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ISSUE 121



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

IN THE MEDIA

COVID-19 tracing data must be protected by law nationally

Federal legislation is urgently needed to ensure COVID-19 tracing data is used only for health purposes in every state and territory, says the Australian Lawyers Alliance (ALA) as the Greens plan to introduce a bill to Parliament that will ban law enforcement agencies from accessing this data. <https://www.lawyersalliance.com.au/news/covid-19-tracing-data-must-be-protected-by-law-nationally>

Appointment of First Parliamentary Counsel

The Attorney General announces the appointment of Ms Meredith Leigh as the new First Parliamentary Counsel, the head of the Office of Parliamentary Counsel. <https://www.attorneygeneral.gov.au/media/media-releases/appointment-first-parliamentary-counsel-5-october-2021>

Comment call on digital identity plans

The Digital Transformation Agency (DTA) is calling for feedback on a draft bill to support the expansion of the Australian Government Digital Identity System. The Agency released a factsheet on the proposed legislation which it said was required to expand the Identity System to a whole-of-economy solution. <https://www.innovationaus.com/legislation-expanding-digital-identity-scheme-to-private-sector-finally-unveiled/>

Record \$95 million boost to legal help sector

More people facing hardship across NSW will have access to free legal support thanks to \$95 million in additional Commonwealth legal assistance funding over four years. <https://www.attorneygeneral.gov.au/media/media-releases/record-95-million-boost-legal-help-sector-30-september-2021>

New campaign on the warning signs of elder abuse

A new campaign to raise awareness of elder abuse has been launched by the Australian Human Rights Commission to mark the International Day of Older Persons. <https://humanrights.gov.au/about/news/new-campaign-warning-signs-elder-abuse>

Ensuring fair and reasonable returns to class action plaintiffs

The Morrison Government has released for consultation exposure draft legislation to promote a fair and reasonable distribution of class action proceeds in proceedings involving a litigation funder. <https://www.attorneygeneral.gov.au/media/media-releases/ensuring-fair-and-reasonable-returns-class-action-plaintiffs>

Freedom of Information changes go too far

On the International Day for Universal Access to Information, the Law Council of Australia has expressed concern the COAG Legislation Amendment Bill 2021 extends Freedom of Information (FOI) exemptions too broadly and without adequate justification. <https://www.lawcouncil.asn.au/media/media-releases/freedom-of-information-changes-go-too-far>

International Access to Information Day 2021

The Office of the Australian Information Commissioner is calling for an open-by-design approach to managing government-held information as it marks International Access to Information Day on 28 September. <https://www.oaic.gov.au/updates/news-and-media/international-access-to-information-day-2021>

NSW

NSW Seniors in spotlight on Awareness Day

October 1 is Australia's first Ageism Awareness Day and coincides with the United Nations' International Day of Older Persons and Probus Day. Minister for Seniors Natalie Ward said it is an important opportunity to reinforce the value of older people to NSW, challenge stigma and highlight the many support services available. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/nsw-seniors-in-spotlight-on-awareness-day>

NSW ICAC set up as a special need for corruption in public sector

Former counsel assisting the NSW ICAC Geoffrey Watson SC defends the role of ICAC, saying the body was set up with the unique nature of corruption in the public sector in mind. <https://www.abc.net.au/news/2021-10-04/icac-set-up-as-a-special-need-for-corruption-in-public-office/13569062>

NSW Coroner's Court needs restructure and more resourcing to reduce delays

The NSW Coroner's Court needs to be restructured and better resourced to reduce the current extensive delays, allow it to better examine systemic issues and ensure its recommendations are acted on, says the Australian Lawyers Alliance (ALA). <https://www.lawyersalliance.com.au/news/nsw-coroners-court-needs-restructure-and-more-resourcing-to-reduce-delays>

IN PRACTICE AND COURTS

Draft legislation for Australian Government Digital Identity System

The proposed legislation will enshrine in law, privacy and consumer safeguards for greater trust in the System as it expands. This includes more services and sectors, accelerating an economy-wide rollout. Submissions are open until 27 October 2021. Visit digitalidentity.gov.au/have-your-say for more information.

FCFCOA launches new pilot list for family law complex financial proceedings

The Federal Circuit and Family Court of Australia is launching a Major Complex Financial Proceedings List (MCFP List) to more efficiently deal with commercially complex financial family law cases. The MCFP List commences on 1 October 2021 and will operate as a pilot program in the Melbourne, Sydney and Brisbane registries of the court.

Review of PBR Act and IPEA Act

The statutory review will consider how the current legislative framework provides appropriate levels of accountability and transparency to the use of taxpayers' money. The Review will report by 31 December 2021. More information on the Review including the terms of reference can be found at: <https://www.finance.gov.au/publications/reviews/PBRAct2017andIPEAAct2017>

Department of Infrastructure, Transport, Regional Development and Communications: Draft Online Safety (Basic Online Safety Expectations) Determination 2021 consultation

Submissions are sought on an exposure draft of the Online Safety (Basic Online Safety Expectations) Determination 2021. The draft determination sets out the government's demands for providers that offer a social media service, "relevant electronic service" or "designated internet service", including the nine principle-based "core expectations" included in the Act.

Law Council Submissions

08 October 2021 - [Treasury Laws Amendment \(Measures for Consultation\) Bill 2021: Litigation funders](#)
01 October 2021 - [COVID-19 concession proposals](#)

Law Council Update - 1 October 2021

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.

AAT Bulletin - Issue No. 20/2021, 4 October 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
[Crimes Amendment \(Remissions of Sentences\) Bill 2021](#)
Report by 14 October 2021.

[The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing \(AML/CTF\) regime](#) Report by 2 December 2021.

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

NSW Court of Appeal Publications

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

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.

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.

ICAC: Re-opened public inquiry into allegations concerning John Sidoti MP starts tomorrow

The NSW ICAC re-opened Operation Witney public inquiry into allegations concerning the State Member for Drummoyne, John Sidoti MP, will start on 29 September 2021.

[ICAC: Further Operation Keppel public inquiry](#)

The NSW ICAC will hold a further public inquiry in Operation Keppel from 18 October 2021. The Commission is investigating whether, between 2012 and 2018, the Hon Gladys Berejiklian MP engaged in conduct that: constituted or involved a breach of public trust by exercising public functions in circumstances where she was in a position of conflict between her public duties and her private interest.

[Reminder: 2020 Professional Standards Scheme commences](#)

The fourth New South Wales Bar Association Professional Standards Scheme will remain in effect until 30 June 2025.

PUBLISHED – ARTICLES, PAPERS, REPORTS

[Which Watchdog](#)

Centre for Public Integrity, Discussion Paper: 06 October 2021

Unlike state and territory bodies the CIC would not be able to scrutinise the influence of people outside the public service on government, hold public hearings, accept whistleblower complaints, make findings or report publicly.

[Deaths in custody in Australia 2019-20](#)

Doherty, Laura Sullivan, Tom, AIC Statistical Report No 36: 05 October 2021

In 2019–20 there were 113 deaths in custody: 89 in prison custody and 24 in police custody or custody-related operations. This report contains detailed information on these deaths and compares the findings to longer term trends.

[The impact of the 'What's Your Plan?' program on ADVO breaches and domestic violence](#)

Min-Taec Kim; Crime and Justice Bulletin No. CJB242: 07 October 2021

Domestic violence, Program evaluation, Apprehended violence order, behavioural insights, Recidivism / Re-offending, Aboriginal over-representation.

[Vaccinations in the workplace and navigating mental health in the COVID era](#)

Law Society of NSW Employment Law Committee: 27 September 2021. Examines examining the legal framework surrounding mandatory COVID-19 vaccinations and the workplace.

CASES

[Bathurst Regional Council v Department of Planning, Industry and Environment trading as Natural Resources Access Regulator \[2021\] NSWLEC 109](#)

JUDICIAL REVIEW – decision of the Natural Resources Access Regulator to give official caution – alleged breach of Water Management Act 2000 – function to give official caution conferred by Natural Resources Access Regulator Act 2017 and Fines Act 1996 – jurisdiction of Land and Environment Court to review decision to give official caution – transfer of proceedings to Supreme Court.

[Davis v Minister for Health \[2021\] NSWCATAD 293](#)

ADMINISTRATIVE LAW – stay or interim order – jurisdiction of Tribunal – whether appropriate to secure effectiveness of review – public interest.

[Jeray v Blue Mountains City Council \[2021\] NSWCATAP 310](#)

STATUTORY CONSTRUCTION – meaning of requirement to identify information sought in s 41(1)(e) of the Government Information (Public Access) Act 2009 (NSW).

[EJE v Nepean Blue Mountains Local Area Health District \[2021\] NSWCATAD 289](#)

ADMINISTRATIVE REVIEW---Health information---Review of conduct of agency---Contravention of Health Privacy Principles EJE v Nepean Blue Mountains Local Area Health District [2021] NSWCATAD 289

[Registrar of Births, Deaths and Marriages v MacMahon \[2021\] NSWCATAP 303](#)

APPEAL- Question of law- statutory interpretation- power of Registrar of Births, Deaths and Marriages to refuse to register change of name- where use of name contrary to public interest- whether Registrar may have regard to purpose of name change, public record of applicant. STATUTORY INTERPRETATION- Definition- Rule in Kelly v R- Mischief rule- Context- Purpose and object of legislation- use of extrinsic materials- ejusdem generis rule.

[Campbell v Murray River Council \[2021\] NSWCATOD 157](#)

LOCAL GOVERNMENT – Disciplinary decision re councillor – Jurisdiction to review.

[Redfern Legal Centre v Commissioner of Police \[2021\] NSWCATAD 288](#)

ADMINISTRATIVE LAW – access to government information – scope of "government information"

[Wood v Secretary of the Department of Transport on behalf of the Government of New South Wales \[2021\] NSWSC 1248](#)

EMPLOYMENT AND INDUSTRIAL LAW – Termination of employment – Public sector employee summarily dismissed for serious and wilful misconduct – Disclosure of information relevant to murder prosecution to police – Whether contractual right to dismiss for serious and wilful misconduct exercised – Whether disciplinary proceedings pursued under Transport Administration (Staff) Regulation – Whether employee denied procedural fairness – Whether employee engaged in serious and wilful misconduct – Relevance of ss 315, 315A and 316 Crimes Act – Whether contract repudiated CONTRACT – Contract of employment – Whether employee employed as a senior manager under Transport Administration Act – Whether provision of contract of employment ineffective CONTRACT – Breach of contract – Construction of contractual confidentiality provision – Whether employee contractually precluded from making disclosure to police – Whether employee had legal duty to make disclosure – Inconsistency between confidentiality provision and s 316 Crimes Act –

Whether disclosure precluded by Privacy and Personal Information Protection Act CONTRACTS – Remedies – Damages ADMINISTRATIVE LAW – Judicial review – Whether to extend time to commence proceedings – Application brought 79 days out of time – Rule 59.10 of the Uniform Civil Procedure Rules – Public Interest – Extension of time granted ADMINISTRATIVE LAW – Jurisdiction – s 68O Transport Administration Act STATUTORY CONSTRUCTION – ss 68N and 68O Transport Administration Act – Whether s 68O operates to preclude judicial review or remedies for breach of contract – reg 30 Transport Administration (Staff) Regulation – What procedural fairness requirements regulation imposes – Privacy and Personal Information Protection Act – s 4 – Whether definition of personal information extends to information about an individual's criminal activities – s 62 – Whether offence confined to corrupt disclosure or use of personal information – Crimes Act – s 316 – Whether s 62 Privacy and Personal Information Protection Act provides basis for a reasonable excuse under s 316(c) of the Crimes Act.

[Broadbent v Commissioner of Police \[2021\] NSWCATAD 287](#)

ADMINISTRATIVE LAW – access to government information – access application – conclusive presumption against disclosure – legal professional privilege – documents affecting law enforcement and public safety – public interests in favour of disclosure – public interests against disclosure – whether overriding public interest against disclosure.

[Henry & Ors v Hazzard \(No 2\) \[2021\] NSWSC 1235](#)

CIVIL PROCEDURE – Notices to produce – Before hearing – Objection to production of material – Public interest immunity.

[Raed Hariz v Commissioner of Police \[2021\] NSWCATAD 285](#)

ADMINISTRATIVE LAW – Public access to government information – Request for information – Balancing public interest considerations – Prejudice the supply of confidential information that facilitates the effective exercise of an agency's functions – reveal an individual's personal information – contravene an information protection principle under the Privacy and Personal Information Protection Act 1998 – contravene a provision of another Act (Surveillance Devices Act 2007) that prohibits disclosure of information.

[Wojciechowska v Commissioner of Police \[2021\] NSWCATAD 284](#)

ADMINISTRATIVE LAW – jurisdiction of the tribunal – matter between a State and a resident of another State – whether tribunal exercising judicial power or administrative power. ADMINISTRATIVE LAW – access to government information – correct and preferable decision – whether respondent did not hold any further information – whether the public interest consideration against disclosure of a deliberation, personal information and a secrecy provision, on balance outweighs the public interest consideration in favour

of disclosure. Whether there is an overriding public interest against disclosure of the information in the way requested by the applicant.

[Grant v Registrar, Births, Deaths and Marriages \[2021\] NSWCATAD 282](#)

ADMINISTRATIVE LAW – registration of birth – whether Registrar should correct the Applicant's name recorded in the Register Grant v Registrar, Births, Deaths and Marriages [2021] NSWCATAD 282.

[Cleverley v Harness Racing New South Wales \[2021\] NSWCATAD 281](#)

ADMINISTRATIVE LAW – access to government information – whether prejudice to the effective exercise of an agency's functions – whether prejudice to the conduct, effectiveness or integrity of any test or investigation – public interest in transparency and accountability – balancing public interest considerations.

[DOZ v NSW Trustee and Guardian \[2021\] NSWCATAD 280](#)

ADMINISTRATIVE REVIEW – financial management – where managed persons estate committed to NSW Trustee and Guardian – where NSW Trustee and Guardian made decisions to sell of protected person's home – where protected person's sons living in home – where substantial debts owed by protected person's estate that cannot be paid without sale of property – whether correct and preferable decision.

LEGISLATION

Commonwealth

[Autonomous Sanctions \(Designated and Declared Persons—Myanmar\) Amendment \(Continuation of Effect\) Instrument 2021](#)

This instrument continues the designations and declarations of 5 persons who the Foreign Minister is satisfied continue to meet the criteria for targeted financial sanctions and travel bans under the Autonomous Sanctions Regulations 2011.

[Royal Commissions Amendment \(Defence and Veteran Suicide Private Sessions\) Regulations 2021](#)

This instrument amends the Royal Commissions Regulations 2019 to prescribe the Royal Commission into Defence and Veteran Suicide as a Royal Commission that is authorised to use private sessions.

[Competition and Consumer \(Consumer Data Right\) Amendment Rules \(No. 1\) 2021](#)

This instrument amends the Competition and Consumer (Consumer Data Right) Rules 2020 to facilitate greater participation in the Consumer Data Right (CDR) regime by participants and consumers, provide greater control and choice to consumers in sharing their data, promote innovation of CDR offerings including intermediary services, and enable services to be more effectively and efficiently provided to customers.

[Do Not Call Register \(Access Fees\) Amendment Determination 2021 \(No.1\)](#)

28/09/2021 - This determination amends the Do Not Call Register (Access Fees) Determination 2017 to increase the fees set out in Part 2 of that determination.

NSW

Regulations and other miscellaneous instruments

[Administrative Arrangements \(Administrative Changes—Ministers and Public Service Agencies\) Order \(No 3\) 2021](#) (2021-583) — published LW 6 October 2021

[Administrative Arrangements \(Interim Ministerial Changes\) Order 2021](#) (2021-582) — published LW 5 October 2021

[Uniform Civil Procedure \(Amendment No 98\) Rule 2021](#) (2021-585) — published LW 8 October 2021

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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

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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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