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ISSUE 15



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Indemnity costs have been awarded in favour of the former Commissioner of ICAC in relation to the unsuccessful action brought by members of the Obeid family against the ICAC and others. In making the award, His Honour Justice Hammerschlag said that allegations made against the former Commissioner were unmaintainable and irresponsibly made.

Last week, former Minister Ian MacDonald was found guilty of wilful misconduct in public office. The charges arose out of the ICAC's inquiry in relation to the granting of mining licences in the Hunter Valley.

### MEDIA

#### AHRC: Proposed changes to the Racial Discrimination Act

The Australian Human Rights Commission remains of the view that section 18C and 18D of the Racial Discrimination Act, as interpreted by the Courts, strike an appropriate balance between freedom of expression and protection from racial vilification.

<http://www.humanrights.gov.au/news/stories/proposed-changes-racial-discrimination-act>

#### Government ordered to hand over 'highly confidential' timetables

Transport for New South Wales is told to give Sydney's 2018 train timetables, which are expected to detail major disruptions for commuters, to the ABC after a three-year legal battle.

<http://www.abc.net.au/news/2017-03-21/nsw-ordered-to-release-draft-timetables/8372354>

#### OAIC: Centrelink debt recovery system

On March 2, allegations arising from the same matter were referred to the Australian Federal Police. In order not to prejudice any proceedings in relation to this issue the Commissioner will not comment further on this matter until inquiries have concluded.

<https://www.oaic.gov.au/media-and-speeches/statements/centrelink-debt-recovery-system>

#### NSW Ombudsman, crime commission in war of words

A spat between two powerful NSW Government organisations over a police phone bugging scandal escalates, as the ombudsman's office rebukes 'unfounded and inflammatory' comments from the crime commission.

<http://www.abc.net.au/news/2017-03-15/nsw-ombudsman-crime-commission-start-slinging-mud/8356996>

#### LCA: The Justice Project to uncover systemic flaws

The Law Council has announced that it is conducting a comprehensive national review into the impediments to justice in Australia, focusing on those facing significant social and economic disadvantage in our community.

[http://www.lawcouncil.asn.au/lawcouncil/images/1715\\_-\\_The\\_Justice\\_Project\\_to\\_uncover\\_systemic\\_flaws.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/1715_-_The_Justice_Project_to_uncover_systemic_flaws.pdf)

## CASES

### [‘LA’ and Department of Defence \(Privacy\) \[2017\] AICmr 25](#)

Privacy – Privacy Act 1988 Part III – Australian Privacy Principles – APP6 – Unauthorised disclosure of personal information – Compensation awarded – Non-economic loss – Aggravated damages not awarded – Section 52(3) expenses awarded

### [‘KZ’ and Australian Federal Police \(Freedom of information\) \[2017\] AICmr 24](#)

Freedom of Information – Whether disclosure would prejudice lawful methods or procedures – Whether disclosure is contrary to an order of the Australian Crime Commission – Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – Whether disclosure of personal information unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 37(2)(b), 46(b), 47E(d) and 47F

### [‘KX’ and Department of Veterans’ Affairs \(Freedom of information\) \[2017\] AICmr 23](#)

Freedom of Information – Whether reasonable steps taken to locate documents – (CTH) Freedom of Information Act 1982 s 24A

### [‘KW’ and Department of Foreign Affairs and Trade \(Freedom of information\) \[2017\] AICmr 21](#)

Freedom of Information – Charges – Request for waiver of charge – Whether giving access to documents is in the general public interest or in the interest of a substantial section of the public – (CTH) Freedom of Information Act 1982 s 29

### [Metro Mining Limited and Department of the Environment and Energy \(Freedom of information\) \[2017\] AICmr 19](#)

Freedom of Information – Whether material obtained in confidence – (CTH) Freedom of Information Act 1982, s 45

### [Wall v Barham \[2017\] NSWCATAP 61](#)

CIVIL AND ADMINISTRATIVE TRIBUNAL – whether refusal to give appellant an extension of time to prepare documents constitutes a denial of procedural fairness

– whether appellant has established the Tribunal “refused to hear” from her

### [State of NSW v Kay \[2017\] NSWSC 274](#)

SUPPRESSION ORDERS – Court Suppression and Non-Publication Orders Act 2010 – primary objective of administration of justice is to safeguard the public interest in open justice – whether safety of high risk sex offender at risk – whether suppression order necessary – whether evidence sufficient to establish that an order is necessary for the safety of the defendant – whether order of any utility in any event

### [Edward Moses Obeid Snr v David Andrew Ipp \[2017\] NSWSC 271](#)

COSTS – indemnity costs – basis for ordering – where Plaintiffs made grave allegations of misconduct which were either abandoned without explanation or held to be without merit – indemnity costs warranted

### [Wotton v State of Queensland \(No 6\) \[2017\] FCA 245](#)

HUMAN RIGHTS – where first respondent found to have engaged in unlawful discrimination – whether Court has power to grant relief against the second respondent when no findings of liability against him – whether appropriate to order the respondent to consider giving an apology – whether respondent should be ordered to publish public statement DAMAGES – pre-judgment interest – entitlement and calculation COSTS – whether lump sum costs order appropriate – whether appropriate to order costs to be paid prior to the conclusion of the representative proceeding

### [Kennett v Financial Ombudsman Service Ltd \[2017\] NSWCATAP 59](#)

STATUTORY INTERPRETATION – meaning of s 79F(1) of Fair Trading Act 1987 – whether that provision requires that, to constitute a consumer claim, the services must be provided in trade or commerce

### [Ahmed v Commissioner of Police, NSW Police Force \[2017\] NSWCATAD 73](#)

ADMINISTRATIVE REVIEW – decision to revoke security industry licence – whether applicant a fit and proper person to hold a licence – whether it is in the public interest for applicant to hold a licence – applicant provided security industry training without the appropriate licence – previously convicted of same offence

[Director of Public Prosecutions \(Cth\) v Pratten \(No 2\) \[2017\] NSWCCA 42](#)

CRIMINAL LAW – prosecution appeal against sentence – whether error in assuming that respondent’s tax liabilities had been repaid in absence of evidentiary foundation for assumption – whether erroneous assumption resulted in overly lenient sentence CRIMINAL LAW – prosecution appeal against sentence – whether respondent entitled to leniency as a first-time offender – whether error in finding that respondent had no prior criminal record in circumstances where some offences, but not convictions, predated other offences – where respondent also had separate prior conviction – application of Crimes Act 1914 (Cth) s 16A(2)(m) STATUTORY INTERPRETATION – Crimes Act 1914 (Cth) s 16A – whether terms of provision reflect general law sentencing principles – whether general law principles able to be accommodated within terms of provision

[CEU v University of Technology Sydney \[2017\] NSWCATAD 79](#)

ADMINISTRATIVE LAW – Health Privacy Principles 2, 9 and 11 of the Health Records and Information Protection Act 2003 – whether provision of health information by one administrative unit of an agency to another constitutes ‘disclosure’ – whether diagnosis of alcohol dependence accurate – whether applicant’s diary collected by agency – whether notes collected were irrelevant, excessive, inaccurate or unreasonably intrusive – whether health information disclosed as alleged on 21 May 2015 - meaning of ‘disclosure’ in Health Privacy Principle 11

## PRACTICE AND PROCEDURE

### Latest HCA Bulletin

The High Court of Australia (HCA) has released the latest [High Court Bulletin \[2017\] HCAB 2](#)

### AHRC: Human Rights Legislation Amendment Bill 2017

The Commission has made a submission to parliament on the proposed changes to the Racial Discrimination Act and Australian Human Rights Commission Act.

<http://www.humanrights.gov.au/news/stories/human-rights-legislation-amendment-bill-2017>

### OAIC: Data + Privacy Asia Pacific Conference 2017

Privacy and data protection regulators from across the Asia Pacific region will join Australian industry leaders and data experts for the Data + Privacy Asia Pacific Conference in Sydney on 12 July this year.

<https://www.oaic.gov.au/media-and-speeches/media-releases/data-privacy-asia-pacific-conference-2017>

### Law Council of Australia: Submissions

21 March 2017: [Strengthening the National Security of Australia’s Critical Infrastructure Discussion Paper](#) (3257)

20 March 2017: [Design and Distribution Obligations and Product Intervention Power \(BLS\)](#) (3256)

### AAT Bulletin

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

[Issue No. 12/2017, 20 March](#)

[Issue No. 11/2017, 13 March 2017](#)

### ACMA: Proposed new rules to streamline researchers’ access to de-identified data

The Australian Communications and Media Authority is consulting on remaking the [Telecommunications Integrated Public Number Database Scheme 2007](#). If the IPND Scheme is not remade before April 2017, it will sunset.

### COAT National Conference, 8 - 9 June 2017

[COAT National conference](#) will be held in conjunction with the COAT NSW Conference in Sydney on 8 & 9 June 2017.

### Commonwealth Consultations

13 April 2017 - Closing date for submission to the AGD for its review of the Statutory Declarations Regulations 1993 (Cth)

October 2017 - Closing date for comments to the FCA on the General Practice Notes

### NSW Civil Trials Bench Book Update 33, March 2017

The [Juries](#) chapter has been revised at [\[3-0045\]](#) to include *Lyons v Queensland* (2016) 90 ALJR 1107 which held that a deaf person who requires the assistance of an interpreter in the jury room is not eligible for jury service. The [particular proceedings](#) chapter includes a new section, “Applications for

judicial review of administrative decisions, including decisions of tribunals”, at [5-8500] written by the Honourable Justice C Adamson of the Supreme Court of NSW [Update 33, March 2017](#)

### NCAT: Email notices available for administrative review, professional discipline and anti-discrimination matters

Email notices of hearing and other outgoing Tribunal correspondence are now available for Administrative & Equal Opportunity Division and Occupational Division matters.

[http://www.ncat.nsw.gov.au/Pages/announcements/20170314\\_email\\_notices\\_for\\_administrative\\_review.aspx](http://www.ncat.nsw.gov.au/Pages/announcements/20170314_email_notices_for_administrative_review.aspx)

### NSW ICAC: Prosecution briefs with the DPP and outcomes

Tables showing outcomes of ICAC-related prosecutions and briefs with the Director of Public Prosecutions.

<http://www.icac.nsw.gov.au/media-centre/media-releases/article/5079>

### NSW ICAC: ICAC corruption prevention program to visit North Coast

The ICAC will visit the North Coast next week, as part of the Commission’s program to bring anti-corruption initiatives and training to centres across the state.

<http://lawsociety.com.au/cs/groups/public/documents/internetcontent/1270962.pdf>

### NSW ICAC: Keeping it together: systems and structures in organisational change

The ICAC has released a new publication to help alert public sector managers to the corruption pitfalls during and following organisational change.

<http://www.icac.nsw.gov.au/documents/preventing-corruption/research-1/4943-keeping-it-together-systems-and-structures-in-organisational-change-14mar17/file>

### NSWs Land and Environment Court Judicial Newsletter

13 March 2017 - [Volume 9 Issue 1](#) of the Court’s Judicial Newsletter is now available.

<http://lawsociety.com.au/cs/groups/public/documents/internetcontent/1270962.pdf>

### New South Wales consultations

17 March 2017 - Closing date for comments to the NSWLRC on Consultation Paper 18 - Dispute resolution: model provisions.

### Protest prohibited: Commissioner of Police v Keep Sydney Open

Part 4 of the SO Act creates a regime to protect people from being prosecuted when they seek to exercise those rights. However the KSO case reveals flaws in the statutory framework which are currently facilitating the erosion of these essential democratic rights.

<http://lawsociety.com.au/cs/groups/public/documents/internetcontent/1270962.pdf>

## LEGISLATION

### Commonwealth

#### Public Governance, Performance and Accountability Amendment (Fair Work Ombudsman and Registered Organisations Commission Entity) Rules 2017

Tabled HR 20/03/2017; Tabled Senate 20 /03/2017 - This instrument amends Schedule 1 to the Public Governance Performance and Accountability Rule 2014 to list the Fair Work Ombudsman and Registered Organisations Commission Entity as a PGPA Act entity and repeals the item that lists the Office of the Fair Work Ombudsman as it has been combined into the foregoing entity.

<https://www.legislation.gov.au/Details/F2017L00201>

### Bills

#### National Disability Insurance Scheme Savings Fund Special Account Bill 2016

Senate: Introduced and read a first time 20/03/2017; Second reading moved 20/03/2017

Establishes the National Disability Insurance Scheme Savings Fund Special Account to assist the Commonwealth to meet its funding obligations in relation to the National Disability Insurance Scheme

[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5682](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5682)

### NSW

#### Regulations and other miscellaneous instruments

- [Administrative Arrangements \(Administration of Acts—Amendment No 1\) Order 2017](#) (2017-78) — published LW 15 March 2017

- [Administrative Arrangements \(Administrative Changes—Public Service Agencies\) Order 2017](#) (2017-79) — published LW 15 March 2017
- [Child Protection \(Offenders Prohibition Orders\) Amendment \(Corresponding Laws\) Regulation 2017](#) (2017-80) — published LW 17 March 2017

## Bills assented

- Fines Amendment Act 2017 No 6 — Assented to 14 March 2017

## 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](mailto:nswgovtlegal@tglaw.com.au) at anytime.



#### [Mark Feetham](#)

Partner  
+61 2 8248 5847  
+61 414 908 225  
[mfeetham@tglaw.com.au](mailto:mfeetham@tglaw.com.au)



#### [Loretta Reynolds](#)

Partner, Markets  
+61 3 8080 3705  
+61 403 069 819  
[lreynolds@tglaw.com.au](mailto:lreynolds@tglaw.com.au)

If you would like to receive a Contact Card with full list of contacts please email us.

### NEWSLETTER EDITOR



#### [Sylvia Fernandez](#)

Partner  
+61 2 8248 3499  
+61 418 340 118  
[sfernandez@tglaw.com.au](mailto:sfernandez@tglaw.com.au)

### DEDICATED LIBRARIAN

Available to assist NSW Government and agencies as required, at no charge.



#### [Warwick Johns](#)

Librarian  
+61 2 9020 5709  
[wjohns@tglaw.com.au](mailto:wjohns@tglaw.com.au)

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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:

- Calling 02 8248 5810; or
- Emailing [legalhelpdesk@tglaw.com.au](mailto: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)    | 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                             |

### SYDNEY

Level 25  
1 O'Connell Street  
Sydney NSW 2000  
+61 2 8248 5800

### MELBOURNE

Level 39  
Rialto South Tower  
525 Collins Street  
Melbourne VIC 3000  
+61 3 8080 3500

### BRISBANE

Level 16  
Waterfront Place,  
1 Eagle Street  
Brisbane QLD 4000  
+61 7 3338 7500

### ADELAIDE

Level 7  
19 Gouger Street  
Adelaide SA 5000  
+61 8 8236 1300