



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

On 15 February 2018, the NSW Civil and Administrative Tribunal handed down its landmark decision in *Waters v Transport for NSW* [2018] NSWCATAD 40 – a case concerning privacy in Australia. Waters, a Gold Opal Card user, brought proceedings against Transport of NSW after taking issue with the department's decision to make registration of Gold (senior/pensioner) and Silver (concession) Opal Cards mandatory, meaning that a record of Waters' physical movements when using public transport was being retained and linked to his identity via the Opal Card number.

While Waters did not object to the collection of information about his identity, he did object to the fact that some users could choose to use public transport anonymously (an option available for Adult Opal Card users) while others, like himself, could not.

Accordingly, Waters argued that Transport for NSW was in breach of Information Protection Principle 1 of the Privacy and Personal Information Protection Act 1998 (NSW), which stipulates that a public sector agency must not collect personal information unless it is collected for a lawful purpose that is directly related to one of its functions/activities and "the collection of the information is reasonably necessary for that purpose". In response, Transport for NSW argued that Silver and Gold Opal Cards needed to be registered in order to ensure that people were not fraudulently claiming concession fares.

The Tribunal, however, found in favour of Waters and held that the department's collection of a person's travel history was not necessary for fraud prevention purposes. The Tribunal further held that while it could not order the same result for all other Gold Opal Card users (as Waters did not have standing to make a claim in relation to the personal information of anyone other than himself), its findings as to the breach of IPP 1 "would be applicable to persons who wished to avail themselves of an unregistered card".

MEDIA

Australian Information Commissioner and Privacy Commissioner's investigation into published MBS / PBS dataset finalised

The Australian Information Commissioner and Privacy Commissioner, Timothy Pilgrim, concluded his investigation into the Department of Health's publication of Medicare

Benefits Schedule (MBS) and Pharmaceutical Benefits Schedule (PBS) data on 23 March 2018. The investigation concluded by way of an enforceable undertaking offered by the Department, and accepted by the Commissioner. <https://www.oaic.gov.au/media-and-speeches/statements/australian-privacy-commissioner-s-investigation-into-published-mbs-and-pbs-data-sets>

Recommendations to reduce disproportionate Indigenous incarceration must not be ignored

The Law Council backed the Australian Law Reform Commission's (ALRC) Indigenous incarceration report and warned that its compelling recommendations must not be shelved like those from the 1991 Royal Commission into Aboriginal Deaths in Custody report. <https://www.lawcouncil.asn.au/media/media-releases/recommendations-to-reduce-disproportionate-indigenous-incarceration-must-not-be-ignored>

ALRC Report: Pathways to Justice—Incarceration Rate of Aboriginal and Torres Strait Islander Peoples

The Australian Law Reform Commission report, Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, was tabled in Parliament. Implementation of the 35 ALRC recommendations will reduce the disproportionate rate of incarceration of Aboriginal and Torres Strait Islander peoples and improve community safety. <https://www.alrc.gov.au/news-media/media-release/pathways-justice-indigenous-incarceration>

New Deputy Director of Public Prosecutions

Attorney General Mark Speakman announced the appointment of Peter McGrath SC as a Deputy Director of Public Prosecutions for NSW. He commenced as Deputy Director of Public Prosecutions on 3 April 2018. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/new-deputy-director-of-public-prosecutions.aspx>

Review of digital assets after death laws

The NSW Law Reform Commission will examine laws that affect access to a person's social media accounts and other digital assets after they die or become incapacitated. Attorney General Mark Speakman announced recently.

https://www.theguardian.com/media/2018/mar/14/australias-media-companies-join-forces-to-fight-chilling-security-laws?CMP=soc_567

Law Council applauds Senate's call for an end to court funding crisis

The Senate has overwhelmingly [passed a motion](#) calling for adequate funding of the Federal Circuit Court and the Family Court, where parties can be forced to wait up to three years before final hearing. The motion also calls for the tabling of the 2014 KPMG report into the funding of the federal courts, and the Ernst & Young associated costings, prior to the Senate voting on the Family Law Amendment (Parenting Management Hearings) Bill 2017. <https://www.lawcouncil.asn.au/media/media-releases/law-council-applauds-senate-s-call-for-an-end-to-court-funding-crisis->

OAIC: Facebook and Cambridge Analytica

The Commissioner is aware of the reports that users' Facebook profile information was acquired and used without authorisation. The Office is making inquiries with Facebook to ascertain whether any personal information of Australians was involved and whether any further regulatory action is required. <https://www.oaic.gov.au/media-and-speeches/statements/facebook-and-cambridge-analytica>

CASES

[Sheehy v Commissioner of Police; Rapisarda v Commissioner of Police; McDonald v Commissioner of Police; Housego v Commissioner of Police \[2018\] NSWCATAD 73](#)

ADMINISTRATIVE LAW – public access to government information – Request for information concerning a complaint under Part 8A of Police Act 1990 alleging police misconduct – police required to provide information to investigation – Personal information – whether prejudice to the effective exercise of an agency's functions – public interest in transparency and accountability - balancing public interest considerations – confidentiality of complainant's identity under Part 8A of Police Act 1990.

[Boyd trading as Kalana Homes v Commissioner for Fair Trading \[2018\] NSWCATOD 46](#)

ADMINISTRATIVE REVIEW - Home Building Act 1989 - Disciplinary proceedings – breach of statutory warranties – rectification orders – failure to comply – reasonable cause – improper conduct – defence - imposition of penalties – protection of consumers.

[Budrodeen v Commissioner of Victims Rights \[2018\] NSWCATAD 67](#)

ADMINISTRATIVE LAW – merits review- Victims Rights and Support – restitution order against person convicted of relevant offence – dispute regarding culpability despite a plea of guilty and conviction.

[Gilleland v Commissioner of Police, NSW Police Force \[2018\] NSWCATAD 68](#)

ADMINISTRATIVE REVIEW – government information - applicant sought access to a copy of a video recording of an incident involving the applicant and a member of her family – a copy of the video recording was provided to

the respondent at the time police attended the home of the applicant following the incident – applicant granted access by viewing the video at the offices of the respondent – respondent refused to provide a copy of the video as requested by the applicant - whether there was an overriding public interest against disclosure of the video in the form requested by the applicant.

PRACTICE AND PROCEDURE

Law Council consults on Review of Australian Solicitors' Conduct Rules

The Law Council is undertaking a review of the Australian Solicitors' Conduct Rules. This is the first comprehensive review of the Rules since they were first promulgated in June 2011. The Law Council's Professional Ethics Committee has developed a [Consultation Discussion Paper for the Review](#) and invites comments and submissions on the issues raised and discussed. [Read more here](#). The closing date for Submissions is 31 May 2018, which may be lodged [here](#).

Law Council of Australia Submissions

21 March 2018 – Law Council
[Review of the Identity-matching Services Bill 2018 and the Australian Passports Amendment \(Identity-matching Services\) Bill 2018](#)
21 March 2018 – Law Council
[Additional submission on National Security Legislation Amendment \(Espionage and Foreign Interference\) Bill 2017 \(EFI Bill\)](#)

ALRC Review of the Family Law System – Call for submissions

The Australian Law Reform Commission (ALRC) has released an [Issues Paper for its Review of the Family Law System](#), and is calling for submissions from the public. The Issues Paper released provides discussion of issues identified in the Terms of Reference, and asks questions about how they could be addressed.

The ALRC invites submissions in response to the 47 questions and analysis in the Issues Paper, which is available on the ALRC website at alrc.gov.au/publications. Submissions are due to the ALRC by 7 May 2018.

OAIC Key dates

[Immigration Data Breach Privacy Complaint](#)
Closes 4pm, 19 April 2018.
[Australian Government Agencies Privacy Code](#)
Commences 1 July 2018.

Current Inquiries

[Judiciary Amendment \(Commonwealth Model Litigant Obligations\) Bill 2017](#)

The Senate referred the Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 8 May 2018. Submissions closed on 28 February 2018.

[The adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying](#)

On 7 September 2017 the Senate referred the below matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 29 November 2017. On 19 October 2017 the Senate extended the committee's reporting date to the last sitting day in March 2018.

NSW

[ICAC: Public inquiry into allegations concerning former Canterbury City Council](#)

The ICAC will hold a public inquiry commencing on Monday 16 April 2018 as part of an investigation it is conducting into allegations concerning the former Canterbury City Council (Operation Dasha).

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

Tables of prosecution briefs with the DPP and outcomes. Last updated 28 March 2018.

[Land and Environment Court: Pilot Duty Lawyer Scheme](#)

A duty lawyer scheme will be trialled in the Land and Environment Court for a 6 month period commencing 6 April 2018. The pilot scheme is aimed at assisting self-represented litigants in Classes 4 and 5 of the Court's jurisdiction. If it proves successful it may be broadened to other Classes or types of proceedings in the Court.

[NCAT: Feedback Assist' improving customer service](#)

Visitors to the NCAT website can now provide feedback and suggestions using the Feedback Assist tool.

JUDCOM

29 March 2018 [Sentencing Bench Book Update 40 published](#)

21 March 2018 [Civil Trials Bench Book Update 35 Published](#)

LEGISLATION

COMMONWEALTH

[Intelligence Services Amendment \(Establishment of the Australian Signals Directorate\) Bill 2018](#)

Finally passed both Houses 28/03/2018

Amends: the Intelligence Services Act 2001 to: establish the Australian Signals Directorate (ASD) as an independent statutory agency within the Defence portfolio reporting directly to the Minister for Defence; amend ASD's functions to include providing material, advice and other assistance to prescribed persons or bodies, and preventing and disrupting cybercrime; require the Director-General of ASD to brief the Leader of the Opposition about matters relating to ASD; and give the Director-General powers to employ persons as employees of ASD; and 18 Acts to make consequential amendments.

NSW

Bills Introduced

Government

Justice Legislation Amendment Act 2018 No 4 — Assented to 21 March 2018.

The Act makes a number of amendments to Acts relating to courts and crimes. Details are outlined here:

[Liquor and Gaming Legislation Amendment Bill 2018](#)

[Liquor and Gaming Legislation Amendment Act 2018 No 7](#) — Assented to 21 March 2018.

[Casino Control Amendment Act 2018 No 8](#) — Assented to 21 March 2018.

For the full text of Bills, and details on the passage of Bills, see [Bills](#).

Proclamations commencing Acts

[Gaming Machines Amendment \(Leasing and Assessment\) Act 2018 No 9](#) (2018-111) — published LW 29 March 2018.

[Liquor and Gaming Legislation Amendment Act 2018 No 7](#) (2018-112) — published LW 29 March 2018.

Regulations and other miscellaneous instruments

[Law Enforcement \(Powers and Responsibilities\) Amendment \(Crime Scenes in Rural Areas\) Regulation 2018](#) (2018-113) — published LW 29 March 2018.

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with the appropriate expertise and achieving maximum efficiency.

Instructions may be emailed to nswgovtlegal@tglaw.com.au at anytime.

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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 email address will be monitored during normal business hours (9.00 am to 5.00 pm (EST), Monday to Friday).

Thomson Geer will use its best endeavours to provide the Help Desk Services within one business day of the query being logged.

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