



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

MEDIA

Media freedoms - striking a balance

Last week the Law Council's Business Law Section hosted a Media and Communications Seminar in Sydney, which focused on the significant legal challengers in the ever-evolving regulatory landscape of the communications sector. <https://www.lawcouncil.asn.au/media/news/media-freedoms-striking-a-balance>

Make your mark on graffiti laws

A review of NSW's graffiti laws is giving people across the State the opportunity to make their own mark in shaping these laws for the future. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/make-your-mark-on-graffiti-laws>

PUBLISHED - ARTICLES, PAPERS, REPORT

[Maintaining Trust in the Parliamentary Process – PACs and Officers of the Parliament](#)

ANAO: 22 November 2019

The Auditor-General, Grant Hehir, delivered a presentation to the 15th Biennial Australasian Council of Public Accounts Committees (ACPAC) Conference held at Parliament House, Canberra, on 7 November 2019. The presentation was titled Maintaining Trust in the Parliamentary Process – PACs and Officers of the Parliament.

[Implementation of recommendations](#)

ANAO: 14 November 2019

This edition of audit insights considers the approaches entities are taking to implement recommendations to improve public administration practices and outcomes.

[19th Copyright Law and Practice Symposium 2019](#)

Creativity. Innovation. Modernisation: 15 November 2019

The 2019 Symposium was a resounding success, with over 200 people attending over 2 days

[Evidence based policy research project: 20 case studies 2019](#)

Matthew Lesh; Institute of Public Affairs: 15 November 2019

The aim of this project was to coax more evidence-based policy decisions by all tiers of government by reviewing and rating 20 high profile government decisions against the Wiltshire business case criteria.

[Guidelines to counter foreign interference in the Australian university sector](#)

University Foreign Interference Taskforce; Department of Education (Australia): 14 November 2019

These guidelines have been developed for, and in partnership with, the Australian university sector, to help manage and engage with risk to deepen resilience against foreign interference. They are designed to build on risk management policies and security practices already implemented by many Australian universities.

IN PRACTICE AND COURTS

[ACICA launch Australian Arbitration Survey](#)

ACICA has launched the Australian Arbitration Survey to gather empirical evidence from practitioners as what works in arbitration and what can be improved on. To take the survey it is necessary to first obtain a respondent number from ACICA. Details can be found [here](#).

[AHRC: Submission date extended for the National Conversation - have your say](#)

The Australian Human Rights Commission has extended the date to hear from anyone on the key human rights priorities for Australia into the future. Submissions for the Free and Equal: An Australian conversation on human rights project will be kept open until 29 November 2019.

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 \[Provisions\]](#)

Rural and Regional Affairs and Transport References Committee

[Federal Government's response to the drought, and the adequacy and appropriateness of policies and measures to support farmers, regional communities and the Australian economy](#)

Community Affairs Legislation Committee

[Australian Sports Anti-Doping Authority Amendment \(Sport Integrity Australia\) Bill 2019](#)

Law Council of Australia: Submissions

13 November 2019— Law Council

[Free and equal : An Australian conversation on human rights](#)

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.

[What does open government mean to you: Open Government Partnership \(OGP\)](#)

OGP is about governments and civil society groups committing to work together to make sure governments are transparent, responsive and accountable to the public. Your input will help gain a better understanding of community attitudes to open government and inform the next OGP National Action Plan.

NSW

[JUDCOM: Civil Trials Bench Book – Update 40](#)

Update 40 to the Civil Trials Bench Book contains amendments to: [1-0240] Broadcast of judgments and [1-0400] The principle of open justice.

[JUDCOM: The Bar Book Project is launched](#)

The Public Defenders NSW launched the [Bar Book Project](#) on 8 November 2019. The Bar Book is hosted on the Public Defenders' website. The Bar Book Project has developed chapters of research relating to experiences of disadvantage and deprivation. The purpose of this resource, for legal practitioners, is to assist in the preparation and presentation of evidence to establish the application of the *Bugmy v The Queen* (2013) 249 CLR 571 principles.

[NSW IPC: Statement relating to Mobile Phone Detection Cameras](#)

The NSW Privacy and Personal Information Protection Act 1998 (PPIP Act) provides the overarching legislative framework for NSW government agencies holding personal information.

[ICAC: Operation Skyline public inquiry to continue from Monday 25 November](#)

The ICAC'S Operation Skyline public inquiry into allegations concerning the Awabakal Local Aboriginal Land Council will continue next week from 25 November 2019 for up to one week.

[ICAC: Prosecution briefs with the DPP and outcomes](#)

The tables on this page each provide information on prosecution briefs that are currently with the Director of Public Prosecutions (DPP), and the outcomes of DPP advice and prosecutions. Last updated 22 November 2019.

[DCJ NSW: Free diary gives seniors 2020 knowledge](#)

NSW seniors are encouraged to pick up a copy of the free 2020 Legal Topics for Older Persons Diary to help them understand their legal rights and navigate the justice system.

[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.

[Decisions of interest: Practice support](#)

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

CASES

[Estates 77 Pty Ltd v Minister for the Environment \(No 2\) \[2019\] FCA 1935](#)

ADMINISTRATIVE LAW – application of judicial review of a decision made under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) – judicial review under the Administrative Decisions (Judicial Review) Act 1977 (Cth) and the Judiciary Act 1903 (Cth) – whether the Minister for Environment made an error of law in considering the applicants' action a 'controlled action' – whether the applicants were exempt under s 43A of the EPBC Act

ENVIRONMENTAL LAW – EPBC Act – construction of s 43A – whether 'specific environmental authorisation' was given by a law of the State – consideration of *Minister for Environment and Heritage v Greentree* (No 2) [2004] FCA 741; (2004) 138 FCR 198 – endangered and vulnerable species of black cockatoo.

[The Wilderness Society \(Tasmania\) Inc v Minister for the Environment \[2019\] FCA 1842](#)

ENVIRONMENTAL LAW – application for judicial review of a referral decision made under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) – where a delegate of the Minister decided under s 75 of the Act that the proposed action was not a "controlled action" – where delegate adopted Departmental brief as reasons for decision – whether delegate's decision involved an error of law or misdirection due to erroneous view of Act's requirements, including task under s 75 – where delegate relied on assessment of proposed action conducted by the Tasmanian Parks and Wildlife Service under the "Reserve Activity Assessment" (RAA) process – where delegate took into account mitigation and avoidance measures proposed by proponent under RAA process in deciding action was not a "controlled action" – whether non-compliance with s 77A of the Act – whether delegate was required to consider whether to exercise power in s 74A of the Act before making decision under s 75 – application allowed.

[Van Dieren and Australian Securities and Investments Commission \[2019\] AATA 4777](#)

PRACTICE AND PROCEDURE – application for stay of decision under s 41(2) of the Administrative Appeals Tribunal Act 1975 – relevant considerations – prospects of success – consequences for the Applicant of a refusal of stay – public interest – consequences for the Respondent in carrying out its functions – whether the application for review would be rendered nugatory – stay application refused – Tribunal does not have power

to order any stay on publication by way of a media release where there has not been a stay granted – order that the hearing of the application be expedited.

Administrative Appeals Tribunal Act 1975 (Cth) – ss 41, 41(2); Australian Securities and Investments Commission Act 2001 (Cth) – s 1(2); Corporations Act 2001 (Cth) – ss 670A(1), 760A, 920A, 920A(1), 1041H(1).

[Council of the City of Ryde v Azizi \[2019\] NSWSC 1605](#)

ADMINISTRATIVE LAW – jurisdictional error – judicial review of Determinations of Compensation issued by the Valuer-General under s 47 of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) – whether the Determinations with respect to underlying zoning and development standards lacked probative evidence and were legally unreasonable – whether the Determinations with respect to the comparable sales method of valuation were legally unreasonable – not legally unreasonable – impermissible merits review – no jurisdictional error ADMINISTRATIVE LAW – jurisdictional error – whether there was power to award certain disturbance costs under s 59(1)(a) of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) – where the Valuer-General misdirected himself to the date from which disturbance costs were claimable in accordance with *Hoy v Coffs Harbour City Council* [2016] NSWCA 257 – whether the legal error made by the Valuer-General in making the Determinations has the consequence that the Determinations are liable to be set aside for jurisdictional error – jurisdictional error – Determinations set aside – declaration made CIVIL PROCEDURE – stay – orders made by consent staying the legal effect of the Valuer-General's Determinations until the final disposition of the proceedings – whether the Court can stay the operation of an Act COSTS – party/party – issues severable – first and second defendants successful on 70 per cent of issues in the case – plaintiff to pay 30 per cent of the first and second defendants' costs Council of the City of Ryde v Azizi [2019] NSWSC 1605

[Da Silva v Building Professionals Board \[2019\] NSWCATOD 177](#)

ADMINISTRATIVE REVIEW – accredited certifier – whether construction certificate plans inconsistent with development consent – whether development consent authorised variations – finding of unsatisfactory professional conduct – appropriate penalty.

[CJU v Northern Sydney Local Health District \[2019\] NSWCATAD 236](#)

ADMINISTRATIVE LAW – privacy – whether an application for internal review has been made – whether the alleged conduct is established – alleged disclosure and use of personal information -- alleged disclosure to legal representative and employee - judicial functions exemption.

[Sneesby v Shoalhaven City Council \[2019\] NSWCATAD 234](#)

FREEDOM OF INFORMATION - consultation with third parties – personal information – prejudice to court proceedings or right to procedural fairness Sneesby v Shoalhaven City Council [2019] NSWCATAD 234.

LEGISLATION

Commonwealth

Regulations

[National Redress Scheme for Institutional Child Sexual Abuse Amendment \(2019 Measures No. 1\) Rules 2019](#)

This instrument amends the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 to exclude eight Queensland grammar schools from the definition of 'State institution' under the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (the Act) and to prescribe various Queensland, New South Wales and Victorian laws for the purposes of section 27 of the Act.

National Redress Scheme for Institutional Child Sexual Abuse Amendment (2019 Measures No. 1) Rules 2019

[Social Security \(Declared Overseas Terrorist Act—Christchurch 2019\) Declaration 2019](#)

This instrument declares the 15 March 2019 attacks in Christchurch as a 'declared overseas terrorist act' for the purposes of the Australian Victim of Terrorism Overseas Payment Scheme.

[Social Security \(Declared Overseas Terrorist Act\) Declaration 2019—Karachi 2002](#)

This instrument declares the 8 May 2002 attacks in Karachi as a 'declared overseas terrorist act' for the purposes of the Australian Victim of Terrorism Overseas Payment Scheme.

[ASIC Corporations \(Whistleblower Policies\) Instrument 2019/1146](#)

This instrument provides relief to public companies limited by guarantee that operate on a not-for-profit basis and have annual consolidated revenue of less than \$1 million from the requirement to have a whistleblower policy under s1317AI(1) of the Corporations Act 2001.

[AusCheck \(Major National Event—International Cricket Council T20 World Cup Australia 2020\) Declaration 2019](#)

This instrument enables AusCheck to conduct and coordinate background checks in connection with the accreditation of individuals who are working or volunteering at the T20WC.

NSW

Regulations and other miscellaneous instruments

Bills introduced Non-Government – 22 November 2019

[Independent Commission Against Corruption Amendment \(Protections for Disclosure of Information\) Bill 2019](#)

Bills revised following amendment in Committee – 22 November 2019

[Justice Legislation Amendment Bill \(No 2\) 2019](#)

Bills passed by both Houses of Parliament – 22 November 2019

[Electoral Funding Amendment \(Cash Donations\) Bill 2019](#)

[Gambling Legislation Amendment \(Online and Other Betting\) Bill 2019](#)

[Justice Legislation Amendment Bill \(No 2\) 2019](#)

Bills introduced Non-Government – 15 November 2019

[Independent Commission Against Corruption Amendment \(Ministerial Code of Conduct—Property Developers\) Bill 2019](#)

[Privacy and Personal Information Protection Amendment \(State Owned Corporations\) Bill 2019](#)

Bills revised following amendment in Committee

[Fines Amendment Bill 2019](#)
[Right to Farm Bill 2019](#)

Bills passed by both Houses of Parliament

[Electoral Funding Amendment \(Local Government Expenditure Caps\) Bill 2019](#)
[Fines Amendment Bill 2019](#)
[Right to Farm Bill 2019](#)
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2019](#)

KEY CONTACTS

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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

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