

31 MAY 2017

ISSUE 19



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

A function of the NSW Independent Commission Against Corruption is education about corruption, including how to report it.

It publishes a biannual newsletter (link below) and reports, such as the recent publication into governance issues in the NSW Aboriginal Land Council network.

<https://www.icac.nsw.gov.au/component/icacsectionlist/corruption-matters/5006?highlight=WyJuZXdzdGV0dGVyIl0=>

### Lindt Cafe siege - findings and recommendations

The State Coroner of NSW has handed down its Findings and Recommendations, after the Inquest into the deaths arising from the Lindt Cafe siege. Link to full report below.

<http://www.lindtinquest.justice.nsw.gov.au/Documents/findings-and-recommendations.pdf>

### MEDIA

#### New laws make intimate image abuse a crime in NSW

People who record or share intimate images without consent could be jailed for up to three years and fined as much as \$11,000 under tough new laws to be introduced by the NSW Government, Attorney General Mark Speakman announced today (21 May 2017)

<http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/new-laws-make-intimate-image-abuse-a-crime.aspx>

#### Two New Magistrates for NSW

The Government has today announced the appointment of Mr Michael Manthorpe PSM as the Commonwealth Ombudsman. Mr Manthorpe's appointment is for a period of five

years commencing on 8 May 2017 (03 May 2017). <http://www.justice.nsw.gov.au/Pages/media-news/media-statements/2017/Two-New-Magistrates-for-NSW.aspx>

#### Three protestors to challenge NSW anti-protest laws in court

Three anti-coal activists say they will challenge the New South Wales Government's anti-protest laws, claiming they are the first to be prosecuted under the legislation (17 May 2017) <http://www.abc.net.au/news/2017-05-17/protestors-to-challenge-nsw-anti-protest-laws-in-court/8534528>

#### High Court won't hear appeal against sentence reduction for NSW cop killer

The High Court refuses to hear an appeal against the sentence for a man who killed NSW police officer Bryson Anderson (12 May 2017) <http://www.abc.net.au/news/2017-05-12/high-court-refuses-appeal-against-sentence-for-mitchell-marbieri/8520794>

#### Ex-Labor boss found guilty of inappropriately using electoral roll

Former NSW secretary Jamie Clements may be fined up to \$22,000 after being found guilty of using electoral roll information for an unauthorised purpose (12 May 2017) <http://www.abc.net.au/news/2017-05-12/former-nsw-labor-secretary-jamie-clements-found-guilty/8520828>

#### Law Review to Review Trust Beneficiary Liability

Attorney General Mark Speakman has asked the NSW Law Reform Commission to review important aspects of the state's laws relating to the liability of beneficiaries of trusts. The NSW Law Reform Commission is due to report to the State Government by 30 April 2018. For

more information visit <http://www.lawreform.justice.nsw.gov.au> (11 May 2017)

<http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/Law-Review-to-Review-Trust-Beneficiary-Liability.aspx>

## New Judge for the District Court and Dust Diseases Tribunal

Attorney General Mark Speakman today announced the appointment of barrister David Russell SC as a judge of the District Court and the Dust Diseases Tribunal of NSW. Mr Russell will be sworn in as a judge of the District Court and the Dust Diseases Tribunal on Wednesday, 24 May 2017 (11 May 2017) <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/New-Judge-for-the-District-Court-and-Dust-Diseases-Tribunal.aspx>

## NSW Announces Big Justices Reform Measures

In a joint Media Release headed "Tough and Smart Justice Reforms Delivering Safer Communities" dated 9 May 2017, the Attorney General, Mark Speakman, the Minister for Police, Troy Grant, and the Minister for Corrections, David Elliott, promised a series of tougher and smarter justice reforms that will according to the NSW Government:

(09 May 2017) <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/tough-and-smart-justice-reforms-delivering-safer-communities.aspx>

## Transforming the family law system

The Turnbull Government today announces the first comprehensive review into the family law system since the commencement of the Family Law Act in 1976, paving the way for long term fundamental reform to better meet the needs of modern Australian families (09 May 2017). <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/SecondQuarter/Transforming-the-Family-Law-System.aspx>

## Broadcast and Content Reform Package Announced

The Government will introduce a comprehensive package of reforms that will support Australia's broadcast sector. This will reduce the exposure of children to gambling advertising and ensure the creation of high quality Australian and children's content (May 2017). <https://www.communications.gov.au/what-we-do/television/broadcast-and-content-reform-package>

## CASES

[Nick Xenophon and Australian Bureau of Statistics \(Freedom of information\) \[2017\] AICmr 42](#)

Freedom of Information – Whether document subject to legal professional privilege – (CTH) Freedom of Information Act 1982 s 42.

[Auld v Independent Liquor and Gaming Authority \[2017\] NSWCATAD 160](#)

ADMINISTRATIVE LAW – joinder of parties – where decision maker applies to join Secretary of Department of Industry as a party – administrator's preference is not to be an active party – relevant considerations when determining whether to join a person who is not the decision maker.

[Chowdhury v Hossain \[2017\] NSWCATAP 109](#)

Appeal – Whether appellant notified of the hearing – whether a denial of procedural fairness – whether rehearing should be ordered.

[Styles v Wollondilly Shire Council \[2017\] NSWCATAP 108](#)

APPEAL – appeal from decision of the Tribunal in the Administrative and Equal Opportunity Division concerning the appellant's application for review of the decision of the respondent to request an advance deposit in dealing with appellant's application for access to specified government information under the Government Information (Public Access) Act 2009 (GIPA Act – scope of access request – whether excessive and unnecessary searches conducted by the respondent – no errors of law or fact identified Jurisdiction - whether Tribunal had power to make an order setting aside a decision of the respondent which was not the subject of the appellant's application for review and which the respondent conceded had been made in error, contrary to s 70(1) of the GIPA Act Costs – a finding of special circumstances warranting an award of costs in favour of the respondent.

[CYL v YZA \[2017\] NSWCATAP 105](#)

PRIVACY AND PERSONAL INFORMATION – Review application dismissed – Appeal by review applicant – Agency disclosed information about internal dispute to anti-discrimination complaints agency – Review applicant had lodged a complaint with that agency - Whether disclosure in issue immune from suit – Whether Tribunal had wrongly excluded matters raised by review applicant from proper scope of the review application – Adequacy of reasons – Procedural fairness – Appeal dismissed. Australian Human Rights Commission Act 1986, s 48; Privacy and Personal Information Protection Act 1998, s 25(b). SUPPRESSION AND ANONYMITY – Orders made restricting circulation of unexpurgated reasons for decision – included restriction to the agency legal representatives presently involved in matter and the agency legal officer – Agency appeal - whether too restrictive – held Tribunal failed to address material consideration and limitation on order unreasonable – Appeal allowed - order varied to allow circulation of unexpurgated reasons to legal representatives and legal advisers where unexpurgated reasons reasonably relevant. Civil and Administrative Tribunal Act 2013, s 49, s 64.

**[Jackson v N K Tiling Pty Ltd \[2017\] NSWCATAP 106](#)**

PROCEDURAL FAIRNESS: rejection of documents not served in accordance with directions and for which no extension of time sought; where party did not understand requirement to seek extension; whether adjournment should have been offered by Tribunal.

**[CXN v Child and Adolescent Specialist Programs and Accommodation \[2017\] NSWCATAD 152](#)**

ADMINISTRATIVE LAW- whether reasons provided by CASPA Services Ltd comply with section 49(3) of the Administrative Decisions Review Act 1997 (NSW) – whether the applicants are entitled to an order under section 52(2) of the Administrative Decisions Review Act 1997 (NSW) – consideration of the content of reasons required to be provided upon request for written reasons – order made for adequate reasons to be provided COSTS – order for quantified costs due to special circumstances pursuant to section 60 of the Civil and Administrative Tribunal Act 2013 (NSW).

**PRACTICE AND PROCEDURE****High Court of Australia: Bulletin**

The latest Bulletin released Bulletin [2017] HCAB 04 (17 May 2017) [http://www.hcourt.gov.au/assets/library/hcabulletin/highcourtbulletin2017\\_04.pdf](http://www.hcourt.gov.au/assets/library/hcabulletin/highcourtbulletin2017_04.pdf)

**AAT: President of the Administrative Appeals Tribunal**

The Hon Justice Duncan Kerr's additional commission as President of the AAT expired on 15 May 2017. Justice Kerr will remain as a judge of the Federal Court of Australia. [The Attorney-General has announced that in the interim](#), the Hon Justice John Logan RFD will act as President (16 May 2017).

**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. 20/2017, 15 May 2017](#)  
[Issue No. 19/2017, 08 May 2017](#)

**OAIC: Developing an APS-wide Privacy Code**

An Australian Public Service (APS) Privacy Code will be developed to support the Australian Government's public data agenda. The Privacy Code will apply to all Australian Government entities subject to the Australian Privacy Act 1988. The Code will be implemented in 2018 (18 May 2017) [Developing an APS-wide Privacy Code](#)

**OAIC Independent review: Privacy (Credit Reporting) Code 2014**

The Office of the Australian Information

Commissioner is currently tendering for the following aspects of the independent review of the Privacy (Credit Reporting) Code 2014. The consultation strategy does not necessarily need to take a two stage approach to consultation. The closing date is May 2017 [Independent review of the Privacy \(Credit Reporting\) Code 2014](#)

**NSW****ICAC: Corruption Matters newsletter Issue 49**

See the latest news from the NSW Independent Commission Against Corruption (19 May 2017) [Corruption Matters newsletter Issue 49 now available](#)

**ICAC: Governance and regulation in the NSW Aboriginal land council network**

The ICAC has released a new publication to help identify and address governance issues in the NSW Aboriginal land council network (15 May 2017) [Governance and regulation in the NSW Aboriginal land council network](#)

**ICAC public inquiry into corruption allegations concerning former Immigrant Women's Health Service CEO (Operation Tarlo)**

The ICAC Operation Tarlo public inquiry has adjourned until Tuesday 13 June 2017 [ICAC public inquiry into corruption allegations concerning former Immigrant Women's Health Service CEO \(Operation Tarlo\)](#)

**NSW Courts – Practice Notes**

[Practice Note SC Gen 20 - Citation of Authority](#) – 15 May 2017

**ARTICLES, PAPERS, REPORTS****The history, mandate and functions of the Auditor-General of Australia**

ANAO: 17 May 2017

In this inaugural edition of audit insights, we look at the history and mandate of the Auditor-General of Australia, the functions delivered under the Auditor-General Act.

<https://www.anao.gov.au/work/audit-insights/history-mandate-and-functions-auditor-general-australia>

**Child Support Collection Arrangements between the Australian Taxation Office and the Department of Human Services**

ANAO: 15 May 2017

The objective of the audit was to assess the effectiveness of the child support collection arrangements between the Department of Human Services (DHS) and the Australian Taxation Office (ATO).

<https://www.anao.gov.au/work/performance-audit/child-support-collection-arrangements-between-ato-and-dhs>

**The NSW prison population simulation model: a policy analysis tool**

Nick Halloran, Ewan Watson, Don Weatherburn; NSW Bureau of Crime Statistics and Research: 8 May 2017

This study finds that it is feasible to build a simple model of the prison system which is easy to maintain, but nonetheless useful, in analysing the likely consequences of changes in arrest, bail and sentencing policy.

<http://www.bocsar.nsw.gov.au/Documents/CJB/Report-2017-NSW-Prison-Population-Simulation-Model-CJB203.pdf>

**Data availability and use: inquiry report Productivity Commission: 8 May 2017**

This report offers guidance on where the benefits of greater data use may be most evident, and ways that governments might engage with the public to generate community understanding of the costs, risks, and benefits associated with data sharing and use. <http://www.pc.gov.au/inquiries/completed/data-access/report>

**Privatisation in NSW: a timeline and key sources**

NSW Parliament, Research Paper: May 2017  
This paper features a timeline of privatisations that have occurred in NSW since 1989 up to and including the recent sales of the titling and registry business of Land and Property Information, and Endeavour Energy. The paper also lists key sources recently published by the NSW Government, the Council of Australian Governments (COAG) and the Commonwealth Government, as well as relevant research, media and stakeholder material.

[Download the full paper as PDF](#)

**LEGISLATION****Commonwealth****Crimes Amendment (Penalty Unit) Bill 2017**

Amends the Crimes Act 1914 to: increase the amount of the Commonwealth penalty unit from \$180 to \$210 from 1 July 2017; delay the first automatic Consumer Price Index (CPI) adjustment of the penalty unit until 1 July 2020; and provide for CPI indexation to occur on 1 July every three years thereafter.

Finally passed both Houses 11 May 2017:  
Assent Act no: 35 Year: 2017 19 May 2017.

[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5813](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5813)

**Telecommunications (Interception and Access – Law Enforcement Conduct Commission of New South Wales) Declaration 2017**

16/05/2017 – This instrument declares the Law Enforcement Conduct Commission an

interception agency for the purposes of the Telecommunications (Interception and Access) Act 1979.

[Telecommunications \(Interception and Access – Law Enforcement Conduct Commission of New South Wales\) Declaration 2017](#)

**NSW****Regulations and other miscellaneous instruments**

[Service NSW \(One-stop Access to Government Services\) Amendment \(Approved Persons\) Regulation 2017](#) (2017-191) – published LW 19 May 2017.

**Bills Updated in the last week**

[Crime and Corruption and Other Legislation Amendment Bill 2017](#)

Introduced on 23/03/2017 Stage reached: Report from Committee on 15/05/2017.

## 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.



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### DEDICATED LIBRARIAN

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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                             |

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