



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Issue 60 of our NSW Public Sector Newsletter.

One of the key things of interest in this edition is the NSW Information Commissioner's release of the eighth annual Report on the operation of the GIPA Act 2017-2018. This Report is a comprehensive assessment of the operation of the right to information legislation in New South Wales. It promotes greater transparency for the NSW community by examining the performance of over 220 government agencies and providing important guidance to policy makers and agency heads.

We cover this, and much more, in detail below.

[IPC: GIPA Act report reveals information access applications and proactive release by agencies on the rise in 2017/18](#)

The NSW Information Commissioner has released the eighth annual Report on the operation of the GIPA Act 2017-2018. The report can be read in its entirety here: [Report on the Operation of the Government Information \(Public Access\) Act 2009 \(GIPA Act\) 2017-2018](#)

MEDIA

Data ethics panel to advise councils

In an Australian-first, a specialised data ethics panel has been appointed to help councils improve the way they manage citizens' personal information.

[https://www.lgag.asn.au/-/data-ethics-committee-to-advise-local-government-sector](#)

Open Justice under Examination

The NSW LRC will begin an extensive review of laws that impact access to court information. The Open Justice Review will determine whether our laws strike the right balance between protecting the rights of victims and witnesses, privacy, confidentiality and the public interest in open justice.

[https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/open-justice-under-examination.aspx](#)

Labor Turns Its Back on Regional and Rural Australia

Special Minister of State Alex Hawke today confirmed that he had changed regulations regarding the way communications allowances can be spent by parliamentarians. Mr Hawke said that the changes will ensure all communities across Australia get the same opportunity to receive information from their Federal Member, closing an anomaly in the old system.

[https://www.smos.gov.au/media-release/2019/02/27/labor-turns-its-back-regional-and-rural-australia-0](#)

Law Council calls for ALRC review of suppression orders, uniformity across jurisdictions

The Law Council of Australia is calling for national uniformity of suppression orders and an examination of whether such laws need to be reviewed in the digital era.

[https://www.lawcouncil.asn.au/media/media-releases/law-council-calls-for-alrc-review-of-suppression-orders-uniformity-across-jurisdictions](#)

Telcos directed to comply with customer data obligations

The ACMA has directed 11 telecommunications providers to comply with their obligations that support emergency services across Australia. ACMA investigations found the telcos had failed to provide data, or provided inaccurate data, to the Integrated Public Number Database (IPND).

[https://www.acma.gov.au/theACMA/telcos-directed-to-comply-with-customer-data-obligations](#)

Have Your Say on National Defamation Law

The NSW-led process of reforming national defamation laws has reached another significant milestone with the release of the Council of Attorneys-General's (CAG) discussion paper, Attorney General Mark Speakman announced today.

[https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/have-your-say-on-national-defamation-law.aspx](#)

Anniversary of Notifiable Data Breaches scheme

One year on from its introduction in February 2018, the Notifiable Data Breaches scheme is driving increased awareness and action on personal information security, Australian Information Commissioner and Privacy Commissioner Angelene Falk said today. <https://www.oaic.gov.au/media-and-speeches/news/anniversary-of-notifiable-data-breaches-scheme>

LCA Opinion Piece: Breach of duties from Lawyer X, police an attack on democracy and justice

However, unlike other professions, lawyers are vested with a unique, paramount duty to the court and to promote the rule of law, which goes to the very heart of our democracy. In a rare unanimous judgment, seven High Court judges held that Lawyer X's actions in informing against clients constituted "fundamental and appalling breaches" of her duties to the court and to her clients. <https://www.lawcouncil.asn.au/media/news/opinion-piece-breach-of-duties-from-lawyer-x-police-an-attack-on-democracy-and-justice>

LCA: AAT appointments must be transparent and merit-based

The Law Council of Australia has raised serious concerns regarding the Federal Government's processes in appointing members to the Administrative Appeals Tribunal (AAT), describing it as secretive with the potential to undermine public confidence. <https://www.lawcouncil.asn.au/media/media-releases/aat-appointments-must-be-transparent-and-merit-based>

Attack on State's Judiciary concerning

The Law Society of NSW, which represents the interests of the state's 34,000 solicitors, has voiced its concerns about media criticism of the Chief Judge of the Land and Environment Court of NSW, including media claims of 'judicial overreach' in relation to a recent and extensive judgment by the Honourable Chief Judge Brian Preston SC. <https://www.lawsociety.com.au/resources/news-and-media/attack-on-states-judiciary-concerning>

Commissioner welcomes COAG endorsement of the National Principles for Child Safe Organisations

The National Children's Commissioner, Megan Mitchell, welcomes the Council of Australian Governments (COAG) endorsement of the National Principles for Child Safe Organisations. <https://www.humanrights.gov.au/news/media-releases/commissioner-welcomes-coag-endorsement-national-principles-child-safe>

LCA: Report highlights why 'catastrophic' Family Court merger must be rejected by Senate

A Senate report into the proposed merger of the Family Court of Australia and Federal Circuit Court has exposed deep flaws and overwhelming opposition with the plan, says the Law Council of Australia. The dissenting report also recommended no reform take place until results from an Australian Law Reform Commission (ALRC) inquiry are released in April – a position strongly advocated by the Law Council (19 February 2019). <https://www.lawcouncil.asn.au/media/media-releases/report-highlights-why-catastrophic-family-court-merger-must-be-rejected-by-senate>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Federal election 2016—Reissue #2](#)

This paper provides a comprehensive set of statistical tables regarding the 2016 Federal election held on 2 July 2016 and updates the Senate tables, previously published in the papers Federal election 2016 (initial results) and Federal election 2016—Reissue (showing the 2017 special counts in Western Australia and South Australia), affected by the 2017 special counts in NSW, Queensland, Western Australia and Tasmania, and the 2018 special counts in South Australia and the ACT.

[Seven ways the government can make Australians safer – without compromising online privacy](#)

If the next government is serious about protecting Australian businesses and families, here are seven concrete actions it should take immediately upon taking office, suggests Damien Manuel.

[Cross-border justice: exploring ways to improve access to legal assistance along the NSW/Victorian border](#)

Many border communities experience complex and unique challenges in accessing justice and have a proportionally higher demand for legal services than other parts of Victoria and New South Wales.

[Review of Model Defamation Provisions: discussion paper](#)

This discussion paper invites public feedback on the Model Defamation Provisions to assess whether the existing laws are meeting their policy objectives, particularly in response to the rise of online publications and technological changes since the provisions were developed.

[Laws designed to silence: the global crackdown on civil society organizations](#)

An alarming global trend has surfaced in which states are introducing and using laws to interfere with the right to freedom of association and to hamper the work of civil society organizations and individuals who participate in them. Laws designed to silence: the global crackdown on civil society organizations.

[Management of Smart Centres' Centrelink Telephone Services – Follow-up](#)

The objective of the audit was to examine the extent to which the Department of Human Services (Human Services) has implemented the recommendations made by the Australian National Audit Office (ANAO) in Auditor-General Report No. 37 of 2014–15 Management of Smart Centres' Centrelink Telephone Services; as well as Human Services' performance against call wait time and call blocking metrics.

[The Impact of Private versus Public Legal Representation on Criminal Proceedings](#)

Legal Aid NSW indictable matters assigned to private defence lawyers are more likely to be finalised at a later stage in proceedings and are more likely to be finalised in the Higher Court.

CASES

[Davie v Industrial Relations Secretary \(Department of Justice, Corrective Services NSW\) \[2019\] NSWIRComm 1012](#)

VICTIMISATION – application for orders by dismissed Public Service senior executive – reinstate or re-employ – pay compensation – jurisdictional objection – implied repeal of power to make orders sought – privative provision – express displacement – application dismissed due to lack of jurisdiction.

[Del Fabbro v Industrial Relations Secretary on behalf of the Secretary, Department of Justice \(Corrective Services NSW\) \[2019\] NSWIRComm 1015](#)

PUBLIC SECTOR DISCIPLINARY APPEAL – dismissal – appellant allowed inmates to take contraband into correctional centre – serious misconduct – dismissal not unreasonable or unjust – mitigating circumstances – dismissal harsh – appeal allowed – some punishment warranted – no order for back pay.

[Pavlou v Commissioner of Police, NSW Police Force \[2019\] NSWCATOD 27](#)

ADMINISTRATIVE LAW – Security licensing – Where applicant's application for a security licence refused by respondent - Where applicant convicted of fraud and other offences – Where no evidence of remorse – Where applicant not candid with Tribunal – Whether applicant a fit and proper person to hold a licence.

[Zonneville v Department of Justice \[2019\] NSWCATAP 44](#)

APPEAL – scope of NCAT's internal appeal jurisdiction - meaning of s 111 and s 112 of the Government Information (Public Access) Act 2009 - whether certain "questions of law" should be referred to the Supreme Court – whether Member at first instance and on appeal should give permission to record proceedings – whether Members at first instance and on appeal should disqualify themselves for bias.

[Hindmarsh v NSW Ministry of Health \[2019\] NSWCATAD 30](#)

ADMINISTRATIVE LAW – Administrative Review - Access to Government Information – personal information – health information – no consent to release – application of public interest test.

[Treble v Building Professionals Board \[2019\] NSWCATOD 34](#)

ADMINISTRATIVE REVIEW – accredited certifier – findings of unsatisfactory professional conduct – disciplinary orders varied as to amount of fine.

[Fisher v Goulburn Mulwaree Council \[2019\] NSWCATAD 34](#)

ADMINISTRATIVE LAW - GIPA Act – Government Information – access – record keeping – relevance - sufficiency of searches.

PRACTICE AND PROCEDURE

[LSC: Our Annual Reports 2017-2018](#)

Following tabling in both the NSW and Victorian Parliaments, our [2017-2018 Annual Reports](#) for the Legal Services Council and the Commissioner for Uniform Legal Services Regulation are now available (19 February 2019). Inside, you will find progress reports and comparative data regarding the Uniform Law. Highlights are outlined [here](#).

[ABA Arbitration Inquiry Submission: New Deadline 15 March 2019](#)

The Australian Bar Association (ABA) has asked the Hon Roger Gyles AO QC to inquire into and report on actions that the ABA can take to enhance opportunities for Australian Barristers to practice in International Disputes, with a focus on Arbitration in the Asia. Practitioners are encouraged to provide their views to Mr Gyles by 15 March 2019.

[COAG endorses National Principles for Child Safe Organisations](#)

"The National Principles for Child Safe Organisations form a national benchmark for organisations working with children and young people across sectors and the country to develop and maintain a child safe culture.

[OAIC: Commissioner's opening statement – Senate Estimates 19 February 2019](#)

In the six months from July 2018 to December 2018 OAIC received over 10,000 enquiries about privacy, freedom of information and related matters. We received 524 requests to review freedom of information decisions of Australian government agencies, up 42 per cent on the same period the previous year.

[High Court of Australia Bulletins](#)

High Court of Australia Bulletin [2019] HCAB 01 (26 February 2019).

[New Victims and Witnesses' website](#)

The CDPP has launched a [new website](#) to provide information about the prosecution process to victims, witnesses, their carers and support people (26 February 2019).

Attorney General Department: Court Appointments

22 February 2019 [Appointment to the Family Court of Australia](#)

22 February 2019 [Appointments to the Federal Court of Australia](#)

[AAT: New procedures for small business taxation applications](#)

There is a new division at the AAT, in operation from 1 March 2019. The Small Business Taxation Division (SBTD) applicants will have a case manager once they have applied to the AAT. They will pay a reduced application fee and, after the hearing process is concluded, decisions will be finalised within 28 days. See the new [practice direction](#) and [guide](#) for small business taxation decisions. Other relevant documents have been updated to include provision for the SBTD. Find out more about the new SBTD, including how to apply.

[Appointments to the Administrative Appeals Tribunal](#)

The Attorney-General has announced new appointments and re-appointments to the AAT.

[AAT Bulletins 2019](#)

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

[Law Council of Australia Submissions](#)

21 February 2019— Law Council
[Australia's national review of the Beijing Declaration and Platform for Action](#)

[Combating Child Sexual Exploitation Legislation Amendment Bill 2019](#)

On 14 February 2019, the Senate referred the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 22 March 2019.

[2019 COAT National Conference](#)

The 2019 Council of Australasian Tribunals (COAT) National Conference will be held 6 – 7 June in Melbourne.

[Current Consultations](#)

[Review of the Telecommunication and Other Legislation Amendment \(Assistance and Access\) Act 2018](#), Parliamentary Joint Committee on Intelligence and Security. This review is in addition to two separate statutory reviews, amendments to include a review due to commence by April 2019.

[Freedom of Speech Legislation Amendment \(Censorship\) Bill 2018, Freedom of Speech Legislation Amendment \(Insult and Offend\) Bill 2018, Freedom of Speech Legislation Amendment \(Security\) Bill 2018](#)

On 3 December 2018, the Senate extended the committee's reporting date to 8 March 2019.

[NSW](#)

[NCAT new orders: Tenancy law changes for victims of domestic violence](#)

From 28 February 2019 changes to tenancy laws allow tenants to end their tenancy immediately and without penalty if they or their dependent children are in circumstances of domestic violence. Under the Residential Tenancies Act 2010 NCAT can make orders following the service of a domestic violence termination notice. The following application forms have been updated with the new order types.

[Public Consultation: Review of Model Defamation Provisions](#)

The Defamation Working Party is seeking feedback on defamation law in Australia, to assess how the legal principles apply in the digital age and identify areas for national reform. Submissions close on 30 April 2019
[Review of Model Defamation Provisions](#).

[NSW Court Appointments](#)

27 February 2019 [New Magistrate and Court Circuit for Grafton](#)

27 February 2019 [New Magistrate and Court Circuit for Muswellbrook](#)

[NSW LRC: Open Justice Review - Court and tribunal information: access, disclosure and publication](#)

The Attorney General has asked us to review the operation of suppression and non-publication orders and access to information in NSW courts and tribunals. See the [Terms of reference](#). The deadline for preliminary submissions is Friday 31 May 2019. Information about making a submission may be found on our website: [Making a submission](#) (28 February 2019).

[JUDCOM: Sexual Assault Trials Handbook Update 23 published](#)

15 February 2019 - Update 23 of the Sexual Assault Trials Handbook includes: [1-040] Meaning of "consent" Following the commencement of the relevant provisions of the Criminal Legislation Amendment (Child Sexual Abuse) Act 2018, which introduced a new consent provision, s 61HE into the Crimes Act 1900, a brief legislative history of the consent provisions has been included in the Handbook.

[LEGISLATION](#)

[Commonwealth](#)

[Telecommunications \(Interception and Access\) Amendment Regulations 2019](#)

These regulations amend the Telecommunications (Interception and Access) Regulations 2017 to update references to authorities to reflect the transfer of responsibilities from the Attorney-General's Department to the Department of Home Affairs.

[Telecommunications \(Interception and Access\) Amendment \(Form of Warrants\) Regulations 2019](#)

This instrument amends the Telecommunications (Interception and Access) Regulations 2017 to prescribe the forms for control order warrants issued under the Telecommunications (Interception and Access) Act 1979.

[Bills](#)

[Electoral Legislation Amendment \(Modernisation and Other Measures\) Bill 2018](#)

Assent Act no: 2 Year: 2019 01 Mar 2019 - Amends the: Commonwealth Electoral Act 1918 to: make completion of a qualification checklist compulsory in relation to candidate nominations; enable candidates to lodge their nominations and certain other documents electronically; and allow a senior Australian Electoral Commission staff member rather than a senior Divisional Returning Officer to be on the Redistribution Committee for the Australian Capital Territory; and Commonwealth Electoral Act 1918 and Referendum (Machinery Provisions) Act 1984 to amend various aspects of voting and scrutiny processes.

[Parliamentary Service Amendment \(Post-election Report\) Bill 2018](#)

Assent Act no: 4 Year: 2019 01 March 2019 - Amends the Parliamentary Service Act 1999 to change the deadline for publishing the post-election report of election commitments, which is prepared and published by the Parliamentary Budget Office (PBO), from before the end of 30 days after the end of the caretaker period for a general election to the later of either 30 days after the end of the caretaker period for the general election to which the report relates or 7 days before the first sitting day of either or both Houses of the Parliament after the general election to which the report relates.

[Counter-Terrorism \(Temporary Exclusion Orders\) Bill 2019](#)

HR Introduced 21 February 2019 - The Counter-Terrorism (Temporary Exclusion Orders) Bill 2019 (the Bill) is a stand-alone bill that introduces a temporary exclusion orders scheme to delay Australians of counter-terrorism interest from re-entering Australia until appropriate protections are in place.

NSW

Proclamations commencing Acts

[Criminal Legislation Amendment \(Consorting and Restricted Premises\) Act 2018 No 50](#) (2019-84) – published LW 22 February 2019

Regulations and other miscellaneous instruments

[Crimes \(Criminal Organisations Control\) Regulation 2019](#) (2019-85) – published LW 22 February 2019

[Young Offenders Amendment \(Exempted Sexual Offences\) Regulation 2019](#) (2019-92) – published LW 22 February 2019

[Children \(Detention Centres\) Amendment \(Classification\) Regulation 2019](#) (2019-117) – published LW 28 February 2019

[Electoral Amendment \(Exemptions\) Regulation 2019](#) (2019-139) – published LW 28 February 2019

[Justices of the Peace Amendment \(Exemptions\) Regulation 2019](#) (2019-124) – published LW 28 February 2019

[Prevention of Cruelty to Animals Amendment \(Penalty Notice Offences\) Regulation 2019](#) (2019-128) – published LW 28 February 2019

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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)
- 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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