

17 MAY 2019

ISSUE 65



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### Open justice review

The NSW Law Reform Commission is inviting preliminary submissions to the review of laws that regulate access, disclosure and publication of information in NSW courts and tribunals

<https://www.justice.nsw.gov.au/Pages/media-news/news/2019/Open-justice-review-call-for-submissions.aspx>

### NSW Law Reform Commission Open Justice review: Call for submissions

The review will consider the operation of the suppression and non-publication orders to determine if the current laws strike the right balance between the proper administration of justice; the rights of victims and witnesses; the right to a fair trial; privacy and confidentiality; public safety and public interest, and commercial interest and national security. The deadline for preliminary submissions is 31 May 2019. For more information visit the [NSW Law Reform Commission website](#).

### ICAC: Managing conflicts of interest in the NSW public sector

This [publication](#) provides guidance in identifying and managing conflicts of interest

### MEDIA

#### Victorian Ombudsman Deborah Glass elected to board of global Ombudsman body

Victorian Ombudsman Deborah Glass has been elected to the board of the International Ombudsman Institute (IOI), which connects more than 190 Ombudsman offices world-wide

<https://www.ombudsman.vic.gov.au/News/Media-Releases/Victorian-Ombudsman-Deborah-Glass-elected-to-board>

### LCA endorses resolution in support of death row inmates

The Law Council has endorsed a resolution signed 1 March 2019 by the Paris Bar Association and the International Association of Lawyers (UIA) at the closing ceremony of the 7th World Congress Against the Death Penalty. The Law Council has consistently advocated for the global abolition of the death penalty

<https://www.lawcouncil.asn.au/media/news/lca-endorses-resolution-in-support-of-death-row-inmates>

### New Disability Discrimination Commissioner

The Australian Human Rights Commission is pleased to welcome Dr Ben Gauntlett as Disability Discrimination Commissioner. Before his appointment, Dr Gauntlett worked as a barrister in Western Australia and Victoria with a broad ranging practice

<https://www.humanrights.gov.au/about/news/new-disability-discrimination-commissioner>

### Telcos warned for not helping vulnerable consumers

Eleven telcos have been hit with formal warnings by the Australian Communications and Media Authority (ACMA) for failing to tell potential new customers that they do not provide Priority Assistance (PA) services, or failing to name a telco that does.

<https://www.acma.gov.au/theACMA/telcos-warned-for-not-helping-vulnerable-consumers>

### All drink drivers to lose their licence on the spot

Motorists caught drink-driving in NSW, including low-range offenders, will now lose their licence immediately

<https://www.nsw.gov.au/news-and-events/news/all-drink-drivers-to-lose-their-licence-on-the-spot/>

### Funding for community legal centres to help more people in NSW

Dozens of community legal centres (CLCs) across the state will receive an increase in funding to help people who need free legal services, including victims of domestic and family violence

<https://www.nsw.gov.au/news-and-events/news/funding-for-community-legal-centres-to-help-more-people/>

**More free legal help for domestic violence victims in NSW**

Victims of domestic and family violence will be among the 55,000 vulnerable people each year who will benefit from more than \$40 million in funding for the state's community legal sector, Attorney General and Minister for the Prevention of Domestic Violence Mark Speakman has announced.

<https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/more-free-legal-help-for-domestic-violence-victims.aspx>

**PUBLISHED - ARTICLES, PAPERS, REPORTS****[#WaterMates: the buyers and sellers of Australia's most controversial water](#)**

Maryanne Slattery, Rod Campbell; The Australia Institute: 07 May 2019

The Australia Institute has released this additional analysis of the controversial \$80 million water deal between the Department of Agriculture and Water and a company domiciled in the Cayman Islands

**[Australian government contract management guide](#)**

Department of Finance (Australia); Government of Australia: 07 May 2019

This guide replaces the Australian National Audit Office's Developing and Managing Contracts Better Practice Guide. It has been refocused to provide practical process guidance at a practitioner level for Commonwealth officials who manage contracts

**[Making content accessible: a guide to navigating Australian copyright law for disability access](#)**

Jessica Coates, Libby Baulch, Fiona Phillips; Australian Inclusive Publishing Initiative: 03 May 2019

Making content accessible: a guide to navigating Australian copyright law for disability access is a guide which provides a simple summary of the copyright law governing access to material for people with a disability in Australia

**[Sexism and gender inequality in the Victorian legal and justice sector](#)**

Monica Campo, Lynda Memery, Nina Ulasowski; Women's Legal Service Victoria: 30 April 2019

This discussion paper outlines stories from almost 300 legal sector professionals which show that sexual harassment and disrespect towards women is pervasive, women's career prospects are routinely stunted and victim-blaming is common

**CASES****[CPB Contractors Pty Limited v Construction, Forestry, Maritime, Mining and Energy Union \[2019\] FCAFC 70](#)**

STATUTORY CONSTRUCTION – reference to secondary and extrinsic materials – when such reference is necessary to identify the context and purpose of a statutory provision

**[National Archives Australia and Ronald Price \(Freedom of information\) \[2019\] AICMr 16](#)**

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 harass or intimidate an individual or an employee of an agency – (CTH) Freedom of Information Act 1982 ss 89K, 89L, 89M

**[Lazarus v Independent Commission Against Corruption \[2019\] NSWCA 100](#)**

JUDICIAL REVIEW – supervisory jurisdiction – orders of District Court on appeal from Local Court – appeal against conviction – where appellant failed to appear and appeal summarily dismissed – whether jurisdictional error JUDICIAL REVIEW – supervisory jurisdiction – orders of District Court on appeal from Local Court – appeal against sentence – where judge correctly understood extent of available evidence – where evidence from trial voluminous – where parties directed to put material relied on before the Court – where parties had sufficient opportunity to do so – whether jurisdictional error CIVIL PROCEDURE – recusal application – apprehended bias – where judge expressed preliminary view as to prospects of success of judicial review proceeding in interlocutory application to vacate hearing date – no basis for reasonable apprehension of bias – no question of principle STATUTORY INTERPRETATION – statute assumes existence of power – necessary implication – power impliedly conferred

**[Heli-Aust Pty Limited v Civil Aviation Safety Authority \[2019\] NSWSC 506](#)**

PRACTICE AND PROCEDURE – Discovery – Statutory prohibition on disclosure – Whether the documents contain "privileged information" – Whether the documents disclose the contents of a draft report – Whether the documents contain "restricted information" – Whether the documents contain "protected confidences" – Transport Safety Investigation Act 2003 (Cth) – Evidence Act 1995 (NSW)

**[State of NSW v Mathers \(No 2\) \[2019\] NSWSC 473](#)**

HIGH RISK TERRORISM OFFENDER – application for extended supervision order (ESO) – Sovereign Citizen Movement – discussion of statutory preconditions for making an ESO – combination of factors – consideration of discretion not to impose ESO – discussion of disputed conditions – ESO imposed

**[Byrne v Baker \[2019\] NSWSC 503](#)**

ADMINISTRATIVE LAW – judicial review – costs in summary criminal proceedings – application by successful defendants for costs against police after all charges dismissed in summary criminal proceedings – whether Magistrate committed jurisdictional error in refusing costs – summons dismissed

[Service Today \(NSW\) Pty Ltd & Magerovski v Commissioner for Fair Trading \[2019\] NSWCATAP 113](#)

ADMINISTRATIVE LAW – review of decision to cancel licenses under the Home Building Act, 1989 – denial of procedural fairness – review of answers given to show cause notice – use of subsequent evidence to demonstrate answers false or misleading – penalty – reference to cases – parity principle.

[DQI v NSW Trustee & Guardian \[2019\] NSWCATAD 75](#)

ADMINISTRATIVE LAW - Protective Jurisdiction – Welfare and Interest – Paramount consideration – Gifting from estate of protected person

[Nguyen v Roads and Maritime Services \[2019\] NSWCATAD 80](#)

ADMINISTRATIVE LAW – refusal of public passenger vehicle driver authority – history of speeding infringements – whether applicant is fit and proper person and has sufficient responsibility and aptitude

[Clark v NSW Trustee and Guardian \[2019\] NSWCATAD 73](#)

ADMINISTRATIVE LAW – Government Information (Public Access) Act -- GIIPA -- meaning of excluded information – whether nature of information and term 'related to' can be ascertained from description of a process – whether determination as to whether to apply for administration constitutes exercising functions as executor, administrator or trustee capacity.

[Guthrie v Lane Cove Council \[2019\] NSWCATAD 74](#)

ADMINISTRATIVE LAW- freedom of information, government information public access- information supplied in response to application-scope of application-jurisdiction

[Ekermawi v Commissioner of Police, NSW Police Force \[2019\] NSWCATAD 79](#)

HUMAN RIGHTS – racial vilification – meaning of "public act" – "capacity to incite serious hatred, ridicule or contempt" – relevance of intention – defence or exception of "reasonably and in good faith"

[Von Furstenrecht v Independent Liquor and Gaming Authority \[2019\] NSWCATAD 78](#)

ADMINISTRATIVE REVIEW – Long term banning orders – Where applicant is a former licensee and a hotel owner – Where applicant assaulted man not far from the hotel he owns - Whether preconditions for making banning orders met - Whether the victim of the assault was affected by alcohol – Whether applicant was performing services on the hotel premises at the time of the offence – Discretionary considerations

## IN PRACTICE AND COURTS

### 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 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

### [AHRC: Commission calls for public submissions](#)

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

See the [terms of reference](#) and [issues paper](#).

### Law Council of Australia: Fortnightly Update

The LCA have published their fortnightly newsletter. See [here](#).

### 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. 18/2019](#), 6 May 2019

[Issue No. 17/2019](#), 29 April 2019

### HC Bulletin 2019

[High Court of Australia Bulletin \[2019\] HCAB 03](#)

### ALRC Family Law Report - Closing the jurisdictional gap

Published on 30 April 2019. The first recommendation in the ALRC's latest inquiry report: Family Law for the Future is that family law disputes be returned to the states and territories and the federal family courts eventually abolished. This recommendation responds to arguably the most pressing concern facing the family law system: that children are falling into harm because of gaps between the federal family court and state and territory courts, child protection services and police. The report can be viewed [here](#).

### [2019 COAT National Conference](#)

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

### [Practice Note 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

### [This May the IPC supports Information Awareness Month 2019](#)

Information Awareness Month is an annual collaborative event with the aim is to increase public awareness of information and its place in all aspects of our day-to-day lives

### [ICAC: Corruption Matters newsletter - latest edition](#)

Read the latest stories including our lobbying consultation, our report on the state of NSW corruption, why town planning is a recurring issue and how to address

### [ICAC Operation Skyline public inquiry resumed Monday 6 May 2019](#)

The NSW Independent Commission Against Corruption's (ICAC) Operation Skyline public inquiry into allegations concerning the Awabakal Local Aboriginal Land Council will resumed on 6 May

### [ICAC brings corruption prevention program to New England region](#)

The NSW Independent Commission Against Corruption (ICAC) will visit the New England region next week as part of its rural and regional outreach program to bring anti-corruption initiatives and training

### [ICAC to hold public inquiry into allegations concerning RMS employees' awarding of contracts](#)

The NSW Independent Commission Against Corruption (ICAC) will hold a public inquiry starting on Monday 20 May 2019 as part of an investigation it is conducting into allegations concerning two Roads and Maritime Services (RMS) employees and how they exercised their official functions when awarding contracts

### [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**

#### **Governor-General Act 1974**

[03/05/2019 - Act No. 16 of 1974](#)

### **Regulation**

#### [Federal Court Amendment \(Court Administration and Other Measures\) Rules 2019](#)

01/05/2019 - The Judges have agreed to amend the FCR 2011 by: 4. amending rules 8.05 and 8.06 consistent with the implementation in the Court of the National Court Framework for the more effective, orderly and expeditious discharge of the business of the court.

### **NSW**

#### **Regulations and other miscellaneous instruments**

[Lobbying of Government Offices \(Lobbyists Code of Conduct\) Amendment Regulation 2019](#) (2019-188) - published LW 10 May 2019

[Administrative Arrangements \(Administration of Acts - General\) Order \(No 2\) 2019](#) (2019-178) - published LW 1 May 2019

[Administrative Arrangements \(Administrative Changes - Ministers\) Order \(No 2\) 2019](#) (2019-179) - published LW 1 May 2019

[Administrative Arrangements \(Administrative Changes - Public Service Agencies\) Amendment Order 2019](#) (2019-180) - published LW 1 May 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](mailto: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](mailto: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