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PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

MEDIA

First female Senior Public Defender for NSW

Attorney General Mark Speakman announced the appointment of Belinda Rigg SC as Senior Public Defender for NSW, the first woman to be appointed as NSW's Senior Public Defender. <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/first-female-senior-public-defender-for-nsw.aspx>

ICAC finds former prison general manager and officers corrupt

The NSW Independent Commission Against Corruption (ICAC) has found that the former general manager/governor of Lithgow Correctional Centre (LCC) and five Corrective Services NSW (CSNSW) officers engaged in serious corrupt conduct in relation to the use of excessive force on an inmate and the associated cover-up of the incident. <https://www.icac.nsw.gov.au/media-centre/media-releases/2019-media-releases/icac-finds-former-prison-general-manager-and-officers-corrupt>

Concerns over AFP raids on journalists

The Australian Human Rights Commission has serious concerns about the raids conducted by the Australian Federal Police on the home and offices of a number of journalists. The Commission notes the Australian Parliament continues to expand coercive powers and criminal laws in this area. <https://www.humanrights.gov.au/about/news/concerns-over-afp-raids-journalists>

Landmark terrorism sentences handed down on same day

Australian courts have sentenced two individuals for engaging in terrorist acts in Australia. While the two cases are not related, this is the first time in Australia that any person has been sentenced for the substantive offence of engaging in a terrorist act. <https://www.cdpp.gov.au/news/landmark-terrorism-sentences-handed-down-same-day>

Tougher conditions for paroled sex offenders

All serious sex offenders on parole are now subject to 24/7 GPS tracking and enhanced supervision, thanks to a \$21.8 million investment by the NSW Government. The tough new approach in supervising these offenders also includes mandatory reporting of all parole breaches – except administrative breaches – to the SPA. <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/tougher-conditions-for-paroled-sex-offenders.aspx>

Commission to develop practical resources on protecting freedom of religion in the workplace Rights and Freedoms

The Australian Human Rights Commission will develop resources to help employers and employees navigate issues on protecting freedom of thought, conscience and religion in the workplace. <https://www.humanrights.gov.au/about/news/commission-develop-practical-resources-protecting-freedom-religion-workplace>

Have your say on the NSW Civil and Administrative Tribunal

The Department of Justice is conducting a review of the Civil and Administrative Tribunal Act 2013, which established the NSW Civil and Administrative Tribunal (NCAT), to find out how well it is working, and to look at reforms that could strengthen access to justice for people in NSW. <https://www.justice.nsw.gov.au/Pages/media-news/news/2019/Review-of-the-Civil-and-Administrative-.aspx>

NSW Information Commissioner Issues Information Access Guideline 7: Open Data

The NSW Information Commissioner, Information and Privacy Commission (IPC) CEO and Open Data Advocate, Ms Elizabeth Tydd, have issued the Information Access Guideline 7: Open Data. The guideline is issued by the Information Commissioner under section 12(3) of the GIPA Act. <https://www.ipc.nsw.gov.au/media-releases/nsw-information-commissioner-issues-information-access-guideline-7-open-data>

Law changed to protect prison officers

The NSW Liberals & Nationals Government will move to close a legal loophole and enhance prison officers' safety by giving them greater certainty when managing inmates, with the amendments to the Crimes (Administration of Sentences) Act 1999. <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/law-changed-to-protect-prison-officers.aspx>

Fight against corruption requires spotlight on lobbying by vested interests

To strengthen democracy and trust in politics, the NSW public must know who is influencing political decisions, the Human Rights Law Centre stated in a submission to the NSW Independent Commission Against Corruption. <https://www.hrlc.org.au/news/2019/5/27/fight-against-corruption-requires-spotlight-on-lobbying-by-vested-interests>

Continuing reforms priority for Attorney-General

Attorney-General, Christian Porter, said the highest priority will be the structural reform of the family law courts, the establishment of the new Commonwealth Integrity Commission and the religious discriminations bill to protect religious freedoms. <https://www.attorneygeneral.gov.au/Media/Pages/Cabinet-ApPOINTment-26-May-2019.aspx>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Skewed priorities: comparing the growth of prison spending with police spending](#)

Australia has seen rapid, unsustainable growth in its incarceration rate. Over the past ten years, the proportion of Australian residents who are incarcerated has risen by 30 percent. The purpose of this paper is to show what this increase means in real terms.

[Quantifying the legal and broader life impacts of domestic and family violence](#)

Women experiencing domestic and family violence are ten times as vulnerable to legal problems as the rest of the population, according to this research.

[Opinion: Media raids raise questions about AFP's power and weak protection for journalists and whistleblowers](#)

The extensive web of laws passed under the rubric of national security, on top of the secrecy provisions of the Commonwealth Crimes Act, gives the executive wide powers to classify as secret anything it wishes to hide.

[NSW Recorded Crime Statistics quarterly update March 2019](#)

Boscar: 06 June 2019

[Parliamentary scrutiny of delegated legislation](#)

The Senate Standing Committee on Regulations and Ordinances (the committee) has scrutinised legislation to guard against the inappropriate exercise of executive power for almost ninety years.

[Administrative Arrangements Order: summary of changes 29 May 2019](#)

Administrative Arrangements Order (AAOs) formally allocate executive responsibility among ministers. They set out which matters and legislation are administered by which department or portfolio. This updated document sets out the Australian government's portfolio and department changes following the Morrison Government's re-election.

[Constitutional 'borrowing' and freedom of expression: can Australia learn from the US First Amendment?](#)

Roberts, J; (2019) 44(1) Alternative Law Journal 56-62
Comparative law - USA – Australia.

[The principle of legality: protecting statutory rights from statutory infringement?](#)

Chen, B; (2019) 41(1) Sydney Law Review 73-104
R v Thoburn - R (Simms) v Secretary of State for the Home Department - Australian Constitution, s51 - Charter of Human Rights and Responsibilities Act 2006 (Cth) - UK – Australia.

CASES

[Zaghloul v Woodside Energy Limited \(No 7\) \[2019\] FCA 818](#)

HUMAN RIGHTS – discrimination – causes of action pleaded and claims for damages under the Australian Human Rights Commission Act 1986 (Cth) and the Disability Discrimination Act 1992 (Cth) – where the AHRC provides an exclusive regime for remedying contraventions – whether the Court can entertain the claims – principles and application of s 46PO of the AHRC Act – s 734 of the Fair Work Act 2009 (Cth) and consideration of a 'general protections court application'

CONSUMER LAW – claims of unconscionable conduct – s 20 and s 21 of the Australian Consumer Law – consideration of the principles applying to the construction of 'in trade or commerce' – where conduct arose during the course of employment – where conduct arose during the course of litigation

PRACTICE AND PROCEDURE – application for summary judgment – application to strike out paragraphs of a concise statement of claim – whether the claims have a reasonable prospect of success – whether the claims are an abuse of process – whether the claims are likely to cause embarrassment and delay proceedings

Held: application allowed.

[PPFQ and National Disability Insurance Agency \[2019\] AATA 1092](#)

NATIONAL DISABILITY INSURANCE SCHEME – Applicant suffers from moderate to severe hearing loss, tinnitus and hyperacusis – Applicant requested funding for high level technology hearing aids – whether supports are reasonable and necessary pursuant to subsections 34(1) of the National Disability Insurance Act 2013 (Cth) – whether there has been adequate investigation of other sources of funding - whether supports represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support – whether support is the minimum necessary support required - decision set aside and substituted. Australian Hearing Services Act 1991 (Cth).

[Australian Competition and Consumer Commission v PT Garuda Indonesia Ltd \(Remedies\) \[2019\] FCA 786](#)

PUBLIC INTERNATIONAL LAW – act of state doctrine – distinction between foreign state immunity and act of state doctrine – whether commercial acts of respondent airline had sovereign aspect to them

PUBLIC INTERNATIONAL LAW – where respondent submitted injunctions and pecuniary penalties would be contrary to customary international law – where respondent argued customary international law relevant to Court’s discretion and power to grant remedies – where respondent argued relevance of principles of ‘accommodation, mutuality and proportionality’

STATUTORY INTERPRETATION – factors relevant to imposition of pecuniary penalty – loss or damage flowing from contravention of competition law – consideration of deeming provision in s 45A of the Trade Practices Act 1974 (Cth) – whether s 45A can inform assessment of loss or damage under s 76 or limited to establishing breach of s 45 – consideration of Federal Commissioner of Taxation v Comber [1986] FCA 92; 10 FCR 88 and Re Levy; Ex parte Walton (1881) 17 Ch D 746.

[Amos v Department of Finance, Services & Innovation \[2019\] NSWCATAD 96](#)

ADMINISTRATIVE LAW – Government Information – access application - building certifier’s response to complaint - confidential information - information provided in confidence – prejudice effective exercise by an agency of the agency’s functions - personal information.

[O’Brien v Wollongong City Council \[2019\] NSWCATAD 90](#)

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

[Zidar v Office of the NSW Attorney General \[2019\] NSWCATAD 97](#)

ADMINISTRATIVE LAW – application to use a recording device to record a case conference – decision to list summary dismissal application for hearing.

[Samimi v Department of Fair Trading \[2019\] NSWCATOD 86](#)

ADMINISTRATIVE Law – administrative review – home building - fit and proper person - whether conduct constitutes failure to disclose – whether matters required disclosure – meaning of fit and proper having regard to legislative scheme – weight of evidence – unchallenged evidence of conduct

[McLachlan v Commissioner of Police, NSW Police Force \[2019\] NSWCATAD 109](#)

ADMINISTRATIVE LAW – public access to government information – Request for information concerning a complaint alleging police misconduct – Personal information – whether prejudice to the effective exercise of an agency’s functions – public interest in transparency and accountability - balancing public interest considerations – personal information .

[DTM v NSW Trustee and Guardian \[2019\] NSWCATAD 105](#)

ADMINISTRATIVE REVIEW – dismissal application on grounds that the applicant has failed to identify a decision of the respondent that is an administratively reviewable decision

[McIntosh v Independent Liquor and Gaming Authority \[2019\] NSWCATAD 101](#)

ADMINISTRATIVE REVIEW – Liquor regulation – Hotel licence – Three strike regime – Imposition of first strike upon former licensee – Where former licensee committed prescribed offence of permitting intoxication on the licensed premises – Meaning of serious harm - Whether patron vomiting constituted serious harm – Whether respondent was entitled to consider potential harm, or to speculate as to harm which might have occurred – Whether the circumstance that the applicant was no longer the licensee at the licensed premises was relevant to the decision to impose a first strike.

[Webb v Port Stephens Council \[2019\] NSWCATAD 107](#)

ADMINISTRATIVE LAW- freedom of information- government information public access-advance deposit requirement-refusal to progress application-open access information- ss6,18, 64,68 and 80 Government Information (Public Access) Act 2009 (NSW).

IN PRACTICE AND COURTS

High Court of Australia

[High Court of Australia Bulletin \[2019\] HCAB 4](#)

[AAT fee increase on 1 July 2019](#)

Annual Federal Courts and Tribunals Fee Increases from 1 July 2019.

From 1 July 2019:

1. Application fees in the Migration and Refugee Division increase to \$1,787.
2. Application fees in the General Division increase to \$932 (migration matters).

AAT Bulletin

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions, including immigration and citizenship.

[Issue No. 22/2019, 3 June 2019](#)

Current Senate Inquiries

Standing Committee of Privileges

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

[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](#).

NSW**Decisions of interest**

June 03 2019 Practice support

The NSW Court of Appeal has just published its latest Decisions of Interest Bulletin on the [Court of Appeal website](#).

NCAT Legal Bulletin

The NCAT Legal Bulletin provides case summaries of relevant and interesting case law of significance to the work of NCAT See [NCAT Legal Bulletin Issue 3 of 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**Gazetted****Annual Federal Courts and Tribunals Fee Increases from 1 July 2019**

04/06/2019 - Pursuant to section 16 of the High Court of Australia (Fees) Regulations 2012, from 1 July 2019 the fee prescribed for each item of Schedule 1 to those Regulations will be the amount listed here

NSW**Bills introduced****Government – 07 June 2019**

[Local Government Amendment Bill 2019](#)

Non-Government – 07 June 2019

[Parliamentary Budget Officer Amendment Bill 2019](#)

Government – 31 May 2019

[Crimes \(Administration of Sentences\) Amendment \(Inmate Behaviour\) Bill 2019](#)

Amendments to the Crimes (Administration of Sentences) Act 1999 will allow inmates who misbehave or assault staff to have prison privileges withdrawn without it affecting criminal or offence-in-custody proceedings.

Non-Government – 31 May 2019

[Liquor Legislation Amendment \(Repeal of Lock-out Laws\) Bill 2019](#)

[Public Finance and Audit Amendment \(Northern Beaches Hospital\) Bill 2019](#)

Bills passed by both Houses of Parliament – 07 June 2019

[Statute Law \(Miscellaneous Provisions\) Bill 2019](#)

Proclamations commencing Acts

[Justice Legislation Amendment Act \(No 3\) 2018 No 87 \(2019-211\)](#) – published LW 31 May 2019

Regulations and other miscellaneous instruments

[Legal Profession Uniform Admission Amendment \(Accreditation\) Rule 2019 \(2019-231\)](#) – published LW 7 June 2019

[Victims Rights and Support \(Victims Support Levy\) Amendment Notice 2019 \(2019-232\)](#) – published LW 7 June 2019

[Electoral Funding \(Adjustable Amounts\) \(Political Donation Caps\) Notice 2019 \(2019-213\)](#) – published LW 31 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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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