



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

MEDIA

\$88 million boost for access to justice

Court cases requiring legal aid will be finalised more efficiently and effectively with the NSW Government investing an additional \$88 million in Legal Aid NSW, driving a fairer and more efficient justice system [https://www.dcj.nsw.gov.au/news-and-media/media-releases/\\$88-million-boost-for-access-to-justice](https://www.dcj.nsw.gov.au/news-and-media/media-releases/$88-million-boost-for-access-to-justice)

NSW Solicitors welcome funding for legal aid

The Law Society of NSW, which represents the state's 34,000 solicitors, welcomed news of an \$88 million funding boost over four years for legal aid in NSW. <https://www.lawsociety.com.au/resources/news-media-releases/nsw-solicitors-welcome-funding-boost-for-legal-aid>

Government to pay e-Invoices within five days

From 1 January 2020, Commonwealth Government agencies will start paying e-Invoices within five days or pay interest on any late payments. e-Invoicing will improve business cash flow through faster payment times and deliver significant benefits and efficiencies to suppliers and the Government by reducing transaction costs and handling errors. <https://www.financeminister.gov.au/media-release/2019/11/07/government-pay-e-invoices-within-five-days>

Report lifts lid on gifts to public sector agencies

An audit has found a lack of transparency around NSW public sector gifts and benefits. The report looked at internal controls and governance at 40 of the state's largest public sector agencies, including several affected by Machinery of Government changes that came into effect in July. <https://www.audit.nsw.gov.au/our-work/reports/internal-controls-and-governance-2019>

Fairer treatment for tax compensation claims

The Government has released its response (link is external) to the review of the treatment of small business tax cases under the scheme for Compensation for Detriment Caused by Defective Administration (CDDA). The Government has accepted all 12 recommendations either in full, in part or in principle. <https://www.financeminister.gov.au/media-release/2019/11/04/fairer-treatment-tax-compensation-claims>

Uluru Statement should be respected

A voice for Indigenous Australians must be heard by parliament not just by the government if it is to have a meaningful impact on our laws and the administration of justice, says Law Council of Australia President, Arthur Moses SC. <https://www.lawcouncil.asn.au/media/uluru-statement-should-be-respected>

HRLC: Prime Minister's plan to outlaw environment boycott campaigns is deeply concerning

Protest rights in Australia should be strengthened, not weakened the Human Rights Law Centre said in response to the Prime Minister's announcement today that he will look to outlaw environmental campaigns targeting businesses. <https://www.hrlc.org.au/news/2019/11/1/prime-ministers-plan-to-outlaw-environment-boycott-campaigns-is-deeply-concerning>

HRLC: Australian Government to face scrutiny on human rights track record at the UN

Australia's human rights record is set to face intense scrutiny in 2020 when the Australian Government appears before the Human Rights Council in Geneva for its major four yearly human rights review. <https://www.hrlc.org.au/news/2019/10/30/australian-government-to-face-scrutiny-on-human-rights-track-record-at-the-un>

LCA: Mandatory sentencing risks unintended consequences

Mandatory minimum sentencing could force judges to "rubber stamp" lengthy prison terms regardless of the facts of a case, says Law Council of Australia President, Arthur Moses SC. <https://www.lawcouncil.asn.au/media/media-releases/mandatory-sentencing-risks-unintended-consequences>

AHRC: Commission welcomes redraft of Identity Matching Bill

The bi-partisan Parliamentary Joint Committee on Intelligence and Security (PJCIS) has recommended the Identity-matching Services Bill 2019 be withdrawn and re-drafted. The Commission's submissions urged that the Bill include stronger democratic oversight. The Bill gave too much discretionary power to the executive branch of government and created potential opportunities for identity theft. <https://www.humanrights.gov.au/about/news/commission-welcomes-redraft-identity-matching-bill>

Redraft of aged care law needed to improve care

The Aged Care Act 1997 needs to be rewritten to improve safety and quality in aged care says the Australian Lawyers Alliance (ALA) ahead of the release of the preliminary report of the Royal Commission into Aged Care Quality and Safety. <https://www.lawyersalliance.com.au/news/redraft-of-aged-care-law-needed-to-improve-care>

Strengthening Youth Justice security

The NSW Government will strengthen security and establish dedicated units to house high-risk offenders in line with recommendations of an independent review into an incident at the Frank Baxter centre earlier this year. <https://www.dcj.nsw.gov.au/news-and-media/media-releases>

IPC Annual Report 2018/19 released

Information and Privacy Commission (IPC) CEO, NSW Information Commissioner and Open Data Advocate Elizabeth Tydd released the IPC's Annual Report 2018/19 today, which also contains a report on the work of the Privacy Commissioner, Samantha Gavel for the same period. <https://www.ipc.nsw.gov.au/media-releases/ipc-annual-report-201819-released>

Disability strongest in AHRC complaints

The Australian Human Rights Commission (AHRC) has found complaints relating to discrimination on the grounds of disability topped its annual list of complaints in 2018-19, accounting for almost 44 per cent of the total. <https://www.humanrights.gov.au/about/news/disability-discrimination-top-commission-complaints-data>

Record year in fight against wage theft

The Ombudsman's annual report revealed that Fair Work Inspectors recovered more than \$40 million for 18,000 under-paid employees – the highest total recoveries figure in the regulator's history. <https://www.abc.net.au/news/2019-10-22/ripped-off-workers-repaid-44-million-dollars-last-year/11626874>

Surveillance device use under more scrutiny

Major crime and corruption lawyer Don McKenzie has been appointed as the first Surveillance Devices Commissioner in NSW, Attorney General Mark Speakman announced today. The establishment of a Surveillance Devices Commissioner is part of the NSW Government's response to the Ombudsman's Operation Prospect probe into conduct of state law enforcement officers during investigations between 1999 and 2002 <https://www.dcj.nsw.gov.au/news-and-media/media-releases/surveillance-device-use-under-more-scrutiny>

PUBLISHED - ARTICLES, PAPERS, REPORT

[Twitter is banning political ads – but the real battle for democracy is with Facebook and Google](#)

Johan Lidberg from Monash University: The Conversation November 01, 2019
Banning political advertising only deals with a symptom of the democratic flu the platforms are causing. The root cause of the flu is the fact social media platforms

are no longer only platforms – they are publishers. Until they acknowledge this and agree to adhere to the legal and ethical frameworks connected with publishing, our democracies will not recover.

[Implementation of the Digital Continuity 2020 policy](#)

Australian National Audit Office: 31 October 2019
The objective of this audit was to examine the extent to which Australian Government entities have implemented the Digital Continuity 2020 policy, and how effectively the National Archives of Australia is monitoring, assisting, and encouraging entities to meet the specified targets of the policy.

[Royal Commission into Aged Care Quality and Safety interim report: Neglect](#)

Royal Commission into Aged Care Quality and Safety: 31 October 2019
The Royal Commission's Interim Report lays the foundations for the fundamental reform and redesign of Australia's aged care system. It is clear that a fundamental overhaul of the design, objectives, regulation and funding of aged care in Australia is required – not merely patching up.

[Joining the dots: 2018 census of the Australian health justice landscape](#)

Suzie Forell, Marie Nagy; Health Justice Australia: 30 October 2019
Health justice partnerships are collaborations that embed legal help into healthcare settings, joining the dots between the legal and social problems that make or keep people unwell.

IN PRACTICE AND COURTS

High Court of Australia

[High Court of Australia Bulletin \[2019\] HCAB 8.](#)

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. 44/2019, 4 November 2019.](#)

[Federal Court of Australia - National Defamation Practice Note](#)

The practice note for the conduct of defamation proceedings in the Federal Court has now been finalised, following consultation with the profession. The Practice Note will take effect from 12 November 2019, and to the extent practicable, will apply to all defamation proceedings, whether commenced before or after 12 November 2019.

[Joint communiqué from Australia's anti-corruption Commissioners](#)

This communiqué addresses practical measures by which corruption may be detected, exposed and prevented.

Current Consultations

Legal and Constitutional Affairs References Committee – November 2019

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

[Nationhood, national identity and democracy](#)

[Native Title Legislation Amendment Bill 2019](#)

[Customs Amendment \(Product Specific Rule Modernisation\) Bill 2019 \[Provisions\]](#)

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

[OAIC: Consultation opens on draft privacy rules](#)

The OAIC is seeking feedback over its draft Privacy Safeguard Guidelines. The planned rules apply to the Consumer Data Right (CDR) regime, which aims to provide Australians with greater choice and control over how their data will be used and disclosed. The CDR scheme will be rolled out in February, starting with the banking sector.

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.

NSW

[NSW Justice: Review of the Graffiti Control Act 2008](#)

The Department of Communities and Justice is seeking feedback on the Graffiti Control Act 2008 to determine whether the policy objectives of the Act remain valid and if its terms remain appropriate for securing those objectives. Submissions close on 15 December 2019 Review of the Graffiti Control Act 2008.

[ICAC: Unmasking corruption in public institutions](#)

Joint communique from Australia's anti-corruption Commissioners (29 October 2019) Unmasking corruption in public institutions.

[Decisions of interest: Practice support](#)

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

[IPC Annual Report 2018/19](#)

Information and Privacy Commission (IPC) : released 28 October 2019

The Annual Report documents the IPC's work and organisational achievements during the reporting period and outlines the IPC's focus for the year ahead across both information access and privacy in NSW.

CASES

[Vella v Commissioner of Police \(NSW\) \[2019\] HCA 38](#)

Constitutional law (Cth) – Judicial power – Constitution – Ch III – State Parliament – Institutional integrity of State courts – Where s 5(1) of Crimes (Serious Crime Prevention Orders) Act 2016 (NSW) provides that State court may make order if satisfied that specified person has been convicted of serious criminal offence or involved in serious crime related activity and satisfied that reasonable grounds to believe that making of

order would protect public by preventing, restricting or disrupting involvement by that person in serious crime related activities – Where s 6(1) of Act provides that order against that specified person may contain such prohibitions, restrictions, requirements and other provisions as court considers appropriate for purpose of protecting public by preventing, restricting or disrupting involvement by that person in serious crime related activities – Where proceedings under Act are civil proceedings – Whether making order exercise of judicial power – Whether powers conferred by Act incompatible with State court's role as repository of federal judicial power – Whether powers conferred by Act substantially impair institutional integrity of State court. Constitution, Ch III. Crimes (Serious Crime Prevention Orders) Act 2016 (NSW), ss 3, 5, 6.

[Nielsen v Wingecarribee Shire Council \[2019\] NSWLEC 1529](#)

COSTS – judicial review proceedings – principles governing exercise of discretion to order costs.

[Seremetis v Department of Communities and Justice \[2019\] NSWCATAP 262](#)

ADMINISTRATIVE LAW – government information – CCTV footage of interior of corrections centre – public interest test – balancing exercise – nature of discretionary task – whether tribunal erred in law.

[DXJ v Health Administration Corporation \[2019\] NSWCATAD 230](#)

ADMINISTRATIVE LAW – privacy – health information – purpose of collection – use or disclosure – whether purpose of use was the same as the purpose for which the information was collected

[Riley v State of New South Wales \(Department of Education\) \[2019\] NSWCATAD 223](#)

ANTI-DISCRIMINATION – racial discrimination – discrimination against contract workers – whether contract worker denied access to benefits or subjected to detriment – whether termination of contract with contract worker's employer constitutes not allowing the contract worker to work – whether differential treatment established – racial vilification – whether laughter and comments at school staff meeting a "public act" – whether laughter and comments capable of inciting serious contempt or severe ridicule – victimisation – whether informal complaints of racial discrimination made – whether second applicant did anything under or by reference to Anti-Discrimination Act – whether respondents subjected second applicant to a detriment.

[Jackson v University of New South Wales \[2019\] NSWCATAD 224](#)

ADMINISTRATIVE LAW – access to government information – presumed conclusive public interest against disclosure - client legal privilege – excluded information. ADMINISTRATIVE LAW – access to government information – whether the cl 1(e), 1(f), 1(g), 3(a), 3(b) and 3(f) public interest considerations against disclosure, on balance, outweigh the public interest considerations in favour of disclosure.

[Fraser v SafeWork NSW \[2019\] NSWCATAD 227](#)

Administrative Law – access to government information – secrecy provisions - whether disclosure could reasonably be expected to constitute a contravention any other Act – whether public interest considerations against disclosure outweigh public interest considerations in favour of disclosure.

[DVH v South Eastern Sydney Local Health District \[2019\] NSWCATAD 221](#)

PRIVACY – jurisdiction - summary dismissal – failure to sufficiently identify conduct in breach of privacy.

[Amos v Central Coast Council \[2019\] NSWCATAD 226](#)

ADMINISTRATIVE LAW – Freedom of information – Access to information – GIPA – confidential information – third party objections - personal information – reasonableness of searches – scope of access application.

LEGISLATION

Commonwealth

Acts

[Crimes Legislation Amendment \(Police Powers at Airports\) Act 2019](#)

30/10/2019 - Act No. 89 of 2019

Bills

[Crimes Legislation Amendment \(Police Powers at Airports\) Bill 2019](#)

Assent Act no: 89 Year: 2019 28 October 2019

Amends the: Crimes Act 1914 to: broaden existing identity check provisions and create offences and powers in relation to identity check, move-on and ancillary directions by constables and protective services officers at Australia's major airports; and Australian Federal Police Act 1979 to provide that the offence of contravening an identity check or move-on direction is a protective service offence for the purposes of the Act.

Regulations

[Taxation Administration Amendment \(Updating the List of Exchange of Information Countries\) Regulations 2019](#)

This instrument amends the Taxation Administration Regulations 2017 to add eight countries to the list of foreign countries and foreign territories specified to be 'information exchange countries' for the purposes of subsection 12-385(4) of Schedule 1 to the Taxation Administration Act 1953.

[AusCheck Legislation Amendment \(Major National Events\) Regulations 2019](#)

These regulations amend the AusCheck Regulations 2017 to provide for the establishment and operation of the AusCheck scheme for major national events purposes, and amend the Crimes Regulations 2019 to provide additional exclusions from the spent convictions scheme.

[Crimes Amendment \(National Disability Insurance Scheme—Worker Screening\) Regulations 2019](#)

These regulations prescribe a person or body in New South Wales, South Australia, Tasmania and the Australian Capital Territory to be authorised to receive, use and disclose spent, pardoned and quashed convictions Crimes Amendment (National Disability Insurance Scheme—Worker Screening) Regulations 2019

NSW

Regulations and other miscellaneous instruments

[Uniform Civil Procedure \(Amendment No 92\) Rule 2019](#)

(2019-534) – published LW 8 November 2019

The object of this Rule is to amend the Uniform Civil Procedure Rules 2005 to provide for rules concerning interpreters based on the Model Rules set out in the Recommended National Standards for Working with Interpreters in Courts and Tribunals prepared by the Judicial Council on Cultural Diversity

[Service NSW \(One-stop Access to Government Services\) Amendment \(Delegation\) Regulation 2019](#)

(2019-527) – published LW 1 November 2019

[Surveillance Devices Amendment \(Body-Worn Recording Devices\) Regulation 2019](#)

(2019-520) – published LW 28 October 2019

Environmental Planning Instruments

[State Environmental Planning Policy Amendment \(Data Storage\) 2019](#)

(2019-537) – published LW 8 November 2019.

KEY CONTACTS

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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

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