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## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

### MEDIA

#### Report reveals the big risks of Australian data breaches

The most recent Australian Notifiable Data Breaches Report, from April 01 to June 30, has identified contact details as the most at risk from a data breach, with malicious or criminal attacks accounting for the majority of breaches. <https://www.insurancebusinessmag.com/au/news/cyber/report-reveals-the-big-risks-of-australian-data-breaches-180177.aspx>

#### Religious Discrimination Bill encroaches too heavily on other human rights

The Law Council's submission on the Bill recognises there are opportunities to consolidate and strengthen federal protections against discrimination on the basis of religion. But it notes under the proposed laws religious expression may, in a range of cases, trump the right not to be discriminated against on the grounds of race, sex, sexual orientation, disability, or age – as well as the right to health care. <https://www.lawcouncil.asn.au/media/media-releases/religious-discrimination-bill-encroaches-too-heavily-on-other-human-rights>

#### Birth certificates changing lives in NSW

Nearly 1,000 people from vulnerable and Indigenous communities have benefited from free birth certificates in 2018-19, helping them to access potentially life changing services. <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/birth-certificates-changing-lives.aspx>

#### High Court to rule on class actions challenge

A High Court decision expected this year on class actions funding could make it more difficult for cases to be brought if the ruling overturns use of existing arrangements <https://www.insurancenews.com.au/local/high-court-to-rule-on-class-actions-challenge>

#### Response to Hong Kong protests must be reasonable and proportionate

The Law Council of Australia has strongly supported comments by Australia's Minister for Foreign Affairs, Senator the Hon Marise Payne, which raise concern over

the use of live ammunition by authorities during weekend protests in Hong Kong. The use of live ammunition on unarmed citizens may require investigation by the United Nations if this behaviour is repeated, or any internal inquiry by Hong Kong police is not transparent and fair. <https://www.lawcouncil.asn.au/media/media-releases/response-to-hong-kong-protests-must-be-reasonable-and-proportionate>

#### Joint Statement Announcing United States and Australian Negotiation of a CLOUD Act Agreement by U.S. Attorney General William Barr and Minister for Home Affairs Peter Dutton

The United States and Australia have entered into formal negotiations for a bilateral agreement under the U.S. Clarifying Lawful Overseas Use of Data Act (the CLOUD Act), as the first step towards significantly boosting law enforcement cooperation between the two allies, with strong protections for rule of law, privacy and civil liberties. <https://minister.homeaffairs.gov.au/peterdutton/Pages/australian-negotiation-cloud-act.aspx> For more information on the CLOUD Act, go to: <https://www.justice.gov/dag/page/file/1153466/download> and <https://www.justice.gov/dag/cloudact>

#### UN Child Rights report card on Australia shows Governments are failing kids

UN child rights experts have called on all Australian Governments to raise the age at which they can lock children up from 10 to 14 years and to ban the use of solitary confinement and the use of force including restraints on children. <https://www.hrlc.org.au/news/2019/10/4/un-child-rights-report-card-on-australia>

#### Drug testing of welfare recipients should not proceed

The Australian Human Rights Commission has expressed serious concerns about the proposed trial to drug test welfare recipients, in a submission to a parliamentary inquiry. The Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (Cth) could lead to suspended, reduced or cancelled social security payments for a failure to comply. <https://www.humanrights.gov.au/about/news/drug-testing-welfare-recipients-should-not-proceed>

**HRLC: NSW anti-protest laws will damage democracy**

NSW parliament should not pass a proposed law that would unfairly and unreasonably impact on peoples' freedom to peacefully protest. <https://www.hrlc.org.au/news/2019/10/3/nsw-anti-protest-laws-designed-to-shut-down-democracy>

**Greater certainty for employers when hiring staff with criminal records**

The Government has amended the Australian Human Rights Commission Regulations 1989 to allow employers to exercise reasonable discretion against prospective employees if their criminal record is relevant to the position being applied for. But it remains unlawful for employers to discriminate if the conviction is irrelevant to the role. <https://www.attorneygeneral.gov.au/Media/Pages/greater-certainty-for-employers-when-hiring-staff-with-criminal-records-3-october-2019.aspx>

**Australia has new whistleblowing laws. Now for the governance**

To deliver on its purpose, an effective whistleblowing regime needs not only legislation and regulation, but also processes and governance frameworks within organisations says Professor AJ Brown, the leader of the Centre for Governance & Public Policy at Griffith University. <https://www.intheblack.com/articles/2019/10/03/australias-new-whistleblowing-laws-now-governance>

**The NSW Information Commissioner Right to Know Week NSW 2019**

The NSW Information Commissioner released the results of the NSW Community Attitudes research to Government Information and launches a Citizen Checklist in Right to Know Week NSW 2019. <https://www.ipc.nsw.gov.au/media-releases/nsw-information-commissioner-releases-results-community-attitudes-research-and-launches-citizen-checklist-right-know-week-nsw-2019>

**Call to free more PS information**

Government Agencies in Australia and New Zealand have been urged to do more to make information available for their citizens. In a joint statement, the Commissioners and Ombudsmen called on all Government Agencies to take a proactive approach towards releasing information. <https://www.oaic.gov.au/updates/news-and-media/right-to-know-essential-to-democracy-in-a-digital-world/>

**LCA: Press freedom should not be by consent of Attorney-General**

The CDPP will now be required to obtain the agreement of the Federal Attorney-General for a prosecution of a journalist charged under section 131.1 (theft) and 132.1 (receiving stolen property) of the Criminal Code and section 73A of the Defence Act 1903 (unlawfully giving or obtaining information as to defences). <https://www.lawcouncil.asn.au/media/media-releases/press-freedom-should-not-be-by-consent-of-attorney-general>

**PUBLISHED - ARTICLES, PAPERS, REPORT****[Cabinet Handbook - 13th edition](#)**

Department of the Prime Minister and Cabinet (Australia): 08 October 2019

This handbook is designed to ensure that the Cabinet observes conventions and principles and fulfils its central purpose of informed decision-making.

**[The Australian Academy of the Humanities submission to the Senate Legal and Constitutional Affairs Reference Committee Inquiry into Nationhood, National Identity and Democracy](#)**

Australian Academy of the Humanities: 01 October 2019  
This resource is the Australian Academy of the Humanities (AAH) submission to the Senate Legal and Constitutional Affairs Reference Committee Inquiry into Nationhood, National Identity and Democracy.

**[DASSH response to the Parliamentary Inquiry into Nationhood, National Identity and Democracy \(2019\)](#)**

Australasian Council of Deans of Arts, Social Sciences and Humanities: 30 September 2019  
This response will focus on the role of HASS education in promoting, strengthening and securing the ongoing stability of democracy and democratic values in the Australian nation.

**[Legal framework for Defence administrative inquiries into a 'matter concerning the Defence Force': a quick guide](#)**

APH Law and Bills Digest Section: 02 October 2019  
This paper sets out the four different methods of conducting a general administrative inquiry into 'a matter concerning the Defence Force'. The first two methods are internal inquiries used by, and subject to, the ordinary chain of command. The last two methods are independent inquiries external to the ordinary chain of command.

**IN PRACTICE AND COURTS****[OAIC: New guide released to help health sector improve privacy practice](#)**

A comprehensive [Guide to health privacy](#) has been released by the Office of the Australian Information Commissioner (OAIC) to help keep patients' personal information safe. The guide brings together a wide range of OAIC advice for all [health service providers](#) covered by the Privacy Act 198.

**Law Council of Australia: Submissions**

08 October 2019—Law Council

**[Religious Freedom Bills](#)**

02 October 2019— Law Council

**[Review of the Identity-Matching Services Bill 2019 and the Australian Passports Amendment \(Identity-matching Services\) Bill 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.

[Issue No. 40/2019, 8 October 2019](#)

### [Cyber security strategy](#)

The new strategy will build on the foundations of the 2016 Cyber Security Strategy. For more information on consultation events until the end of October 2019.

### **Reminder: Practice Directions - High Court of Australia, No 1 of 2019**

#### [Legislation and Authorities Appeals and Other Full Court Matters](#)

Reminder: This Practice Direction takes effect in relation to matters set down for hearing after 1 October 2019. In consultation with the respondent and any interveners, the appellant must prepare a joint book of the authorities which reference will be made during the course of oral argument at the hearing of the appeal

### **Draft Religious Freedom Bills**

The Australian Government invites submissions on a package of legislative reforms on religious freedom. These are the: Religious Discrimination Bill 2019; Religious Discrimination (Consequential Amendments) Bill 2019 and Human Rights Legislation Amendment (Freedom of Religion) Bill 2019. The draft Bills are available on the [Attorney-General's Department website](#).

### **Senate Committee Inquiries**

#### **Community Affairs Legislation Committee**

##### [Social Security \(Administration\) Amendment \(Income Management to Cashless Debit Card Transition\) Bill 2019](#)

Submissions are sought by 18 October 2019  
[Social Services Legislation Amendment \(Drug Testing Trial\) Bill 2019](#)

#### **Legal and Constitutional Affairs Legislation Committee**

##### [Crimes Legislation Amendment \(Sexual Crimes Against Children and Community Protection Measures\) Bill 2019 \[Provisions\]](#)

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

### **Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press**

The inquiry was [referred by the Attorney-General, The Hon Christian Porter MP](#) who noted that the Government will consider proposals from media organisations and interested bodies which aim to ensure the right balance is struck between a free press and keeping Australians safe. [For further information about the inquiry see the full terms of reference](#). As agreed by the Attorney-General, the reporting date for this inquiry has been extended to 28 November 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**

#### [Administrative Law - Practice Support](#)

The NSW Court of Appeal has published a new resource for practitioners on administrative law.

### **NSW Fair Trading**

The Building Professionals Board's website is now permanently closed, and visitors will be redirected to the [NSW Fair Trading website](#). You're encouraged to visit the certifier section of the NSW Fair Trading website and update any weblinks and bookmarks. The website closure is part of the Board's integration into NSW Fair Trading.

#### [ICAC: Operation Ember public inquiry into allegations concerning RMS employees continues 15 October](#)

Operation Ember involves allegations concerning Roads and Maritime Services (RMS) employees, Samer Soliman and Jainesh Singh, and how they exercised their official functions when awarding contracts.

#### [NSW IPC checklist: Tips for framing your information access application](#)

The released checklist includes key information that is often overlooked by applicants and can potentially cause their application to be rejected specifically due to an unreasonable and substantial diversion of resources for the agency.

### **CASES**

### **NSW**

#### [Vok v Director of Public Prosecutions \(NSW\) \[2019\] NSWCA 242](#)

ADMINISTRATIVE LAW – judicial review – jurisdictional error – where applicant convicted of knowingly contravening apprehended personal violence order – where applicant appealed against conviction to District Court – whether District Court exceeded jurisdiction in dismissing conviction appeal – no question of principle.

#### [Ljubisavljevic v Workers Compensation Commission of New South Wales \[2019\] NSWSC 1358](#)

ADMINISTRATIVE LAW – judicial review – workers compensation – medical dispute as to degree of whole person impairment – request by worker to be re-examined by Appeal Panel – whether Appeal Panel bound to examine worker – where certificate of determination entered before application for review of decision of Appeal Panel – decision of Arbitrator refusing to rescind certificate – whether Appeal Panel failed to engage with worker's arguments.

#### [Zoran Divis v Georgia Knight & Ors \[2019\] NSWSC 1344](#)

Dismissal of proceedings, Judicial Immunity, Witness Immunity, Police Officers as Defendants.

[Port Macquarie-Hastings Council v Waite \[2019\] NSWLEC 146](#)

CRIMINAL OFFENCES: voir dire as to the admissibility of a record of interview in criminal proceedings – whether evidence inadmissible by reason of a failure of the council to advise the accused of his privilege against self-incrimination as required under statute – whether accused required to answer questions or whether interview voluntary. EVIDENCE: whether record of interview was illegally or improperly obtained – whether admissions contained in record of interview should be excluded on discretionary grounds.

[Fisher v Commissioner of Police, NSW Police Force \[2019\] NSWCATAD 205](#)

ADMINISTRATIVE LAW – Freedom of Information – access to information – scope of the application – personal information – sufficiency of searches – prejudice to future supply of information from informants – prejudice to prevention, detection or investigation of a contravention or enforcement of the law.

[DRO v South Coast Medical Aboriginal Corporation \[2019\] NSWCATAD 204](#)

ADMINISTRATIVE LAW – review under section 245 Children and Young Persons (Care and Protection) Act 1998 (NSW) – child protection – care and protection of children – cancellation of authorisation as an authorised carer.

[Commandeur v Building Professionals Board \[2019\] NSWCATOD 152](#)

ADMINISTRATIVE REVIEW – accredited certifier – findings of unsatisfactory professional conduct – disciplinary orders.

[Ekila v Commissioner of Police, NSW Police Force \[2019\] NSWCATOD 150](#)

ADMINISTRATIVE REVIEW – occupational licensing – security licence – revocation – whether applicant fit and proper person – whether contrary to public interest for applicant to hold a security licence.

## LEGISLATION

### Commonwealth

#### Regulator

[Public Interest Disclosure Rules 2019](#)

These rules bring the Australian Securities and Investments Commission back within the scope of the Public Interest Disclosure Act 2013 Public Interest Disclosure Rules 2019.

### NSW

#### Regulations and other miscellaneous instruments

[Administrative Arrangements \(Administration of Acts— Amendment No 2\) Order 2019](#) (2019-495) – published LW 11 October 2019

[Civil and Administrative Tribunal \(Amendment No 6\) Rule 2019](#) (2019-496) – published LW 11 October 2019  
Rule 42 Inspections of documents in Registry Insert “(other than a sound recording)” after “record” in paragraph (d) of the definition of public access document in rule 42(8)

[Education Amendment \(Non-Government Schools\) Regulation 2019](#) (2019-497) – published LW 11 October 2019

[Law Enforcement \(Powers and Responsibilities\) Amendment \(Custody Notification Service\) Regulation 2019](#) (2019-500) – published LW 11 October 2019

[Civil Liability \(Non-economic Loss\) Amendment Order 2019](#) (2019-485) – published LW 1 October 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