



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

The biggest news from the past fortnight is the postal survey returning a 'yes' vote for Same Sex Marriage. The eyes of the nation are watching the Parliament closely to see if legislation is introduced as the next stage of the process.

Legislation the next hurdle for marriage equality

Lawyers have underscored the importance of ensuring same-sex marriage legislation does not limit anti-discrimination protections. After the same-sex marriage postal survey returned a 61.6 per cent 'yes' vote, all eyes turned to Canberra for the next stage of the process. <https://www.lawyersweekly.com.au/wig-chamber/22261-legislation-the-next-hurdle-for-marriage-equality>

LCA: It's a 'yes' for marriage equality! Now for legislation that does not discriminate

With the 'yes' vote now confirmed, Parliament must move swiftly to introduce legislation that legalises marriage equality while preserving important anti-discrimination protections for LGBTI Australians. <https://www.lawcouncil.asn.au/media/media-releases/it-s-a-yes-for-marriage-equality-now-for-legislation-that-does-not-discriminate>

LCA: New Bill an extraordinary winding back of anti-discrimination laws under cover of same-sex marriage

The draft Marriage Amendment (Definition and Protection of Freedoms) Bill 2017 to legalise same-sex marriage, released by Senator James Paterson, represents an 'extraordinary and perilous' winding back of Australia's anti-discrimination laws under the cover of marriage equality. <https://www.lawcouncil.asn.au/media/media-releases/new-bill-an-extraordinary-winding-back-of-anti-discrimination-laws-under-cover-of-same-sex-marriage>

MEDIA

Opal Card False Imprisonment Case Overturned By NSWCA

In *State of New South Wales v Le* [2017] NSWCA 290, the NSW Court of Appeal ("the Court") has overturned a decision by the NSW District Court that saw a man stopped by transport police awarded damages of \$3201 for "false imprisonment". The Court found that "the officers were justified in the steps they took in stopping and detaining the respondent" [at 23] and allowed the appeal. <http://www.smh.com.au/nsw/court-overturns-3000-damages-award-over-opal-card-false-imprisonment-20171116-gzmfze.html>

High Court's decision to dismiss Hollie Hughes shows the constitution needs updating Analysis

About one in six workers in Australia would be deemed ineligible to run for Parliament under the current rules, including teachers, police officers, nurses, doctors, public servants. <http://www.abc.net.au/news/2017-11-16/analysis-section-44-constitution-needs-updating/9154540>

Funding for local solutions to local crime

Local businesses, councils and community groups with grassroots solutions to crime in their local communities have the chance to apply for up to \$250,000 each in grant funding, Attorney General Mark Speakman and Minister for Police Troy Grant announced. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/funding-local-solutions-to-local-crime.aspx>

Council and dog advertising under spotlight: NSW

Margaret Crawford, the NSW Auditor-General, recently tabled a new report titled 'Government Advertising: Campaigns for 2015-16 and 2016-17, placing a spotlight on two campaigns that garnered significant media attention. The report makes four recommendations that aim to help agencies comply with existing requirements and improve transparency where the need to commence advertisement is deemed to be 'urgent' under the Government Advertising Act 2011. <http://www.audit.nsw.gov.au/news/government-advertising-campaigns-2015-16-2016-17>

eSafety office fronts Facebook pilot

The Office of the eSafety Commissioner has joined Facebook in an international pilot program to prevent intimate images of people being posted online without their consent. <https://esafety.gov.au/about-the-office/newsroom/media-releases/facebook-and-esafety-office-partner-to-protect-australians-online>

CASES

[Caratti v Commissioner of the Australian Federal Police \[2017\] FCAFC 177](#)

ADMINISTRATIVE LAW – appeal from orders substantively dismissing application for judicial review pursuant to the Administrative Decisions (Judicial Review) Act 1997 (Cth) and s 39B of the Judiciary Act 1903 (Cth) in relation to the decision to issue search warrants under s 3E of the Crimes Act 1914 (Cth) CRIMINAL LAW – practice and procedure – search warrants.

[Australian Competition and Consumer Commission v Apple Pty Ltd \(No 2\) \[2017\] FCA 1329](#)

PRACTICE AND PROCEDURE – leave to amend concise statement – whether proposed amended concise statement pleaded material facts to support alleged contraventions of ss 18 and 29(1)(m) of the Australian Consumer Law -Competition and Consumer Act 2010 (Cth), Sch 2, Australian Consumer Law, ss 18 and 29.

[Australian Competition and Consumer Commission v Morild Pty Ltd \[2017\] FCA 1308](#)

CONSUMER LAW – contraventions of the Competition and Consumer Act 2010 (Cth) and Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth) (Franchising Code) – breaches of cl 8(1) and cl 9(1) of the Franchising Code for failing to create a complying disclosure document and for the distribution of that non complying disclosure document – where contraventions admitted – where parties agree that the insolvency of two predecessor franchisors was “relevant business experience” which pursuant to the Franchising Code must be disclosed – principles applicable to imposition of a pecuniary penalty, declarations and injunctive relief – appropriateness of agreed orders and declarations.

[Australian Competition and Consumer Commission v Meriton Property Services Pty Ltd \[2017\] FCA 1305](#)

CONSUMER LAW – misleading or deceptive conduct – conduct liable to mislead the public as to the nature, characteristics or suitability for their purpose of services – where respondent carried on serviced apartment business – where respondent’s properties listed on the TripAdvisor website – where respondent participated in system called Review Express to solicit reviews from guests who had stayed at properties – where respondent masked email addresses of guests who had complained – where respondent withheld email addresses of guests where there had been a major service disruption – whether respondent’s conduct had effect of reducing the number of negative reviews – whether respondent’s conduct likely to mislead or deceive – whether respondent’s conduct liable to mislead the public as to the nature, characteristics or suitability for purpose of accommodation services

EVIDENCE – hearsay – business records – where respondent subscribed to online service that collected and analysed guest reviews from the internet – where respondent accessed the service and prepared reports containing such data – whether representations in reports covered by business records exception to hearsay rule - Competition and Consumer Act 2010 (Cth), s 139B, Sch 2.

[Liem v Republic of Indonesia \[2017\] FCA 1303](#)

EXTRADITION – application for judicial review under s 39B of Judiciary Act 1903 (Cth) – seeking review of Minister’s decision to issue notice under s 16 of Extradition Act 1988 (Cth) upon concluding that applicant was an “extraditable person” within meaning of s 6 of Extradition Act 1988 (Cth) – seeking review of magistrate’s decision that applicant was eligible for surrender as being a nullity - asserted incapacity of material to establish Minister’s conclusion that applicant was “accused of having committed the offences” – asserted failure by Minister to properly consider whether applicant was not “accused of having committed the offences” due to insufficient material – alleged denial of procedural fairness – held: open to Minister to conclude that applicant was “accused of having committed the offences” and thus an “extraditable person” – held: material before Minister sufficient to base conclusion – held: no denial of procedural fairness due to no obligation arising - held: magistrate’s decision therefore not a nullity – held: judicial review application dismissed

EXTRADITION – statutory appeal under s 21 of Extradition Act 1988 (Cth) challenging orders of magistrate that applicant was eligible for surrender to Indonesia under s 19(9) of Extradition Act 1988 (Cth) – alleged error by magistrate in considering police investigators report to be part of statement of conduct – alleged error by magistrate in concluding dual criminality requirement was satisfied – alleged error by magistrate in holding Indonesia to have provided requisite statement of conduct - held: no issue in police investigators report forming part of statement of conduct – held: no error in holding dual criminality to be satisfied – held: no error in holding statement of conduct provided to be satisfactory – held: statutory appeal dismissed

Corporations Act 2001 (Cth), s 184; Extradition Act 1988 (Cth), ss 5, 6, 7, 10(3), 12, 15, 16, 17, 19, 21; Judiciary Act 1903 (Cth), s 39B.

[Pascale v City of Parramatta \[2017\] NSWCATAD 332](#)

COSTS - Administrative Law - GIPA Act - Whether special circumstances established - Settled how costs approached.

[Transcon Holding Pty Ltd t/as Sydney Multicultural Child Care Services v Secretary, Department of Education \[2017\] NSWCATAD 333](#)

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 – correct and preferable decision - whether the Tribunal should uphold the decision or substitute a decision – correct and preferable decision is to confirm the decision of the Regulatory Authority.

[DDT v Charles Sturt University \[2017\] NSWCATAD 329](#)

Government Information (Public Access) – Application for release of report of investigation into an allegation of academic misconduct – application made by person who had made allegation – disclosure would prejudice the exercise of agency’s functions – disclosure would reveal personal information and infringe information privacy.

[CYX v City of Ryde Council \[2017\] NSWCATAD 324](#)

ADMINISTRATIVE LAW – privacy – disclosure of personal information – whether individual reasonably likely to have been aware that information of that kind is usually disclosed.

[DED v Randwick City Council \[2017\] NSWCATAD 327](#)

Privacy - personal information held by an agency - review of conduct of agency admitted to be a contravention of the information protection principles concerning personal information - alleged unlawful disclosure of the applicant’s personal information by an officer of the agency - whether alleged loss or damage suffered because of the alleged contravention by the agency.

[Mewett v The University of Sydney \[2017\] NSWCATAD 325](#)

HUMAN RIGHTS – where complaint of age and disability discrimination in education declined by President of Anti-Discrimination Board as lacking in substance – where the Tribunal needs to grant leave before complaint can proceed – whether fair and just for complaint to proceed – whether it is apparent that complaint lacks substance.

[CEU v University of Technology Sydney \[2017\] NSWCATAD 323](#)

HUMAN RIGHTS – where complaint of disability discrimination in education declined by President of Anti-Discrimination Board as lacking in substance – where the Tribunal needs to grant leave before complaint can proceed – whether fair and just for complaint to proceed – whether it is apparent that complaint lacks substance - complexity of legal issues.

PRACTICE AND PROCEDURE

[OAIC: GPs, gyms, and childcare centres may have obligations under the Notifiable Data Breaches scheme – will your organisation?](#)

Private sector health service providers will be required to notify affected individuals and the Australian Information Commissioner of data breaches that are likely to cause serious harm under the [Notifiable Data Breaches \(NDB\) scheme](#).

[ANAO Audit insights: Communicating effectively with stakeholders](#)

Effective, engaging and accessible communication remains an ongoing focus for the Australian National Audit Office (ANAO), given the important role that we play in providing assurance to the Parliament of Australia, and improving public sector administration.

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. 46/2017, 13 November 2017](#)

[Issue No. 45/2017, 6 November 2017](#)

High Court of Australia (17 November 2017)

NOTICE - Reference by the Senate to the Court of Disputed Returns - MR STEPHEN PARRY ([See attached file](#)).

NOTICE - Reference by the Senate to the Court of Disputed Returns - MS JACQUI LAMBIE ([See attached file](#)).

[Election funding and disclosure in Australian states and territories: a quick guide](#)

Damon Muller; Parliamentary Research Paper Series 2017- This Quick Guide summarises the often complex funding and disclosure laws in each Australian state and territory for the purpose of comparison

[Law Council Submissions](#)

03 November 2017— Law Council.

NSW

Supreme Court of NSW: Updated forms for costs assessment

Updated costs assessment forms have recently been published on the [Supreme Court website](#). From 1 January 2018 the registry will only accept these costs assessment forms for processing.

[The High Court’s decision in Brown v Tasmania](#)

Tom Gotsis; NSW Parliamentary Research Service: 06 November 2017 - This e-brief discusses the High Court’s decision in Brown v Tasmania and its implications for protest law in NSW.

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

Prosecution briefs with the DPP and outcomes - last updated 09 November 2017.

LEGISLATION

COMMONWEALTH

[Judiciary Amendment \(Commonwealth Model Litigant Obligations\) Bill 2017](#)

16/11/2017 - This Bill requires the Attorney-General to oblige Commonwealth litigants to act as model litigants, in line with current practice. It establishes a process by which the Commonwealth Ombudsman can investigate complaints regarding contraventions of these obligations, and requires the Ombudsman to include details of these complaints in annual reports. It empowers a court to order a stay of proceedings and, if it is satisfied of a contravention, to make any order it considers appropriate.

[Marriage Amendment \(Definition and Religious Freedoms\) Bill 2017](#)

16/11/2017 – This Bill amends the Marriage Act 1961 (Cth) to remove the restrictions that limit marriage in Australia to the union of a man and a woman. The Bill will allow two people the freedom to marry in Australia, regardless of their sex or gender. The Bill also recognises foreign same-sex marriages in Australia. The requirements for a legally valid marriage otherwise remain the same under the Marriage Act. [Public Governance, Performance and Accountability Amendment \(Executive Remuneration\) Bill 2017](#)

16/11/2017 – This Bill seeks to establish caps on the remuneration paid to senior executives in the Commonwealth public service as well as annual reporting requirements regarding this remuneration.

ACTS

[Freedom of Information Act 1982](#)

Act No. 3 of 1982 as amended – 13/11/2017.

[Regulatory Powers \(Standardisation Reform\) Act](#)

Act No 124 of 2017 – amends to Privacy Act 1988 - 08/11/2017.

REGULATIONS

[High Court Amendment \(Fees\) Rules 2017](#)

10/11/2017 - These rules amend Schedule 2 of the High Court Rules governing the schedule of fees for work done or services performed.

NSW

Proclamations commencing Acts

[Parole Legislation Amendment Act 2017 No 57](#) (2017-627) – published LW 17 November 2017.

Regulations and other miscellaneous instruments

[Crimes \(Administration of Sentences\) Amendment \(Parole\) Regulation 2017](#) (2017-628) – published LW 17 November 2017.

[Supreme Court \(Corporations\) Amendment \(No 13\) Rules 2017 - Erratum](#) (2017-625) – published LW 14 November 2017.

[Local Court \(Amendment No 8\) Rule 2017](#) (2017-623) – published LW 10 November 2017.

[Supreme Court \(Corporations\) Amendment \(No 13\) Rules 2017](#) (2017-618) – published LW 10 November 2017.

Bills introduced Government – 17 November 2017

[Terrorism \(High Risk Offenders\) Bill 2017](#)

Non-Government – 17 November 2017

[Privacy and Personal Information Protection Amendment \(Notification of Serious Violations of Privacy by Public Sector Agencies\) Bill 2017](#)

Bills revised following amendment in Committee – 17 November 2017

[Electoral Bill 2017](#)

[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2017](#)

Bills passed by both Houses of Parliament – 17 November 2017

[Rural Crime Legislation Amendment Bill 2017](#)

[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2017](#)

For the full text of Bills, and details on the passage of Bills, see [Bills](#).

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 (9.00 am to 5.00 pm (EST), Monday to Friday).

Thomson Geer will use its best endeavours to provide the Help Desk Services within one business day of the query being logged.

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