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ISSUE 120



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

IN THE MEDIA

Information Access Commissioners and Ombudsmen make recommendations to support Open by Design Principles

Australian Information Access Commissioners and Ombudsmen published an authoritative statement to promote the proactive release of information. The Open by Design Principles have been released ahead of International Access to Information Day on 28 September. <https://www.ipc.nsw.gov.au/media-releases/media-release-information-access-commissioners-and-ombudsmen-make-recommendations-support-open-design-principles>

OAIC: Open by Design Principles

The [Open by Design Principles](#) have been released ahead of [International Access to Information Day](#) on 28 September, and should be used by government agencies to encourage and authorise the proactive release of information and promote open government.

Some concerns remain for the Law Council over ATO draft privilege protocol

The Law Council of Australia remains concerned about aspects of the Australia Taxation Office's draft legal professional privilege (LLP) protocol which was released this week for further consultation. <https://www.lawcouncil.asn.au/media/media-releases/some-concerns-remain-for-the-law-council-over-ato-draft-privilege-protocol>

New report recommends more action to prevent human rights harms in business sector

The Australian Government, businesses and institutional investors have been called on to take more action to prevent business-related human rights harm, with a new report which examines the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Australia. <https://humanrights.gov.au/about/news/new-report-recommends-more-action-prevent-human-rights-harms-business-sector>

Use of technology for corporate meetings

The Law Council acknowledges the Australian Government's ongoing commitment to consulting on engagement with digital technology and communications, with invited businesses and individuals to have their say on how technology can be used to streamline the way statutory declarations and deeds are executed. <https://www.lawcouncil.asn.au/media/media-releases/use-of-technology-for-corporate-meetings>

Consultation to modernise document execution across The Federation

Businesses and individuals are being invited to have their say on how technology can be used to streamline the way statutory declarations and deeds are executed. <https://www.attorneygeneral.gov.au/media/media-releases/consultation-modernise-document-execution-across-federation-14-september-2021>

Foxtel breaks rules with live sport betting promotion

Foxtel has breached broadcasting rules by airing a segment promoting a betting service during the live broadcast of an AFL match on Easter Monday afternoon. Foxtel self-reported the breach to the ACMA following a complaint from a viewer. <https://www.acma.gov.au/articles/2021-09/foxtel-breaks-rules-live-sport-betting-promotion>

NSW

ICAC: Public inquiry into allegations concerning John Sidoti MP to be re-opened

The NSW ICAC will re-open the Operation Witney public inquiry into allegations concerning the State Member for Drummoyne, John Sidoti MP, commencing Wednesday, 29 September 2021. <https://www.icac.nsw.gov.au/media-centre/media-releases/2021-media-releases/public-inquiry-into-allegations-concerning-john-sidoti-mp-to-be-re-opened>

Protecting children through innovation in NSW

At-risk children are being prevented from slipping through the cracks when their families move interstate with a new database helping child protection authorities access critical information from interstate agencies. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/protecting-children-through-innovation>

NSW to trial facial recognition, geolocation app for home quarantine

The NSW government will adopt a smartphone app that uses the same facial recognition and geolocation technology as South Australia for its home-based isolation pilot next month. <https://www.itnews.com.au/news/nsw-to-trial-facial-recognition-geolocation-app-for-home-quarantine-569950>

IN PRACTICE AND COURTS

Attorney General Court Appointments

17 September 2021 [Appointment of Deputy Chief Judges of the Federal Circuit and Family Court of Australia](#)

Law Council Update

The Law Council produces a fortnightly newsletter which highlights the Law Council's important activities and advocacy, along with any relevant media and events stakeholders would be interested in [17 September 2021](#).

[AAT Bulletin - Issue No. 19/2021, 20 September 2021](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions.

Legal and Constitutional Affairs Legislation Committee

[Constitution Alteration \(Freedom of Expression and Freedom of the Press\) 2019](#) Status: Accepting Submissions Date Referred: 17 June 2021 Submissions Closed: 20 August 2021. Reporting Date: 31 December 2021.

Select Committee on Foreign Interference through Social Media

[Foreign Interference through Social Media](#)
Select Committee on Foreign Interference through Social Media to inquire into and report on the risk posed to Australia's democracy by foreign interference through social media. The committee is to present its final report on or before the second sitting day of May 2022 The closing date for submissions is 31 October 2021.

NSW

[Artificial Intelligence \(AI\)](#)

The NSW Government believes they can use AI to benefit the community and is taking actions to ensure that AI is used safely, ethically and effectively. The Government has an AI Strategy (External link) that outlines the vision for the use of AI, and ensures transparency, fairness and accountability. Have your say to 31 December 2021.

[Read the September 2021 IPC Bulletin](#)

15 September 2021 - The IPC Bulletin includes 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.

Costs Disputes – Uniform Law - Indexed Amounts

Sections 291, 292 and 293 of the Legal Profession Uniform Law (NSW) relate to costs disputes. The amounts have again been indexed for the financial year 1/7/2021 - 30/6/2022. The Legal Profession Uniform Law (Indexed Amounts) Notice 2021 has been published and is available [here](#).

[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 20 September 2021.

PUBLISHED – ARTICLES, PAPERS, REPORTSCASES

[At the Crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia](#)

Australian Human Rights Commission and the Australian Human Rights Institute at UNSW Sydney, Sept 2021
A new report examines the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Australia.

[NSW Recorded Crime Statistics quarterly update June 2021](#)

[NSW Bureau of Crime Statistics and Research: 15 September 2021](#)

This report presents data on crime reported to, or detected by, the NSW Police Force from January 1995 to June 2021, with a focus on the statistical trends for the 24 months ending June 2021.

CASES

[Walker v Northern Beaches Council \[2021\] NSWCATAD 277](#)

ADMINISTRATIVE LAW - access to government information - restraint order in place - leave required for applicant to apply for information under Government Information (Public Access) Act 2009 (NSW) - Transitional Provisions Northern Beaches Council.

[EPG v NSW Trustee and Guardian \[2021\] NSWCATAD 276](#)

ADMINISTRATIVE LAW – review under section 62 NSW Trustee and Guardian Act 2009 (NSW) - NSW Trustee and Guardian – Interests and welfare of protected person – whether to lease a protected person's property – financial management order – s16 NSW Trustee and Guardian Act 2009 (NSW) – accessibility of property contents.

[Jones \(a pseudonym\) v R \[2021\] NSWCCA 225](#)

CRIME – Appeals – Appeal against sentence – Denial of procedural fairness – Confidential information detailing applicant’s assistance to the authorities provided to the Court by the Crown but not to the applicant’s legal representatives – Application of HT v The Queen – Appeal allowed.

[Cooney v Commissioner of Police \[2021\] NSWCATAD 272](#)

ADMINISTRATIVE LAW – government information – access application – information for which there is a conclusive public interest against disclosure (privileged information) – client privilege – in-house lawyers – non-disclosure order – anonymisation order – information for which there is an overriding public interest against disclosure (cl 1 (d), (e), (f) and (g) of the table to s 14 (2) of the Government Information (Public Interest) Act 2009 – confidential information – balancing public interest considerations.

[Director of Public Prosecutions \(Cth\) v Saadieh \[2021\] NSWSC 1186](#)

CRIMINAL LAW - release application - membership of a terrorist organisation - requirement for exceptional circumstances - assessment of strength of prosecution case - possession of ISIS propaganda - pledge of allegiance - conflicting expert opinion on meaning of “giving Bay’ah” - where applicant under observation since 2018 - no escalation in activities - where applicant seeks psychological intervention before arrest - where deradicalisation therapy available in community - COVID 19 - relevance to bail - where applicant suffers from asthma - not the “new normal” for purposes of considering bail - conditions of incarceration - relevance of delay - whether unacceptable risk - conditions of bail - release application granted CRIMINAL LAW - bail application - availability of appeal under Crimes Act 1914 (Cth) - statutory stay - detention application - appropriateness of stay allowing Director to challenge decision to grant conditional bail - stay granted.

[Groth v Registrar of Births, Deaths and Marriages \[2021\] NSWCATAD 271](#)

ADMINISTRATIVE LAW – births, deaths and marriages – birth record for the Applicant does not state name of the father – Applicant and her mother claim an identified person was her father – claim disputed by offspring of the identified person Groth v Registrar of Births, Deaths and Marriages [2021] NSWCATAD 271.

[Gibson v Director of Public Prosecutions \(NSW\) \(No 2\) \[2021\] NSWCA 218](#)

ADMINISTRATIVE LAW – Judicial review – where questions sought to be referred by the applicant to the Court of Criminal Appeal were plainly not pure “questions of law” – where any jurisdictional error by the primary judge in finding that she lacked power to refer questions to the Court of Criminal Appeal because she was functus officio was thus immaterial – where relief withheld in the exercise of the Court’s discretion because of its lack of demonstrated utility CRIMINAL PROCEDURE – Submission of purported questions of law to Court of Criminal Appeal – nature of the power and role of a

District Court judge in deciding whether or not to submit a question of law to the Court of Criminal Appeal – contextual considerations surrounding the operation of s 5B of the Criminal Appeal Act 1912 (NSW) CRIMINAL PROCEDURE – Submission of purported questions of law to Court of Criminal Appeal – where applicant submitted questions informally via email to the Registrar of the Local Court – where no formal order was made by the primary judge dismissing the applicant’s request to state a case to the Court of Criminal Appeal – where no reasons were published by the primary judge for declining the applicant’s request – where applicant was advised of the primary judge’s refusal to state a case via an email from the Registrar of the Local Court CRIMINAL PROCEDURE – Submission of purported questions of law to Court of Criminal Appeal – where questions sought to be referred to the Court of Criminal Appeal were plainly not pure “questions of law” JUDGMENTS AND ORDERS – where no formal order was made by the primary judge dismissing the applicant’s request to state a case to the Court of Criminal Appeal – where no reasons were published by the primary judge for declining the applicant’s request – where applicant was advised of the primary judge’s refusal to state a case via an email from the Registrar of the Local Court – general requirement for judgments to be given in open court where practicable to do so – requirement for clarity as to when a judgment has been given – requirement that a judgment reaches the parties.

[Redford v Secretary, Department of Education \[2021\] NSWCATAD 264](#)

ADMINISTRATIVE LAW – access to government information – access application – public interests in favour of disclosure – public interests against disclosure – whether overriding public interest against disclosure.

[New v Ku-Ring-Gai Council \[2021\] NSWCATAD 263](#)

ADMINISTRATIVE LAW – access to government information – access application – review of decision that information not held by an agency.

[Bradford v Commissioner of Police \[2021\] NSWCATAD 262](#)

ADMINISTRATIVE LAW – Public access to government information – Request for information – Whether adequate searches undertaken – Conclusive presumption regarding “excluded information” of an agency.

LEGISLATION**Commonwealth****Bills**[Charter of the United Nations Amendment Bill 2021](#)

Assent Act no: 106 Year: 2021 13 Sep 2021 - Amends the Charter of the United Nations Act 1945 to: specify that certain counter-terrorism financial sanctions lists and revocations be made by legislative instrument; and confirm the validity of action that has been taken, or which may need to be taken, in respect of conduct in relation to existing counter-terrorism financial sanctions listings that were made but not registered on the Federal Register of Legislation at the time of their making.

[COAG Legislation Amendment Bill 2021](#)

A Bill for an Act to make amendments to deal with the cessation of the Council of Australian Governments and to make amendments relating to the National Cabinet.

Act Compilation

[Telecommunications \(Interception and Access\) Act 1979](#)

13/09/2021 - Act No. 114 of 1979 as amended

NSW

Regulations and other miscellaneous instruments

[Annual Holidays Amendment \(COVID-19 Prescribed Period\) Regulation 2021](#) (2021-548) – published LW 24 September 2021

[Civil Liability \(Non-economic Loss\) Amendment Order 2021](#) (2021-549) – published LW 24 September 2021

[Court Security Amendment Regulation 2021](#) (2021-551) – published LW 24 September 2021

[Public Health Amendment \(COVID-19\) Regulation 2021](#) (2021-562) – published LW 24 September 2021

[Constitution \(COVID-19 Emergency Measures\) Amendment \(Prescribed Period\) Regulation 2021](#) (2021-538) – published LW 17 September 2021

[Interpretation \(COVID-19 Emergency Measures\) Regulation 2021](#) (2021-539) – published LW 17 September 2021

[Public Holidays Amendment \(City of Lismore\) Order 2021](#) (2021-536) – published LW 15 September 2021

[Stronger Communities Legislation Amendment \(COVID-19\) Regulation 2021](#) (2021-537) – published LW 15 September 2021

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

Thomson Geer is:

- appointed to Sub Panels 1-6 of the NSW Government Legal Services Panel; and
- particularly recommended for the following areas of law:

Sub Panel 1: Construction	Sub Panel 2: Commercial	Sub Panel 3: Planning, Property and Environmental	Sub Panel 4: Employment, Work Health and Safety	Sub Panel 5: Government Regulatory and Administrative Law	Sub Panel 6: Litigation and Inquiries
(a) Construction b) Major infrastructure projects c) PPPs and associated transactions d) Construction related dispute resolution and arbitration	(a) Commercial and contractual matters c) Intellectual Property d) Information Technology	(a) Complex property advice, transactions and accreditation b) Routine property advice and transactions c) Planning, environmental, heritage and natural resources e) Crown land and local government	(a) Employment and industrial relations e) Discrimination	a) Administrative law, statutory interpretation and governance advice	b) General litigation, dispute resolution and debt recovery

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