



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

MEDIA

ICAC asks ministers to disclose details on how they deal with lobbyists

Letters have been sent by the ICAC over the holiday period as part of its Operation Eclipse investigation into the regulation of lobbying, access and influence. <https://www.watoday.com.au/politics/nsw/icac-asks-ministers-to-disclose-details-on-how-they-deal-with-lobbyists-20200116-p53s59.html>

High Court decision prompts lawyers to use the humble BBQ to sign clients Explainer

A recent High Court ruling that impacts how class actions can be funded in Australia has threatened a planned PFAS class action, which has been billed as Australia's biggest ever, involving eight sites across Australia. <https://www.abc.net.au/news/2020-01-11/class-action-lawsuit-changes-and-what-they-mean-for-consumers/11858928>

PM argues for 'comprehensive' inquiry into bushfire crisis

Climate change, hazard reduction burns and the national response to the fires will all be considered under a wide-ranging inquiry, Prime Minister Scott Morrison says. <https://www.abc.net.au/news/2020-01-09/morrison-argues-for-wide-ranging-inquiry-into-bushfire-crisis/11856180>

Commission warns on Religious Discrimination Bill overreach

In its submission on the latest draft of the Religious Discrimination Bill, the Australian Human Rights Commission warns that elements of the Bill are inconsistent with international human rights law. <https://www.humanrights.gov.au/about/news/media-releases/commission-warns-religious-discrimination-bill-overreach>

Constitutional questions loom over \$100 million community sports grants

Legal experts have raised concerns over the constitutional basis of the Morrison government's controversial \$100 million sports grants program. <https://www.sbs.com.au/news/constitutional-questions-loom-over-100-million-community-sports-grants>

IN PRACTICE AND COURTS

Religious Freedom Bills—Second Exposure Drafts

The Attorney-General's Department is inviting public feedback in relation to the second exposure draft of a package of legislation on religious freedom.

Federal Court of Australia—Amended Practice Notes

The Chief Justice of the Federal Court has advised the amended Practice Notes are now finalised and available [here](#). The amended practice notes took effect from Friday 20 December 2019 and are available on the Federal Court's website. The list includes the following Federal Court Practice Notes

Lists of Authorities and Citations Practice Note

Federal Court of Australia, GPN-AUTH of 2019

Central Practice Note: National Court Framework and Case Management

Federal Court of Australia, CPN-1 of 2019

Administrative and Constitutional Law and Human Rights Practice Note

Federal Court of Australia, ACLHR-1 of 2019

Class Actions Practice Note

Federal Court of Australia, GPN-CA of 2019

Federal Court Revised Class Actions Practice Notice

A revised Class Actions Practice Note was issued on 20 December 2019, following the decision in *BMW Australia Ltd v Brewster; Webster Banking Corporation v Lenthall* [2019] HCA 45.

ALRC Discussion Paper: corporate criminal responsibility

The Discussion Paper makes 23 proposals for reform and asks 11 questions on particular areas of reform. A number of aspects of corporate criminal liability are discussed, including: the division between criminal offences and civil penalty provisions; the method for attributing liability to corporations; individual liability for corporate offences; sentencing; and, specific issues such as illegal phoenix activity.

[High Court of Australia Digital Lodgment System Portal](#)

In January 2020 the High Court of Australia introduced a Digital Lodgment System Portal (DLS Portal) to permit parties to start cases, file documents, pay fees, receive notifications from the Court and track the progress of a case without attending the Registry.

[Development of a Protocol on Standards of Judicial Behaviour and Conduct in the Courtroom](#)

The Law Council of Australia invited feedback on a proposed Protocol on Standards of Judicial Behaviour and Conduct in the Courtroom.

[AHRC: Human Rights and Technology Discussion Paper - Rights and Freedoms](#)

The Commission has launched the Human Rights and Technology Discussion Paper, which makes wide-ranging proposals for safeguarding human rights and encouraging accessible, equal and accountable use of new technology in Australia. The deadline for submissions is 10 March 2020.

[ACC: Government response to the Digital Platforms Inquiry](#)

The government released its response to the Australian Competition and Consumer Commission (ACCC) Digital Platforms Inquiry final report on 12 December 2019. The government has committed to reviewing copyright enforcement reforms made in 2018 at the end of 2020 and considers this will be an opportune time to better evaluate the opportunities for facilitating online copyright enforcement.

[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.

[OAIC: Bushfires Disaster Emergency Declaration under the Privacy Act](#)

Australian Government agencies and private sector organisations covered by the Privacy Act 1988 who are part of the bushfire disaster response can now operate under emergency privacy provisions to assist people impacted by the bushfires and coordinate and manage the response.

[OAIC: Credit reporting changes to benefit consumers](#)

The Office of the Australian Information Commissioner (OAIC) has approved amendments to the Credit Reporting Code 2014 that will benefit consumers. ARCA began consulting on the amendments in 2018, following an independent review of the Code.

[Federal Circuit Court of Australia: Joint Practice Direction 1 of 2020 - Core Principles in the Case Management of Family Law Matters](#)

This Practice Direction sets out the ten core principles that underpin the exercise of the family law jurisdiction of the Courts. All steps taken in proceedings before the Courts, including commencement of proceedings, should follow these principles.

[Federal Circuit Court Discrete Property List - 28 January, 2020 Commencement](#)

From 28 January, 2020 applications which seek financial orders only, will be listed before a Registrar on the First Court Date and managed by a Registrar until the conclusion of the dispute resolution process. Referral to a Judge on the First Court Date will only be permitted in circumstances of genuine urgency requiring judicial determination.

[Legal and Constitutional Affairs References Committee](#)

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

[Nationhood, national identity and democracy](#)

[Legal and Constitutional Affairs Legislation Committee](#)

[Federal Circuit and Family Court of Australia Bill 2019 \[Provisions\] and Federal Circuit and Family Court of Australia \(Consequential Amendments and Transitional Provisions\) Bill 2019 \[Provisions\]](#)

[Crimes Legislation Amendment \(Combatting Corporate Crime\) Bill 2019](#)

[NSW DCJ: Update to child protection reporting](#)

From 1 March 2020 amendments to the [Children and Young Persons \(Care and Protection\) Act 1998](#) opens in new window (Care Act) will commence to expand mandatory reporting groups and provide greater protections for reporters.

[Call for Submissions on the Legal Profession Uniform Admission Rules 2015 \(NSW\) Removal of the word 'fame'](#)

The Legal Services Council's (LSC's) Admissions Committee invites comment about its recommendation that the text of the Legal Profession Uniform Admission Rules 2015 (Admission Rules) be amended to reflect the language of the Legal Profession Uniform Law 2014 (Uniform Law). Specifically, the Admissions Committee supports the removal of the word 'fame'. Submissions close on 28 February 2020.

NSW

[IPC NSW: Information Commissioner updates Guideline 3](#)

The NSW Information Commissioner has updated Guideline 3: For Local government - personal information in development applications following consultations with the NSW Privacy Commissioner and peak bodies for the local government sector.

[IPC Bulletin](#)

The IPC Bulletin updates on the IPC's recent activities, resources and guidance, links to new case notes, information about upcoming events, and other relevant issues and developments in information access and privacy.

[ICAC: Conflict of interest](#)

The ICAC has released new conflict of interest FAQs for managers and public officials as well as a new sample policy

[NSW Department of Justice: Current Consultations 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 10 February 2020.

[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.

PUBLISHED - ARTICLES, PAPERS, REPORT

[Corruption perceptions index 2019](#)

[Transparency International: 23 January 2020](#)

The index offers an annual snapshot of the relative degree of corruption by ranking countries and territories from all over the globe. In 2012, Transparency International revised the methodology used to construct the index to allow for comparison of scores from one year to the next Corruption perceptions index 2019.

CASES

[Crown Resorts Limited v Zantran Pty Limited \[2020\] FCAFC 1](#)

CONTRACTS – express obligations of confidence allegedly preventing voluntary communications with the solicitors for opposing party in litigation

CONFIDENTIAL INFORMATION – consideration of the sources of obligations of confidence

PRACTICE AND PROCEDURE – consideration of orthodox approaches to enforcing obligations of confidence and obtaining information from potential witnesses in advance of trial.

[Feldman v Nationwide News Pty Ltd & Ors; Feldman v Nationwide News Pty Ltd & Ors; Feldman v Nationwide News Pty Ltd & Ors; Feldman v Special Broadcasting Corporation \[2020\] NSWSC 26](#)

DEFAMATION – capacity to convey pleaded imputations – where defendants published articles concerning evidence given by a Rabbi during the Royal Commission into Institutional Responses to Child Sexual Abuse – where articles allege reprehensible ignorance of the criminality of touching a child for sexual gratification – where majority of imputations conceded – whether articles conveyed additional imputations including to the effect that the plaintiff was ignorant of the moral wrongfulness of touching a child for sexual gratification
DEFAMATION – defences – justification – consideration of plaintiff's evidence given to Royal Commission and a 2011 email exchange where plaintiff expressed views that instances of child sexual abuse ought not be reported to secular authorities in the first instance
DEFAMATION – defences – protected report under statute – whether articles report the substance of proceedings.

[Dolton v Eurobodalla Shire Council \[2020\] NSWCATAD 36](#)

Administrative Law – Freedom of Information – access application – whether agency holds further information – reasonableness of searches
Dolton v Eurobodalla Shire Council [2020] NSWCATAD 36.

[Nilufar v Secretary, Department of Education \[2020\] NSWCATAD 37](#)

ADMINISTRATIVE LAW – provision of education and care services to children – prohibition notice issued – whether there may be an unacceptable risk of harm to children – what is an unacceptable risk – content of prohibition notice exceeding risk – amendment of decision.

[EEZ v TAFE NSW \[2020\] NSWCATAD 35](#)

HUMAN RIGHTS – equal opportunity – leave required for complaint to proceed – principles applying to grant of leave
EEZ v TAFE NSW [2020] NSWCATAD 35.

[Fearnley v Health Care Complaints Commission \[2020\] NSWCATAD 30](#)

ADMINISTRATIVE LAW – Freedom of information – Access to information – application for Tribunal to refuse to deal with administrative review application under s 109 of the Government Information (Public Access) Act 2009 – access application seeking access to excluded information – access application invalid – Tribunal refused to deal with and dismissed administrative review application.

[Johnson v Secretary, Department of Communities and Justice \[2020\] NSWCATAD 23](#)

FREEDOM OF INFORMATION – government information – misconduct investigation into allegations of breach of confidence and privacy – witness evidence received in confidence – results of investigation – personal information – personal factors.

[Hayley Paddon v Northern NSW Local Health District \[2020\] NSWCATAD 24](#)

ADMINISTRATIVE LAW – government information – preliminary question – whether the board of a local health district is a public authority.

[DRX v City of Canada Bay Council \[2020\] NSWCATAD 26](#)

ADMINISTRATIVE REVIEW – personal information – review of conduct of agency admitted to be a contravention of Privacy and Personal Information Protection Act 1998 – order for compensation.

LEGISLATION

Commonwealth

Act compilation

[Parliamentary Joint Committee on Law Enforcement Act 2010](#)

30/01/2020 – Act No. 128 of 2010

[Federal Circuit Court of Australia Act 1999](#)

28/01/2020 – Act No. 193 of 1999 as amended

[Ombudsman Act 1976](#)

24/01/2020 – Act No. 181 of 1976

Regulation

[Taxation Administration \(Remedial Power—Disclosure of Protected Information by Taxation Officers\) Determination 2020](#)

This instrument modifies the operation of the taxpayer confidentiality rules in Division 355 of Schedule 1 to the Taxation Administration Act 1953. The modification ensures that a taxation officer can disclose protected 3

information of a deceased person to the registered tax agent, BAS agent, or legal practitioner of an executor or administrator of the estate of the individual who has died.

NSW

Regulations and other miscellaneous instruments

[Casino Control Amendment \(Miscellaneous\) Regulation 2020 \(2020-18\)](#) – published LW 24 January 2020

[Local Government \(General\) Amendment \(Tendering\) Regulation 2020 \(2020-19\)](#) – published LW 24 January 2020

[Public Health Amendment \(Scheduled Medical Conditions and Notifiable Diseases\) Order 2020 \(2020-17\)](#) – published LW 21 January 2020

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)

4(f) Discrimination

2(a) Commercial and contractual matters

6(b) General litigation and dispute resolution

4(a) Employment and industrial relations law

6(c) Debt recovery

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