

12 AUGUST 2019

ISSUE 71



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

[ICAC public inquiry into lobbying started Monday 5 August 2019](#)

The ICAC's public inquiry into the regulation of lobbying, access and influence in NSW (Operation Eclipse) started Monday, 5 August 2019.

[ICAC: Public inquiry into allegations concerning political donations](#)

The NSW ICAC will hold a public inquiry starting Monday 26 August 2019 as part of an investigation it is conducting into allegations concerning political donations, the NSW Branch of the Australian Labor Party (ALP), members of Chinese Friends of Labor and others.

MEDIA

New credit reporting arrangements to facilitate better lending deals for consumers and protect vulnerable consumers

New credit reporting arrangements will improve transparency for credit providers of customers who have entered into financial hardship arrangements and enable people experiencing financial difficulty. Changes to the Privacy Act will support the Government's mandatory comprehensive credit reporting regime, which will increase lending competition and deliver better deals for Australian consumers. <https://www.attorneygeneral.gov.au/Media/Pages/new-credit-reporting-arrangements-2-august-2019.aspx>

LCA: Citizenship stripping should rely on conviction by court, may be unconstitutional

The Law Council of Australia has expressed serious concerns regarding current laws that allow terror suspects to be stripped of Australian citizenship. The government should not pursue a policy of exclusion that could see potential terrorists shipped to another jurisdiction, which may not have adequate security infrastructure and respect for the rule of law. <https://www.lawcouncil.asn.au/media/media-releases/citizenship-stripping-should-rely-on-conviction-by-court-may-be-unconstitutional-says-law-council>

No, it's not OK for the government to use your prescription details to recruit you for a study

Legal experts weigh in on the research ethics issue

sparking debate this week. When pursuing information for big data projects, the risks to individual autonomy and privacy are easily overlooked. <https://theconversation.com/no-its-not-ok-for-the-government-to-use-your-prescription-details-to-recruit-you-for-a-study-121122>

Commission plans to reform discrimination law

An 11 point plan for reforming federal discrimination law was released today by Commission President, Emeritus Professor Rosalind Croucher. The discussion paper identifies the problematic operation of permanent exemptions in the SDA, DDA and ADA. <https://www.humanrights.gov.au/about/news/commission-plans-reform-discrimination-law>

Strengthening Australia's counter-terrorism laws

The Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019, introduced, will make it harder for high risk terrorist offenders to get out of jail – even when they have served their full sentence – by closing a loophole which prevented some from being served with continuing detention orders (CDOs). <https://www.attorneygeneral.gov.au/Media/Pages/Strengthening-australias-counter-terrorism-laws-1-august-2019.aspx>

How councils are future-proofing themselves against shrinking regional media

Locals and journalists are the two main casualties that come up in conversations around regional media closures, but what about the councils which rely on local titles to get their messages out into the community. <https://mumbrella.com.au/how-councils-are-future-proofing-themselves-against-shrinking-regional-media-589442>

Australia appoints first-ever independent examiner to investigate corporate human rights abuses overseas

The Human Rights Law Centre welcomed the Federal Government's appointment of Mr John Southalan as the first-ever Australian independent examiner charged with investigating reported instances of corporate misconduct by Australian multinationals. <https://www.hrlc.org.au/news/2019/7/31/australia-appoints-first-ever-independent-examiner-to-investigate-corporate-human-rights-abuses-overseas>

ACCC points finger at digital giants

The ACCC has published a report of its inquiry into the impact of digital platforms on competition in Australia's media and advertising markets. The ACCC report contains 23 recommendations spanning competition law, consumer protection, media regulation and privacy law. <https://www.accc.gov.au/media-release/digital-giants%E2%80%99-buy-up-of-start-ups-poses-challenges-for-merger-laws> The ACCC's report can be accessed at this [link](#).

New security guide for MoG changes

The Australian Cyber Security Centre (ACSC) has developed a new publication to assist Agencies and businesses going through Machinery of Government (MoG) or other changes to manage the increased cyber security risks the changes bring. <https://www.cyber.gov.au/news/cyber-security-best-practice-mergers-acquisitions-and-mog-changes>. ACSC's guide can be accessed at this [link](#).

ACMA welcomes ACCC's Digital Platforms Inquiry final report

The ACMA welcomes the Government's acceptance of the ACCC's conclusion that there is a need for reform and in particular, the development of a harmonised media regulatory framework. <https://www.acma.gov.au/theACMA/acma-welcomes-acccs-digital-platforms-inquiry-final-report>

OAIC welcomes privacy law update to protect Australians' personal information

The national privacy regulator today welcomed the Australian Government's recognition that privacy laws must be strengthened to ensure they are fit for purpose in the digital age. <https://www.oaic.gov.au/updates/news-and-media/oaic-welcomes-privacy-law-update/>

Protocol to provide balanced framework for Legal Professional Privilege claims

A new protocol dealing with legal professional privilege (LPP) being developed by the Law Council of Australia and the Australian Tax Office will help avoid unnecessary and protracted disputes over claims of LLP. <https://www.lawcouncil.asn.au/media/media-releases/protocol-to-provide-balanced-framework-for-legal-professional-privilege-claims>

Passing of TEO Bill sets dangerous precedent, undermines PJCIS

The Law Council of Australia is disappointed the Federal Government's Temporary Exclusion Orders (TEO) Bill has passed the Senate, reiterating concerns about its constitutional validity. Providing ASIO with the power to secretly and immediately detain persons whether or not they are suspected of terrorism-related activities is a clear overreach. <https://www.lawcouncil.asn.au/media/media-releases/passing-of-teo-bill-sets-dangerous-precedent-undermines-pjcis>

OAIC: FTC fine and privacy requirements for Facebook

The \$US5 billion penalty against Facebook announced by the US Federal Trade Commission is a globally significant order that demonstrates the concerns of privacy regulators around the world. <https://www.oaic.gov.au/updates/news-and-media/ftc-fine-and-privacy-requirements-for-facebook/>

Have your say on the response to data breaches

The Department of Communities and Justice is inviting feedback on how NSW public sector agencies respond to privacy breaches and manage personal information. In NSW, the Privacy and Personal Information Protection Act 1998 (NSW) governs how public sector agencies manage personal information. <https://www.justice.nsw.gov.au/Pages/media-news/news/2019/Have-your-say-on-the-response-to-data-breaches.aspx>

Statutory Review of the Amalgamated AAT Tabled

The Government today tabled the Statutory Review of the amalgamated AAT. The Administrative Appeals Tribunal was amalgamated with the former Social Security Appeals Tribunal, the Migration Review Tribunal and the Refugee Review Tribunal, following the commencement of the Tribunals Amalgamation Act 2015 on 1 July 2015. <https://www.attorneygeneral.gov.au/Media/Pages/statutory-review-of-the-amalgamated-aat-tabled-23-july-2019.aspx>. A copy of the report is available on the [Attorney-General's Department](#) website.

PUBLISHED - ARTICLES, PAPERS, REPORT

[Online fraud victimisation in Australia: risks and protective factors](#)

To gain a better understanding of online consumer fraud, the AIC worked with the ACCC to compare a matched sample of victims and non-victims. This study aimed to identify and quantify the factors that make some individuals more vulnerable to consumer fraud than others. The findings offer policymakers opportunities to better target fraud prevention and education initiatives.

[The effective and ethical development of Artificial Intelligence: an opportunity to improve our wellbeing](#)

Placing society at the core of Artificial Intelligence (AI) development, this report analyses the opportunities, challenges and prospects that AI technologies present, and explores considerations such as workforce, education, human rights and our regulatory environment.

[Digital Platforms Inquiry: final report](#)

The dominance of the leading digital platforms and their impact across Australia's economy, media and society must be addressed with significant and holistic reform, according to this final report of the ACCC's.

[Data is a development issue](#)

This paper uses a wide range of metrics to show that most developing and middle-income countries are not ready or able to provide an environment where their citizens' personal data is protected and where public data is open and readily accessible.

[Evidence-based policing: a survey of police attitudes](#)

Evidence-based policing (EBP) advocates the use of scientific processes in police decision-making. This paper examines results from a survey of officers in the Queensland Police Service and the Western Australia Police on the uptake of and receptiveness towards EBP research.

[Party leadership changes and challenges: a quick guide](#)

This quick guide outlines the current rules relating to the election of leaders for the four largest federal parliamentary parties: the Liberal Party (LIB), the Nationals (NATS), the Australian Labor Party (ALP) and the Australian Greens (AG). Appendices provide prime ministerial changes since 2007 together with a list of the changes and challenges to leaders of the Liberal Party, the Nationals, and the ALP.

CASES

[Nursing and Midwifery Board of Australia v Linquist \[2019\] NSWSC 978](#)

ADMINISTRATIVE LAW – appeal from Civil and Administrative Tribunal – whether decision made by validly constituted tribunal – four-member tribunal was constituted for the purposes of the hearing – whether principal member could separately and simultaneously constitute herself as the tribunal to decide legal questions – single member of a multi-person tribunal which has already been constituted not authorised to constitute himself or herself as the tribunal on unstated informal basis or to make a decision unilaterally without recourse to the balance of the tribunal – decision void COSTS – whether successful plaintiff ought pay defendant’s costs of proceedings – defendant invited to file submitting appearance – defendant not neutral contradictor – costs follow the event COSTS – suitors’ fund – application for suitors’ fund certificate – appropriate to grant certificate where defendant did not contribute to error made by tribunal.

[Lemon v Department of Planning and Environment \[2019\] NSWCATAD 148](#)

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

[Johnston v TAFE NSW \[2019\] NSWCATAD 152](#)

ADMINISTRATIVE LAW – freedom of information – access to information – legal professional privilege – whether respondent holds further information – access charges – whether information personal information.

[DKV v Southern NSW Local Health District \[2019\] NSWCATAP 189](#)

Administrative Law – NCAT internal appeal – Health Privacy Principles – scope of review by NCAT.

[Sydney AC Pty Ltd v Commissioner for Fair Trading, Department of Finance, Services and Innovation \[2019\] NSWCATOD 116](#)

ADMINISTRATIVE REVIEW – Home building – Where respondent decided not to grant application for renewal of applicant’s contractor licence – Where applicant was subject to Tribunal order which had not been satisfied within required period – Where applicant had not complied with order after that period – Meaning of “satisfied”.

[Dubow v Mid-Western Regional Council \[2019\] NSWCATAD 142](#)

ADMINISTRATIVE LAW – Particular administrative bodies – NSW Civil and Administrative Tribunal – administrative review jurisdiction – no jurisdiction to administrative review abatement under s125 of the Local Government Act 1993 – no jurisdiction to administratively review impounding of stock under s 116(3) of the Local Land Services Act 2013.

[Commissioner of Victims Rights v Dobbie \[2019\] NSWCA 183](#)

ADMINISTRATIVE LAW – judicial review – victim’s compensation claim – primary victim of domestic violence – claim for “severely disabling” psychological disorder – challenge to rejection by delegate – whether the delegate attributed incorrect meaning to “severely disabling” ADMINISTRATIVE LAW – judicial review – expert psychologists designated by Director – assessment of disability by designated expert – whether delegate obliged to follow expert’s assessment absent countervailing evidence – whether delegate’s rejection of assessment manifestly unreasonable APPEAL – leave to appeal – precondition of grant – small amount at stake in individual case – relevance to large number of claims – whether matter of principle or public interest – error identified without setting aside judgment below.

IN PRACTICE AND COURTS

New Senate Inquiries - Legal and Constitutional Affairs Legislation Committee

Legal and Constitutional Affairs References Committee

[The impact of changes to service delivery models on the administration and running of Government programs](#)

[Nationhood, national identity and democracy](#)

Environment and Communications References Committee

[Press Freedom](#)

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. 30/2019, 29 July 2019.

[ABA: Have your say on the proposed new rule regarding ‘CPD Activity’](#)

The Australian Bar Association invites public comment on the [draft Legal Profession Uniform Continuing Professional Development \(Barristers\) Amendment \(CPD Activity\) Rule 2019](#) in accordance with s 427 of the Uniform Law (UL). The Draft Rule provides for a new definition of ‘CPD Activity’, clarifies the content of ‘CPD Activity’ and sets out the format a ‘CPD Activity’ may consist of. Submissions close on 26 August 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.

[ANAO Performance audit in-progress: Defence's management of its public communications and media activities](#)

Due to table: December, 2019: The objective of this audit is to assess the effectiveness and appropriateness of the Department of Defence's (Defence's) management of its public communications and media activities.

NSW

[Consultation paper: Mandatory Notification of Data Breaches by NSW Public Sector Agencies](#)

The paper aims at seeking feedback on: whether NSW public sector agencies should be required to notify the NSW Privacy Commissioner and affected individuals if a breach of privacy occurs; and how the key elements of a mandatory notification scheme should operate (if implemented in NSW). The discussion paper is available at www.haveyoursay.nsw.gov.au Submissions close on 23 August 2019.

[NSW Justice: New Guided Pathways to help solve every day legal issues](#)

Navigating legal information about recovering money and resolving fencing disputes has become easier with the release of new Guided Pathways on the LawAccess NSW website. Expansion of Guided Pathways is one of the initiatives under the [Civil Justice Action Plan](#) released in late 2018. The Plan contains a suite of reforms designed to address key issues experienced by people with civil legal problems. To view the full range of Guided Pathways, [visit the LawAccess NSW website](#).

[ICAC: Operation Ember public inquiry continues Thursday 1 August 2019](#)

The NSW ICAC Operation Ember public inquiry will continue on 1 August 2019. The inquiry is scheduled to sit on Friday 2 August, and then next week on 8 and 9 August.

[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.

[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.

LEGISLATION

Acts

[Counter-Terrorism \(Temporary Exclusion Orders\) \(Consequential Amendments\) Act 2019](#) 31/07/2019 - Act No. 54 of 2019

[Counter-Terrorism \(Temporary Exclusion Orders\) Act 2019](#) 31/07/2019 - Act No. 53 of 2019

Bills

[Australian Security Intelligence Organisation Amendment \(Sunsetting of Special Powers Relating to Terrorism Offences\) Bill 2019](#)

Finally passed both Houses 01 August 2019 - Amends the Australian Security Intelligence Organisation Act 1979 to extend the operation of the Australian Security Intelligence Organisation's questioning and detention powers for a further 12 months to 7 September 2020.

[Treasury Laws Amendment \(Consumer Data Right\) Bill 2019](#)

Finally passed both Houses 01 August 2019 - Amends the Competition and Consumer Act 2010, Australian Information Commissioner Act 2010 and Privacy Act 1988 to create the Consumer Data Right to provide individuals and businesses with a right to access specified data in relation to them held by businesses.

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

House of Representatives Third reading agreed to 01 August 2019 - Amends the Criminal Code Act 1995 to introduce two new offences in relation to the incitement of trespass or property offences on agricultural land. The Bill contains exemptions for journalists and those who are making lawful disclosures of information, including whistleblowers.

[Identity-matching Services Bill 2019](#)

HR Second reading moved 31 Jul 2019 - The Bill will facilitate the secure, automated and accountable exchange of identity information between the Commonwealth and state and territory governments, pursuant to the objectives of the Intergovernmental Agreement on Identity Matching Services.

[Australian Passports Amendment \(Identity-matching Services\) Bill 2019](#)

HR Second reading moved 31 Jul 2019 - This Bill amends the Australian Passports Act 2005 (Passports Act) to provide a legal basis for ensuring that the Minister is able to make Australian travel document data available for all the purposes of, and by the automated means intrinsic to, the identity-matching services to which the Commonwealth and the States and Territories agreed in the Intergovernmental Agreement on Identity Matching Services (IGA).

[Royal Commissions Amendment \(Private Sessions\) Bill 2019](#)

Senate Second reading moved 31 Jul 2019 - Amends the: Royal Commission Act 1902 to: enable a Royal Commission to hold private sessions where a regulation is made authorising it to do so; enable the Chair of a multi-member Royal Commission, or a sole Commissioner, to authorise Assistant Commissioners to hold private sessions; and impose limits on the use and disclosure of private session information and certain information given to the Child Sexual Abuse Royal Commission; and Freedom of Information Act 1982 to make consequential amendments.

[Fair Work \(Registered Organisations\) Amendment \(Ensuring Integrity\) Bill 2019](#)

Senate Second reading moved 31 Jul 2019. Amendments include certain serious criminal offences as a new category of 'prescribed offence' for the purposes of the automatic disqualification regime in relation to registered organisations; establish an offence for a disqualified person to continue to act as an official or in a way that influences the affairs of an organisation; allow the Federal Court to disqualify officials from holding office in certain circumstances or if they are otherwise not a fit and proper person; allow the Federal Court to cancel the registration of an organisation on a range of grounds.

[Landholders' Right to Refuse \(Gas and Coal\) Bill 2015](#)

Senate Restored to Notice Paper 31 Jul 2019. The bill: provides that Australian landholders have the right to refuse the undertaking of gas and coal mining activities by corporations on their land without prior written authorisation; sets out the requirements of a prior written authorisation; provides for relief which a court may grant a land owner when prior written authorisation is not provided; prohibits hydraulic fracturing for coal seam gas, shale gas and tight gas by corporations; and provides for civil penalties.

[Human Rights \(Parliamentary Scrutiny\) Amendment \(Australian Freedoms\) Bill 2019](#)

Senate Second reading moved 23 Jul 2019 - Amends the Human Rights (Parliamentary Scrutiny) Act 2011 to: include a definition of 'Australian freedoms'; require the Parliamentary Joint Committee on Human Rights to explicitly consider 'Australian freedoms' in its examinations of legislation; and require statements of compatibility for bills and disallowable legislative instruments to provide certain information in relation to 'Australian freedoms'.

Assented

[Counter-Terrorism \(Temporary Exclusion Orders\) Bill 2019](#)

Finally passed both Houses 25 Jul 2019 Assent Act no: 53 Year: 2019 30 July 2019
Introduces a temporary exclusion order scheme to delay Australians of counter-terrorism interest from re-entering Australia until appropriate protections are in place.

[Counter-Terrorism \(Temporary Exclusion Orders\) \(Consequential Amendments\) Bill 2019](#)

Finally passed both Houses 25 Jul 2019 Assent Act no: 54 Year: 2019 30 July 2019. Introduces a temporary exclusion orders scheme to delay Australians of counter-terrorism interest from re-entering Australia until appropriate protections are in place.

Regulation

[Defence Determination, Conditions of service Amendment \(Approved forms and privacy\) Determination 2019 \(No. 21\)](#)

This determination amends the Defence Determination 2016/19, Conditions of service to remove elements that are of a non-legislative nature such as examples, non-examples, cross-reference notes, see notes and forms, to remove any specific reference to a form number or name and replace it with the defined term 'approved form' and to put beyond doubt Defence's right to collect, use or disclose personal information in the administration of member benefits.

NSW

Regulations and other miscellaneous instruments

[Subordinate Legislation \(Postponement of Repeal\) Order 2019](#) (2019-366) — published LW 2 August 2019

Bills introduced - Government

[Fines Amendment Bill 2019](#)

KEY CONTACTS

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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

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- (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