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ISSUE 21



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

The Attorney-General of Australia has announced that the Federal Government will accept all of the Commonwealth related recommendations arising out of the Lindt Café siege inquest report.

One such recommendation related to improved accessibility of information on criminal history (including bail) relevant to the investigation and prosecution of criminal offences. The 12 recommendations and the Government response are outlined in the Attorney-General's release below.

MEDIA

They've stolen the payments': Push to increase NSW victims of crime scheme

Victims of crime call on the NSW Government to increase funding for compensation, after the scheme was scaled back four years ago (16 June 2017). <http://www.abc.net.au/news/2017-06-16/victims-of-crime-in-nsw-push-government-for-more-compensation/8621910>

National Firearms Amnesty starts on July 1

The National Firearms Amnesty will commence on July 1, giving Australians an opportunity to hand in unregistered and unwanted firearms and improve community safety. While there have been state-based amnesties since then, it is again time that we give every Australian the chance to dispose of firearms without fear of being prosecuted (16 June 2017). <https://www.ministerjustice.gov.au/MediaReleases/Pages/2017/SecondQuarter/National-firearms-amnesty-starts-on-July-1.aspx>

Legal profession sets out core principles and commitments on human rights, as international spotlight shines on nation

The Law Council today launched its [Policy Statement on Human Rights and the Legal Profession](#), laying out core principles and commitments of behalf of the Australian legal profession. The Policy Statement sets out a framework for evaluating the merits of legislation, policy, and practice by reference to international human rights law (16 June 2017). <https://www.lawcouncil.asn.au/media/media-releases/legal-profession-sets-out-core-principles-and-commitments-on-human-rights-as-international-spotlight-shines-on-nation>

Proposed new powers over AAT on citizenship decisions risks undermining vital checks and balances

The expansion of the Immigration Minister's power to overrule independent citizenship decisions made by the AAT is a disproportionate response that weakens crucial checks and balances. The new powers are outlined in *The Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017* introduced into the House of Representatives today (15 June 2017). <https://www.lawcouncil.asn.au/media/media-releases/proposed-new-powers-over-aat-on-citizenship-decisions-risks-undermining-vital-checks-and-balances>

Elder Abuse—A National Legal Response

The Australian Law Reform Commission (ALRC) is delighted to be launching its Report, [Elder Abuse—A National Legal Response \(ALRC Report 131\)](#), on World Elder Abuse Awareness Day 2017. The ALRC was asked

to consider Commonwealth laws and legal frameworks and how they might better protect older persons from misuse or abuse, and safeguard their autonomy (15 June 2017). <http://www.alrc.gov.au/news-media/elder-abuse-national-legal-response>

Muslim woman charged over refusal to stand in court considers challenge

Moutia Elzahed, who is the first person in NSW to be charged with the offence of disrespectful behaviour in court since it was introduced last year, is considering a constitutional challenge (15 June 2017). <http://www.abc.net.au/news/2017-06-15/muslim-woman-considers-constitutional-challenge-over-court-stand/8620120>

Government delivers for native title stakeholders

The Senate has today passed the Native Title Amendment Bill (Indigenous Land Use Agreement) Bill, restoring certainty to the native title system (14 June 2017). <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/SecondQuarter/Government-delivers-for-native-title-stakeholders.aspx>

Political attacks on the courts a very worrying trend

The Law Council, speaking on behalf of the Australian legal profession, is calling for an end to political attacks on the judiciary, especially in cases where they might be perceived to interfere with matters currently before the courts (13 June 2017) <https://www.lawcouncil.asn.au/media/media-releases/political-attacks-on-the-courts-a-very-worrying-trend>

ASIO Intelligence Sharing Remains Strong

Information-sharing by intelligence agencies has been standard practice through the Joint Counter-Terrorism Teams (JCTT) in each jurisdiction. JCTTs comprise representatives of ASIO, the AFP, and state police in each jurisdiction. How widely intelligence provided by ASIO to JCTTs is shared by state law enforcement agencies is a matter for each state (12 June 2017). <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/SecondQuarter/ASIO-Intelligence-Sharing-Remains-Strong.aspx>

NSW A-G disputes Brandis' plan to increase politicians' parole powers

NSW Attorney-General Mark Speakman says judges, not politicians, should decide when someone is freed from jail, after his federal counterpart George Brandis calls for state and territory attorney-generals to decide on parole for criminals with terrorism links (08 June 2017). <http://www.abc.net.au/news/2017-06-08/nsw-a-g-disputes-push-to-increase-politicians-parole-powers/8599722>

[06-08/nsw-a-g-disputes-push-to-increase-politicians-parole-powers/8599722](http://www.abc.net.au/news/2017-06-08/nsw-a-g-disputes-push-to-increase-politicians-parole-powers/8599722)

NSW Recorded Crime Statistics March 2017

None of the major crime categories have increased in NSW over the last two years. In the 24 months to March 2017, four of the 17 major offences were trending downward and the remaining 13 were stable (08 June 2017). <http://www.bocsar.nsw.gov.au/Pages/bocsar-media-releases/2017/mr-NSW-Recorded-Crime-Statistics-March-2017.aspx>

Turnbull Government accepts all Commonwealth recommendations of Lindt Café siege inquest report

The Turnbull Government will accept all Commonwealth related recommendations of the Lindt Café siege inquest report. This includes supporting work to strengthen information sharing in relation to criminal history, including bail and parole, and further consulting with states and territories on ADF call out powers (06 June 2017). <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/SecondQuarter/Turnbull-government-accepts-all-commonwealth-recommendations-of-lindt-cafe-siege-inquest-report.aspx>

CASES

[Casenote: Hughes v The Queen \[2017\] HCA 20: Character Evidence](#)

The High Court has today (14 June 2017) by majority, dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales in the case of Hughes v The Queen [2017] HCA 20. The case revolved around whether tendency evidence was inadmissible.

[Luck v Chief Executive Officer of Centrelink \[2017\] FCAFC 92](#)

ADMINISTRATIVE LAW – decision made by reference to departmental handbook – whether decision made “under an enactment” within the meaning of the Administrative Decisions (Judicial Review) Act 1977 (Cth) – whether decision made under an Act – whether decision made under an instrument.

BANKRUPTCY AND INSOLVENCY – where sequestration order made – whether proceeding stayed by force of s 60(2) of the Bankruptcy Act 1966 (Cth) – whether exception in s 60(4) applies – whether application for judicial review commenced before bankruptcy is an action in respect of personal wrong.

PRACTICE AND PROCEDURE – whether decision upholding objection to competency interlocutory – whether leave to appeal required

PRACTICE AND PROCEDURE – leave to appeal – where primary judge refused application for refusal – whether decision attended by sufficient doubt to warrant its reconsideration on appeal.

PRACTICE AND PROCEDURE – leave to appeal – where adjournment sought pending outcome of removal application under s 40 of the Judiciary Act 1903 (Cth) – where primary judge refused to grant adjournment – whether decision attended by sufficient doubt to warrant its reconsideration on appeal.

[Carrigan v Honourable Senator Michaelia Cash \[2017\] FCAFC 86](#)

CONSTITUTIONAL LAW – originating application for judicial review of a report provided to the Minister of Employment – redacted copy of report tabled in Parliament – whether conduct of the author of the report and the Minister constituted “acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House [of the Australian Parliament]” within s 16(2) of the Parliamentary Privileges Act 1987 (Cth) – whether the report was prepared “for purposes of or incidental to the transacting of any [business of a House of the Australian Parliament]” within s 16(2)(c) of that Act.

PRACTICE AND PROCEDURE – appeal from orders of primary judge striking out statement of claim and entering summary judgment for the respondents – originating application for judicial review of a report provided to the Minister of Employment – redacted copy of report tabled in Parliament – whether conduct of the author of the report and the Minister constituted “acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House [of the Australian Parliament]” within s 16(2) of the Parliamentary Privileges Act 1987 (Cth) – whether the report was prepared “for purposes of or incidental to the transacting of any [business of a House of the Australian Parliament]” within s 16(2)(c) of that Act.

[‘LP’ and The Westin Sydney \(Privacy\) \[2017\] AICmr 53](#)

Privacy – Australian Privacy Principles – Privacy Act 1988 (Cth) – APP 3 – Whether collection of personal information was by lawful and fair means – Recording of phone call without participants’ knowledge – APP 12 – Access to personal information – Whether three days was an unreasonable period within which to provide access to a call recording.

[Australian Taxation Office and Andrew Garrett \(Freedom of information\) \[2017\] AICmr 50](#)

Freedom of Information – Vexatious applicant declaration – Whether person

should be declared a vexatious applicant – Whether person has repeatedly engaged in access actions that involve an abuse of process – Whether the access actions unreasonably interfere with the operations of an agency – (CTH) Freedom of Information Act 1982 ss 89K, 89L, 89M – (CTH) Acts Interpretation Act 1901 s 33.

[‘LM’ and Australian Taxation Office \(Freedom of information\) \[2017\] AICmr 49](#)

Freedom of Information – Whether disclosure would disclose the existence or identity of a confidential source of information – (CTH) Freedom of Information Act 1982 s 37(1)(b).

[DCB v Secretary of the Department of Education NSW \[2017\] NSWCATAD 189](#)

ADMINISTRATIVE LAW- Education and Care Services National Law – Operator approval – Breach of condition of approval – Objects and Principles of National Law – Children – Childcare Services – Failure to commence operating with 6 months – Administrative review jurisdiction– External Appeal jurisdiction – whether stay is desirable- interim stay under section 60, 61, 62 Administrative Decisions Review Act 1997 (NSW) – stay granted.

[CYD v Secretary of the Department of Education NSW \[2017\] NSWCATAD 190](#)

ADMINISTRATIVE LAW- Education and Care Services National Law - cancellation of provider approval - breach of condition of approval – Objects and Principles of National Law – Children – Childcare Services – Administrative review jurisdiction – what is the correct and preferable decision - whether the Tribunal should uphold the decision or substitute a decision – whether to remit – whether to impose additional conditions – correct and preferable decision is to set aside the decision and restore the approvals previously granted.

[Zonneville v Department of Finance, Services and Innovation \[2017\] NSWCATAD 186](#)

ADMINISTRATIVE REVIEW - Government Information – attempt to reopen findings - reasonableness of searches – discharge of onus - whether reasonable grounds to believe information exists – unreasonable and substantial diversion of resources – balancing exercise – information already provided – legal professional privilege – allegations of delay - allegations of misconduct - request for referral to Minister – jurisdiction PROCEDURAL FAIRNESS – application for disqualification.

PRACTICE AND PROCEDURE

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. 24/2017, 13 June 2017](#)

[Issue No. 23/2017, 5 June 2017](#)

COAG meeting Communiqué, 9 June 2017

The Council of Australian Governments (COAG) held its 44th meeting today, in Hobart. Leaders welcomed Premiers Berejiklian and McGowan to their first meeting. Leaders agreed to further strengthen collaboration to prevent and respond to terrorism and other threats to public safety, underpinned by strong justice and national security systems. <http://www.coag.gov.au/meeting-outcomes/coag-meeting-communicue-9-june-2017>

NSW

Department of Justice 2017 Regulatory Impact Statements

Proposed NSW Trustee and Guardian Regulation 2017

The NSW Department of Justice is seeking comments on the public consultation draft of the proposed NSW Trustee and Guardian Regulation 2017 and [Regulatory Impact Statement](#).

Proposed Births, Deaths and Marriages Registration Regulation 2017

The NSW Department of Justice is seeking comments on the public consultation draft of the proposed Births, Deaths and Marriages Registration Regulation 2017 and [Regulatory Impact Statement](#).

ICAC: [Operation Tarlo public inquiry adjourned](#)

The Operation Tarlo public inquiry has adjourned until Wednesday, 12 July 2017. Transcripts for this inquiry can be accessed at the quick link to the right of screen (16 June 2017).

ICAC: [Prosecution briefs with the DPP and outcomes](#)

Tables of prosecution briefs with the DPP and outcomes. Last updated 15 June 2017.

ARTICLE, PAPER, REPORTS

Australian Bureau of Statistics

14/06/2017 [In Focus: Crime and Justice Statistics, Stalking](#) - June 2017 (cat no. 4524.0).

[National Disability Insurance Scheme \(NDIS\) Costs: position paper](#)

Productivity Commission: 09 June 2017
This position paper outlines the Commission's early thinking on NDIS costs. The purpose of this position paper is to seek feedback on the Commission's preliminary conclusions, and on any additional issues that should be considered before the public release of the final study report. Feedback is sought by 12 July 2017.

[Disability support services: services provided under the national disability agreement 2015-16](#)

Australian Institute of Health and Welfare: 05 June 2017.

LEGISLATION

Commonwealth

Enhancing Online Safety for Children Amendment Bill 2017

Amends the Enhancing Online Safety for Children Act 2015 to: amend the short title of the Act to the Enhancing Online Safety Act 2015; change the title of the Children's e-Safety Commissioner to the e-Safety Commissioner; expand the role and function of the commissioner to cover Australians more generally rather than only Australian children; permit the commissioner to disclose a broader class of information to specified Commonwealth authorities; and make consequential amendments to five other Acts. Senate: Introduced and read a first time 14 June 2017; Second reading moved 14 June 2017; Second reading debate 15 June 2017. http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5794

NSW

Proclamations commencing Acts

[Law Enforcement Conduct Commission Act 2016 No 61](#) (2017-256) — published LW 16 June 2017.

Regulations and other miscellaneous instruments

[Election Funding, Expenditure and Disclosures \(Adjustable Amounts\) Amendment Notice 2017](#) (2017-262) — published LW 16 June 2017.

[Law Enforcement Conduct Commission Regulation 2017](#) (2017-263) — published LW 16 June 2017.

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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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 email address will be monitored during normal business hours

SUB-PANEL APPOINTMENTS

Thomson Geer is 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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