, for public comment for a period of at least 30 days, the draft Legal Profession Uniform Admission Amendment (Qualifications) Rule 2019 (Draft Rule) in accordance with s 426 of the Uniform Law. The Draft Rule relates to the admission of foreign lawyers in NSW and Victoria, a function performed by the admitting authorities in each State. <http://www.legalservicescouncil.org.au/Pages/Highlights/2019/Have-your-say-on-new-rule-regarding-foreign-lawyers.aspx>

PUBLISHED - ARTICLES, PAPERS, REPORT**[ANAO Annual Report 2018-19](#)**

ANAO: 14 August 2019

This annual report documents the performance of the Australian National Audit Office (ANAO) in the financial year ended on 30 June 2019. The report addresses all applicable obligations under the Public Governance, Performance and Accountability Act 2013; the Public Governance, Performance and Accountability Rule 2014; the Auditor-General Act 1997.

[The effect of lockout and last drinks laws on non-domestic assaults in Sydney: an update to March 2019](#)

Neil Donnelly, Suzanne Poynton

NSW Bureau of Crime Statistics and Research: 08 August 2019

This research set out to examine the long term impact of the 2014 NSW liquor law amendments on non-domestic assaults in Kings Cross, the Sydney CBD and surrounding areas. As in previous studies, a significant reduction in non-domestic assaults in the Kings Cross and Sydney CBD precincts was revealed.

[Whistleblower policies: consultation paper](#)

Australian Securities and Investments Commission: 07 August 2019. This consultation paper seeks feedback on our proposed guidance for entities that must have a whistleblower policy—public companies, large proprietary companies and proprietary companies.

IN PRACTICE AND COURTS**[High Court Practice Direction 1 of 2019](#)**

The High Court has recently issued a new practice direction, which applies to matters set down after 1 October 2019.

[High Court \(2020\) Sittings Rules 2019](#)

The High Court has provided a copy of the Rule of Court appointing the High Court sittings for 2020. The Rule of Court appoints the Full Court sittings to be held in Canberra throughout the year and the days on which special leave applications will be heard. Sittings of the Court will continue to be held in Adelaide, Brisbane, Hobart and Perth as required.

[Attorney General: Purchasing legal services - Whole of Australian Government Legal Services Panel](#)

The Whole of Australian Government Legal Services Panel commenced on 15 August 2019. The panel consists of five broad Areas of Law, comprising a number of Practice Areas.

[Federal Court of Australia: Notice to the Profession regarding Use of Junior Counsel](#)

The Hon J L B Allsop AO, Chief Justice of the Federal Court of Australia, has issued a Notice to the Profession on the use of Junior Counsel. The note indicates that the Federal Court of Australia encourages the active participation of junior counsel where two counsel are briefed for a party.

Law Council of Australia Submissions

07 August 2019— Law Council

[Inquiry into the Impact of the Exercise of Law Enforcement and Intelligence Powers on the Freedom of the Press](#)

AIJA Newsletters

The Institute's newsletter, AIJA News, is designed to keep members informed of the Institute's activities and also to bring its work to the attention of a wider national and international audience. See [August 2019](#)

Current Senate Inquiries - Legal and Constitutional Affairs Legislation Committee

Legal and Constitutional Affairs References Committee
[The impact of changes to service delivery models on the administration and running of Government programs Nationhood, national identity and democracy](#)
Environment and Communications References Committee
[Press Freedom](#)

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. 32/2019, 12 August 2019](#)

LSC Public consultation: proposed new rules regarding practice administration

The Legal Services Council (LSC) invites public comment on the [draft Legal Profession Uniform Amendment \(Miscellaneous\) Rule 2019](#) (Draft Rule) in accordance with s 425 of the Uniform Law (UL).

NSW**[Government to consult on proposal to establish a single personal injury tribunal](#)**

The Minister for Customer Service has announced ([click here](#)) the Government's support for the establishment of a single personal injury tribunal to hear workers compensation and compulsory third party disputes. The Minister has also announced that the Government will be conducting a consultation process regarding an appropriate model for the new tribunal.

[Consultation paper: Mandatory Notification of Data Breaches by NSW Public Sector Agencies](#)

The paper aims at seeking feedback on: whether NSW public sector agencies should be required to notify the NSW Privacy Commissioner and affected individuals if a breach of privacy occurs; and how the key elements of a mandatory notification scheme should operate (if implemented in NSW). The discussion paper is available at www.haveyoursay.nsw.gov.au.

[ICAC public inquiry into lobbying](#)

The ICAC's public inquiry into the regulation of lobbying, access and influence in NSW (Operation Eclipse) started 5 August 2019.

[ICAC: Public inquiry into allegations concerning political donations](#)

The NSW ICAC will hold a public inquiry started 26 August 2019 as part of an investigation it is conducting into allegations concerning political donations, the NSW Branch of the Australian Labor Party (ALP), members of Chinese Friends of Labor and others.

[ICAC: Operation Ember public inquiry continues Thursday 1 August 2019](#)

The NSW ICAC Operation Ember public inquiry will continue on 1 August 2019.

[Adoption of mandatory data breach notification](#)

The Department of Communities and Justice is seeking feedback on whether a mandatory reporting scheme for data breaches should be adopted under the Privacy and Personal Information Protection Act 1998.

[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](#). Information about making a submission may be found on our website.

CASES**[Palmer v Australian Electoral Commission \[2019\] HCA 24](#)**

The application is dismissed. Parliamentary elections (Cth) – House of Representatives – Counting of votes – Where s 274(2A)-(2C) of Commonwealth Electoral Act 1918 (Cth) provides for indicative two-candidate preferred count in each Division – Where s 7(3) of Commonwealth Electoral Act confers power

on Australian Electoral Commission to do all things necessary or convenient for or in connection with performance of its functions – Where practice of Australian Electoral Commission to publish information about indicative two-candidate preferred count for a Division after close of polls in that Division – Whether publication of information for a Division before polls closed in all parts of nation has any demonstrated effect on electoral choices – Whether information inaccurate or misleading – Whether publication constitutes imprimatur to any particular candidate or outcome – Whether publication authorised by s 7(3).

Constitutional law (Cth) – Parliament – Elections – Whether publication of information about indicative two-candidate preferred count prior to close of polls nationally contrary to ss 7 and 24 of Constitution – Whether factual foundation of challenge established. Commonwealth Electoral Act 1918 (Cth), ss 7, 274.

[Edwards v Commissioner for Fair Trading, Department of Finance, Services and Innovation \[2019\] NSWCATAP 208](#)

APPEAL – licensing and regulation – leave to appeal on a ground other than a question of law – whether Tribunal's decision unjust – whether significant new evidence had arisen since the hearing below ADMINISTRATIVE LAW – Practice and procedure – Agency's duty to produce documents under s 58 Administrative Decisions Review Act 1997.

[Alajmi v Macquarie University \[2019\] NSWSC 1026](#)

ADMINISTRATIVE LAW – reviewability – justiciability – subject matter of power or decision – matter of academic judgement – decision by a university thesis supervisor not to certify that a doctoral thesis met the University's preparation requirement that the thesis was the student's "own work" – findings of an investigatory panel into allegations of plagiarism against the student taken into account – not an exercise of public power – impermissible merits review ADMINISTRATIVE LAW – legal unreasonableness – whether the "non-certification decision" and the panel's findings were legally unreasonable – Briginshaw standard did not apply – inferences made were reasonably open and logically available – not legally unreasonable – no irrelevant consideration – no apprehended bias – no impermissible fetter of discretion or subjugation of state of satisfaction CONTRACTS – implied terms – parties agreed to be bound by the University's By-laws and Rules – no term that the parties also agreed to be bound by the University's Code, Policy and Procedure should be implied CONTRACTS – legal unreasonableness – alleged failure to exercise a unilateral contractual discretion reasonably – "non-certification decision" not legally unreasonable ESTOPPEL – estoppel by convention – mutual assumption – assumptions not supported by the evidence ESTOPPEL – estoppel by representation – detrimental reliance – representations not made – representations not relied upon.

[Saul v Department of Fair Trading \[2019\] NSWCATAD 161](#)

ADMINISTRATIVE LAW – Disciplinary decisions – whether fit and proper person to hold a licence Administrative Decisions Review Act 1997 (NSW); Property Stock and Business Agents Act 2002 (NSW).

[DQN v University of Sydney \[2019\] NSWCATAD 159](#)

ADMINISTRATIVE LAW – Freedom of information – Access to information concerning a preliminary assessment report of a complaint made by the applicant – whether there is public interest against the disclosure of the information sought and on balance, that public interest against disclosure overrides the public interest in favour of disclosure – confidential information – personal information of a person other than the applicant.

[P&N NSW Pty Ltd v Milovic \[2019\] NSWCATAP 201](#)

2. The appeal is allowed and the orders made 5 March 2019 in application GEN 18/4903 are set aside.
ADMINISTRATIVE LAW – Reasons – breach of warranty – failure to provide adequate reasons - Civil and Administrative Tribunal Act, 2013 (NSW); Civil and Administrative Tribunal Rules, 2014 (NSW).

[DMW and DMX v NSW Rural Fire Service \[2019\] NSWCATAD 158](#)

Administrative Law – privacy and personal information whether collection of personal information – use of personal information – disclosure of personal information - whether agency exempt from compliance with information protection principle - law enforcement purposes.

[Lilli v Building Professionals Board \[2019\] NSWCATOD 119](#)

The respondent is to refund the balance of \$5,000.00 to Mr Lilli within 28 days of this decision.
ADMINISTRATIVE REVIEW – accredited certifier – findings of unsatisfactory professional conduct – disciplinary orders - Administrative Decisions Review Act 1997.

LEGISLATION**Acts****Bills**[Australian Security Intelligence Organisation Amendment \(Sunsetting of Special Powers Relating to Terrorism Offences\) Bill 2019](#)

Assent Act no: 61 Year: 2019 – 12 Aug 2019
Amends the Australian Security Intelligence Organisation Act 1979 to extend the operation of the Australian Security Intelligence Organisation's questioning and detention powers for a further 12 months to 7 September 2020.

[Treasury Laws Amendment \(Consumer Data Right\) Bill 2019](#)

Assent Act no: 63 Year: 2019 - 12 Aug 2019
Amends the Competition and Consumer Act 2010, Australian Information Commissioner Act 2010 and Privacy Act 1988 to create the Consumer Data Right to provide individuals and businesses with a right to access specified data in relation to them held by businesses

Regulation[High Court \(2020 Sittings\) Rules 2019](#)

These Rules of Court appoint the High Court days of sitting for 2020.

NSW**Regulations and other miscellaneous instruments**

[Administrative Decisions Review Regulation 2019](#) (2019-380) – published LW 16 August 2019

[Anti-Discrimination Regulation 2019](#) (2019-381) – published LW 16 August 2019

[Children \(Protection and Parental Responsibility\) Regulation 2019](#) (2019-382) – published LW 16 August 2019

[Children's Court Regulation 2019](#) (2019-383) – published LW 16 August 2019

[Civil Liability Regulation 2019](#) (2019-384) – published LW 16 August 2019 Proportionate liability

[Crimes \(Domestic and Personal Violence\) Regulation 2019](#) (2019-386) – published LW 16 August 2019

[Privacy and Personal Information Protection Regulation 2019](#) (2019-391) – published LW 16 August 2019

[Status of Children Regulation 2019](#) (2019-395) – published LW 16 August 2019

[Victims Rights and Support Regulation 2019](#) (2019-398) – published LW 16 August 2019

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

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

Instructions may be emailed to nswgovtlegal@tglaw.com.au at anytime.



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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