



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### MEDIA

#### LCA: Put children first, abandon flawed family court merger

A coalition of domestic violence service providers, specialist family law and child protection legal assistance providers, academics and legal practitioners are urging the Federal Government not to reintroduce the flawed family court merger bills in the 46th Parliament, warning the merger would hurt – not help – children and families. <https://www.lawcouncil.asn.au/media/media-releases/put-children-first-abandon-flawed-family-court-merger>

#### V4 Telecom warned for inadequate complaints handling

V4 Telecom failed to tell customers who made contact what it was doing to restore their services and did not keep complete records of the complaints. The ACMA may issue infringement notices or commence civil penalty proceedings in the Federal Court for non-compliance with the Standard. <https://www.acma.gov.au/theACMA/v4-telecom-warned-for-inadequate-complaints-handling>

#### NSW government launches IDCare Identity Recovery Service

The NSW government's Cyber Security NSW arm has established an identity recovery service for state government customers whose identities become compromised as a result of a "cyber incident". The Identity Recovery Service will allow for 500 individual referrals to IDCare to be used by NSW government departments and agencies as required. <https://www.finance.nsw.gov.au/about-us/media-releases/identity-recovery-service-now-available-nsw-government-customers>

#### LCA: Artificial Intelligence: Australia's Ethics Framework

The Department of Industry, Innovation and Science discussion paper proposed eight 'core principles' for the ethical use of AI in non-military contexts, and suggested a supporting 'toolkit' of associated resources and processes. The Law Council has called for clarity regarding accountability and liability, and careful consideration implications for public and private sector applications of AI. <https://www.lawcouncil.asn.au/media/news/artificial-intelligence-australias-ethics-framework>

#### LCA: Justice for All report

The Taskforce recently delivered its Justice For All report, identifying global strategies to spearhead progress on achieving SDG 16.3 (access to justice for all). The report substantially drew upon the Law Council's own Justice Project final report amongst other relevant worldwide research and findings. <https://www.lawcouncil.asn.au/media/news/justice-for-all-report>

#### Announcing NSW's new State Coroner

Magistrate Teresa O'Sullivan has been announced as NSW's new State Coroner. Her Honour is the second woman to head the jurisdiction in its history. <https://www.justice.nsw.gov.au/Pages/media-news/news/2019/Announcing-NSW%E2%80%99s-new-State-Coroner.aspx>

#### Medicare fraud detection program pays dividends

A new sophisticated Medicare fraud detection program incorporating advanced fraud risk and data analytics capabilities is already yielding strong results. <https://www.mhs.gov.au/media-releases/2019-07-13-medicare-fraud-detection-program-pays-dividends>

#### Lawyers warn legal aid at breaking point after NSW murder trial derailed

The nation's peak lawyers group has warned the legal aid funding crisis is at "breaking point" following the extraordinary derailment of a high-profile murder trial in New South Wales. <https://www.theguardian.com/australia-news/2019/jul/12/lawyers-warn-legal-aid-at-breaking-point-after-nsw-trial-derailed>

#### HRLC: UN must protect human rights experts from threats of violence

The Human Rights Law Centre joined 14 other non-governmental organisations to express concern about the governments of Human Rights Council members attacking and discrediting UN experts when human rights abuses by Council members are called out. <https://www.hrlc.org.au/news/2019/7/11/un-must-protect-human-rights-experts-from-threats-of-violence>

## Prosecution for NDIS fraud

The Victorian County Court has today sentenced Mohamed Osman Omar (36), to four years imprisonment, after he pleaded guilty to defrauding the National Insurance Disability Scheme (NDIS) of more than \$370,000. <https://www.cdpp.gov.au/news/prosecution-ndis-fraud>

## ACMA reveals telco complaints

The ACMA released its first Telecommunications complaints handling report today. The high level of complaints reported for voice-only services delivered by telcos over the NBN is of real concern as they are critical to the most vulnerable in our community. <https://www.acma.gov.au/theACMA/acma-reveals-telco-complaints>

## NSW Information Commissioner releases guideline on access to Out-of-Home Care Records

The NSW Information Commissioner launched today Information Access Guideline 8: Care Leavers' access to their Out-of-Home Care Records. The statutory guideline highlights the public interest considerations in favour of government agencies releasing information to those who have experienced out of home care arrangements. <https://www.ipc.nsw.gov.au/media-releases/nsw-information-commissioner-releases-guideline-access-out-home-care-records>

## PUBLISHED - ARTICLES, PAPERS, REPORTS

### [Opinion Piece: Leaving our security threats offshore may not be smart: citizens suspected of terrorist activities abroad should face the full force of Australian law](#)

Opinion Piece by Law Council of Australia President, Arthur Moses SC –The Australian, 16 July 2019  
If Australian citizens break our laws, break their bond to this country, or threaten our safety or values, then they should feel the full force of our rules. Passing legislation that puts security risks outside of the reach of these rules – and serves as a get-out-of-jail-free card – is unwise, ill-considered and does not protect the public interest.

### [Paper tsunami: how the move to digital medical records is leaving us drowning in old paper files](#)

Gillian Oliver, Peter Bragge; The Conversation: 10 July 2019  
What to do with our old paper medical files now that records are going digital? As a recent Brisbane case demonstrates, not all files are heading straight for destruction.

### [Commonwealth fraud investigations 2016–17](#)

Penny Jorna, Russell G. Smith; Australian Institute of Criminology: 05 July 2019  
The Australian government is committed to tackling fraud against the Commonwealth by supporting research into the extent of the problem and promoting the development and use of fraud control practices to reduce risks and to detect and deal with fraud in a timely and effective manner.

## CASES

### [Kempfi v Adani Mining Pty Ltd \(No 2\) \[2019\] FCAFC 117](#)

NATIVE TITLE – statutory construction – subject matter of judicial review of administrative decision-making – where representative body certified area ILUA under s 203BE(1)(b) of the Native Title Act 1993 (Cth) – whether challenge to s 203BE(1)(b) certificate possible after Registrar determines under s 24CK to register area indigenous land use agreement (ILUA).

NATIVE TITLE – statutory construction – where representative body must not certify agreement under s 203BE(5) unless of opinion that all reasonable efforts have been made to ensure that all persons who hold or may hold native title in area covered by the agreement have been identified and all persons so identified have authorised the making of the agreement.

Administrative Decisions (Judicial Review) Act 1977 (Cth); Federal Court of Australia Act 1976 (Cth) s 27.  
The appeal be dismissed with costs.

### [Saturaga v Commissioner of Police, NSW Police Force \[2019\] NSWCATOD 114](#)

ADMINISTRATIVE REVIEW – occupational licensing – security licence – mandatory refusal – whether regulation invalid – no compelling reasons to examine validity – meaning of “in relation to” in s 16(1)(a) of the Act.

### [DQJ v Secretary, Department of Family and Community Services \[2019\] NSWCATAD 138](#)

Administrative Law – privacy and personal information – whether disclosure of personal information.

### [Miskelly v Roads and Maritime Services \[2019\] NSWCATAD 133](#)

ADMINISTRATIVE LAW – access to government information – cabinet information ADMINISTRATIVE LAW – whether the Tribunal has jurisdiction to review a decision of an agency that information is ‘out of scope’.

### [Hallaby v Local Court of New South Wales \[2019\] NSWSC 840](#)

ADMINISTRATIVE LAW – judicial review – whether the Magistrate misconstrued ss 214(1)(b) and 214(1)(d) of the Criminal Procedure Act (1986) (NSW) and thereby misconceived the nature of his function – whether the Magistrate erred on the face of the record by assuming the proceedings had been initiated by an unidentified “prosecution” – whether the Magistrate’s decision should be quashed under s 69 of the Supreme Court Act 1970 (NSW). COSTS – whether the second defendant should pay the plaintiff’s professional costs – whether exclusion of police evidence under s 138 of the Evidence Act 1995 (NSW) demonstrated proceedings were initiated without reasonable cause under s 214(1) of the Criminal Procedure Act (1986) (NSW). CIVIL PROCEDURE – whether an extension of time should be granted for the commencement of the proceedings.

## [ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA v RASCHKE & ANOR \[2019\] SASCFC 83](#)

CONSTITUTIONAL LAW - THE NON-JUDICIAL ORGANS OF GOVERNMENT - THE CROWN - CLASSIFICATION OF FUNCTIONS: JUDICIAL, LEGISLATIVE OR ADMINISTRATIVE - PARTICULAR FUNCTIONS - OTHER MATTERS  
CONSTITUTIONAL LAW - OPERATION AND EFFECT OF THE COMMONWEALTH CONSTITUTION - GENERAL MATTERS.  
Dismissing the appeal: 1. The powers exercised by the Tribunal in making the orders for vacant possession were judicial.

## IN PRACTICE AND COURTS

### High Court of Australia

[High Court of Australia Bulletin](#) [2019] HCAB 5 (8 July 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). The Draft Rule is publically released for written submissions for a minimum period of 30 days until 19 August 2019.

### [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.

### Current Senate Inquiries - Legal and Constitutional Affairs Legislation Committee

#### [Criminal Code Amendment \(Agricultural Protection\) Bill 2019 \[Provisions\]](#)

The bill would amend the Criminal Code Act 1995 to introduce two new offences relating to the use of a carriage service to incite trespass, property offences, or other offences on agricultural land. On 4 July 2019 the Senate referred the provisions of the Criminal Code Amendment (Agricultural Protection) Bill 2019 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 6 September 2019. The deadline for submission to the inquiry is 31 July 2019.

### Current Senate Inquiries - Finance and Public Administration Legislation Committee

#### [Ministers of State \(Checks for Security Purposes\) Bill 2019](#)

On 4 July 2019, the Senate referred the Ministers of State (Checks for Security Purposes) Bill 2019 for inquiry and report by 11 November 2019. The closing date for submissions is 23 August 2019.

## NSW

### [New ICAC public inquiry into lobbying to start 5 August](#)

The ICAC will hold a public inquiry commencing on Monday 5 August 2019 as part of a new investigation it is conducting into the regulation of lobbying, access and influence in NSW (Operation Eclipse).

### [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. Submissions close on 23 August 2019 Adoption of mandatory data breach notification.

### [NCAT Fees and charges from 12 July 2019](#)

NCAT's fees and charges for the filing of applications, appeals and other services will change on 12 July 2019.

### Decisions of interest: Practice support

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

### 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

## LEGISLATION

### [Australian Prudential Regulation Authority \(confidentiality\) determination No.1 of 2019](#)

This instrument prescribes information provided by general insurers and Lloyd's underwriters for the purposes of the National Claims and Policies Database under Reporting Standard GRS 800.1, GRS 800.2, GRS 800.3, LOLRS 800.1, LOLRS 800.2 and LOLRS 800.3.

### [Enhancing Online Safety \(Protecting Australians from Terrorist or Violent Criminal Material\) Legislative Rule 2019](#)

This rule provides for the eSafety Commissioner to exercise powers under relevant legislation to take action, where required, to reduce Australian internet users' exposure to material that promotes, instructs or incites in matters of terrorist acts or violent crimes.

## NSW

### Proclamations commencing Acts

[Justice Legislation Amendment Act \(No 3\) 2018 No 87](#) (2019-330) — published LW 12 July 2019

### Regulations and other miscellaneous instruments

[Civil and Administrative Tribunal Amendment \(Fees\) Regulation 2019](#) (2019-326) — published LW 11 July 2019

[Civil Procedure Amendment \(Fees\) Regulation 2019](#) (2019-327) — published LW 11 July 2019

[Criminal Procedure Amendment \(Fees\) Regulation 2019](#) (2019-328) — published LW 11 July 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](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