



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Former NSW minister for infrastructure Andrew Kelly and former members of parliament, Eddie Obeid Snr and Joseph Tripodi have been found by the NSW Independent Commission Against Corruption (ICAC) to have engaged in serious corrupt conduct in relation to conduct concerning a public private partnership proposal by Australian Water Holdings. ICAC has recommended that consideration be given to obtaining advice from the DPP with respect to the prosecution of Mr Kelly, Mr Obeid Snr and Mr Tripodi. Click [here](#) to read the full report.

ICAC also recently released its report on Operation Ricco, Investigation into the conduct of former City of Botany Bay Council Chief Financial Officer and others. The ICAC found that former City of Botany Bay Council chief financial officer, Gary Goodman, had engaged in serious corrupt conduct involving false or inflated invoices and incurring personal expenditure of over \$620,000.

The report notes that there were overwhelming failures in the Council's procedures and governance framework that created significant opportunities for corruption of which Mr Goodman and others took full advantage. Eight recommendations have been made to the now Bayside Council to prevent the type of conduct exposed in this investigation from recurring. The ICAC has also recommended that the NSW Government consider adopting a model of local council oversight that is comparable to that applicable to state government agencies.

Read more about the Operation Ricco report [here](#).

MEDIA

eSubpoenas make access to justice easier

Access to justice is now faster, easier and cheaper with a new eSubpoena service enabling people to submit subpoenaed items online to NSW courts, Attorney General Mark Speakman announced today. The online eSubpoena service is now available for the return of subpoenaed documents to registries across the NSW Supreme, District, Local and Land and Environment Courts for civil matters. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/esubpoenas-make-access-to-justice-easier.aspx>

Acting President of Australian Law Reform Commission

Mr Cornell has been appointed for a period of three months, commencing 30 July 2017, while a recruitment process will be undertaken to fill the vacancy left by Emeritus Professor Rosalind Croucher AM. This process will be conducted in accordance with Merit and Transparency Guidelines issued by the Australian Public Service Commission. <https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/ThirdQuarter/Acting-President-of-Australian-Law-Reform-Commission-28-July-2017.aspx>

Three new magistrates for NSW

Attorney General Mark Speakman today announced the appointments of Christopher Halburd, Theresa Hamilton and Brett Shields as magistrates of the Local Court of NSW. Mr Shields will be sworn in as a magistrate on 28 August, while Ms Hamilton and Mr Halburd will join the Local Court bench on 11 September. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/Three-new-magistrates-for-NSW.aspx>

HRLC: Australia takes important step towards more open government

Although Australia has, in many ways, a strong democracy, secrecy has noticeably increased across government. Australia's commitment to the Open Government Forum is a step towards addressing some of the transparency issues that hold us back. <https://www.hrlc.org.au/news/2017/7/27/australia-takes-important-step-towards-more-open-government>

Reducing Reoffending In Juvenile Justice in NSW

Minister for Corrections David Elliott today announced the creation of new caseworker roles at Juvenile Justice, providing support, guidance and discipline to young offenders as part of a commitment to reduce reoffending. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/reducing-reoffending-in-juvenile-justice.aspx>

Political reformation

Prime Minister Malcolm Turnbull has signalled he may be open to fixed four-year terms for federal parliament after Opposition Leader Bill Shorten renewed his call for an overhaul of Australia's electoral system. The change could only be introduced by a referendum. <http://www.abc.net.au/news/2017-07-23/malcolm-turnbull-bill-shorten-fixed-four-year-parliamentary-term/8735690>

The topic of four-year terms for the House of Representatives was also the subject of a Commonwealth parliamentary library research paper in 2000 - http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0001/01RP04

NSW reviews child abuse civil laws

Attorney General Mark Speakman today encouraged the community to have a say on changing laws to make it easier for survivors of child abuse to obtain civil justice, releasing a consultation paper on the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/nsw-reviews-child-abuse-civil-laws.aspx>

ASIC Enforcement Review Taskforce consults on ASIC's telecommunications intercept powers

The Government welcomes today's release of the ASIC Enforcement Review Taskforce position paper titled 'ASIC's Access to Telecommunications Intercept Material'. As part of its review the Taskforce is examining the adequacy of ASIC's information gathering powers, including information obtained from telecommunications interception warrants <http://kmo.ministers.treasury.gov.au/media-release/066-2017/>

The position paper is available on the [Treasury website](#). Interested stakeholders are invited to

comment on the positions put forward by the Taskforce. Submissions for the consultations will close on 17 August 2017.

CASES

[Whish-Wilson; Australian Fisheries Management Authority and \(Freedom of information\) \[2017\] AATA 1098](#)

FREEDOM OF INFORMATION — Access to documents — requests for access to documents relating to fishing operations regulated by agency — documents contain commercially sensitive information — whether disclosure could reasonably be expected to adversely affect fishing operators' cooperation with agency's monitoring program — whether disclosure of documents could reasonably be expected to have substantial adverse effect on the proper and efficient conduct of agency's operations — whether access would, on balance, be contrary to the public interest — whether reasonably practicable for agency to prepare copies of documents modified by the deletion of exempt and irrelevant matter, having regard to the nature and extent of the modification — decisions under review set aside and substituted. Freedom of Information Act 1982, ss 3(2)(b), 4(1), 11A(5), 11B(3), 15, 22, 27, 31B, 47E(d), 47F, 47G, 54L, 54M, 54W(b), 55G, 57A(1)(a), 61(1)(a), 93A

['LY' and Commonwealth Ombudsman \(Freedom of information\) \[2017\] AICmr 68](#)

Freedom of Information — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether contrary to public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982 ss 11A(5) and 47E(d)

[David Albuquerque and Department of Foreign Affairs and Trade \(Freedom of information\) \[2017\] AICmr 67](#)

Freedom of Information — Charges — Requests 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

[Andrew Pascoe and Civil Aviation Safety Authority \(Freedom of information\) \[2017\] AICmr 66](#)

Freedom of Information — Whether documents subject to legal professional privilege — 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 material in documents irrelevant to the request — Whether contrary to the public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982 ss 11A(5), 22, 42, 47E(d) and 47F

[4nature Incorporated v Centennial Springvale Pty Ltd \[2017\] NSWCA 191](#)

ADMINISTRATIVE LAW – challenge to validity of State significant development consent for proposed extension of Springvale coal mine – consent authority’s satisfaction that development would have “a neutral or beneficial effect” on water quality required – whether consent authority’s approach valid ENVIRONMENT AND PLANNING – challenge to validity of State significant development consent for proposed extension of Springvale coal mine – development must have “a neutral or beneficial effect” on water quality under State Environment Planning Policy (Sydney Drinking Water Catchment) 2011 (NSW) cl 10(1) – nature of comparison required STATUTORY INTERPRETATION – delegated legislation – no general principle requiring laxity or flexibility in construction – adherence to basic principles of statutory construction – focus on text and context

[State of New South Wales v Bouffler \[2017\] NSWCA 185](#)

TORTS – trespass to land – whether entry of police officers authorised by law – six police officers entered house occupied by the respondent without his consent – eight officers entered respondent’s property without consent – officers relied on ss 9 and 10 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) – whether officers had requisite state of mind to satisfy ss 9 and 10 – whether officers must each individually have state of mind – whether officers can enter to assist other officers engaged in an arrest – circumstances in which state of mind can be inferred STATUTORY CONSTRUCTION – Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) – whether each officer must individually have state of mind required under ss 9, 10 and 99 – whether context and purpose indicates that meaning is to be given that is different from or qualifies plain meaning – meaning of “reasonable grounds” STATUTORY CONSTRUCTION – Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) – relationship between ss 10 and 99 – whether entry to a premises pursuant to LEPRA, s 10 requires a lawful arrest under s 99 – whether s 10 operates as a derivative of s 99 STATUTORY CONSTRUCTION – Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), s 9 – meaning of “breach of the peace” – whether breach of the peace requires actual or threatened violence – whether threat of harm must be to third person

[Robertson v Director of Public Prosecutions \(NSW\) & District Court NSW \[2017\] NSWCA 180](#)

ADMINISTRATIVE LAW – judicial review – generally – s 32 of Mental Health (Forensic Provisions) Act 1990 – whether applicant eligible under s 32 – whether failure to make finding as

to jurisdiction – whether denial of procedural fairness

[Commissioner of Police \(NSW Police Force\) v Howard Silvers & Sons Pty Ltd \[2017\] NSWSC 981](#)

COMMON LAW – Local Court Appeal – Firearms Act – whether magistrate erred in construction of s 4D – whether object claimed to be a children’s toy falls within s 4D(4) – determination of imitation firearm – necessity to have regard to production and identification of object - appeal allowed – decision set aside – remitted back to the Local Court for decision to be made according to law

[The Owners – Strata Plan No 5225 v Registrar General of New South Wales \[2017\] NSWSC 886](#)

PUBLIC ROAD – dedication at common law – unmade road – land described as road in subdivision created before 1906 – acceptance and use by public – maintenance by Council STATUTORY CONSTRUCTION – s224(3) Local Government Act, 1919 – freestanding operation not subject to s327 – not opening or dedication of road STATUTORY CONSTRUCTION – s327 Local Government Act – scope and operation – inapplicable to exercise of s224(3) power ADVERSE POSSESSION – exclusive physical control – intention to possess as against whole world – not established STANDING – entitlement of body corporate to sue – adjoining land

[White v Commissioner of Fair Trading \[2017\] NSWCATAD 233](#)

ADMINISTRATIVE REVIEW - tattoo parlours – tattooist licence - adverse security determination - fit and proper person - public interest

[Tedder v Commissioner of Police, NSW Police Force \[2017\] NSWCATAD 226](#)

ADMINISTRATIVE LAW – Government information – access to information – form of access - whether overriding public interest against disclosure – relevant considerations - personal information - nature of information sought – public interest - whether release would prejudice the effective exercise of an agency’s functions – whether release would prejudice an investigation - investigation finalised – balancing exercise

PRACTICE AND PROCEDURE

[OAIC: Updated privacy policy](#)

The OAIC has updated its privacy policy. The update includes the following changes outlined here <https://www.oaic.gov.au/media-and-speeches/news/updated-privacy-policy>

[OAIC: Independent review of the Privacy \(Credit Reporting\) Code 2014](#)

The OAIC has completed the tender process,

and contracted PricewaterhouseCoopers (PwC) to conduct an independent review of the Privacy (Credit Reporting) Code 2014 (Version 1.2). More information will be provided as the review progresses. For more information about the CR Code and credit reporting under the Privacy Act see the [Credit Reporting page](#)

[ANAO 2017–18 Corporate Plan](#)

The ANAO 2017–18 Corporate Plan is the ANAO's key strategic planning document. It guides our operating environment and sets out how we will deliver on our purpose. The corporate plan is complemented by the [annual audit work program](#) which reflects the ANAO's strategy and deliverables for the coming year (19 July 2017) ANAO 2017–18 Corporate Plan

Law Council of Australia Submissions 26 July 2017

[Response to Consultation Paper OPCAT in Australia](#)

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. 30/2017, 24 July 2017](#)

[Issue No. 29/2017, 17 July 2017](#)

[AHRC: e-bulletin, 26 July 2017](#)

The Australian Human Rights Commission e-bulletin. Published monthly, this e-bulletin keeps you up-to-date with our programs, projects and news.

NSW

NSW Sentencing Bench Book

For the latest update, see [Update 38, July 2017](#)

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

Last updated 17 July 2017

Victims' involvement in sentencing

The NSW Attorney General has asked us to conduct a review of victims' involvement in the sentencing process. The deadline for preliminary submissions was 31 July 2017. <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Current-projects/VIS/Victims.aspx>

JUDCOM Research Monograph 40

20 July 2017: Transparent and consistent sentencing in the Land and Environment Court of NSW: orders for costs as an aspect of punishment. A particular focus of the study is how orders for costs impact upon the sentencing process. The study suggests a revision of the concepts used for criminal liability for Tier 1 offences under the Protection of the Environment Operations Act 1997 (NSW). To obtain a copy, please order from [shop.nsw](#)

IPC NSW: Have your say on the development of uniform metrics on the use of FOI laws in Australia

Australian Information Commissioners and Ombudsmen, within the remit of each of their jurisdictions and led by NSW, have agreed on six proposed 'Metrics on Public Use of Freedom of Information Access Rights' that can be viewed [here](#). Members of the public, experts and other stakeholders are invited to give your views on the metrics via a short survey [here](#). <http://www.ipc.nsw.gov.au/news-media/news/have-your-say-development-uniform-metrics-use-foi-laws-australia>

LEGISLATION - COMMONWEALTH

[Telecommunications \(Integrated Public Number Database – Permitted Research Purposes\) Instrument 2017](#)

20/07/2017 - This instrument specifies the kinds of research for which access to information in the Integrated Public Number Database may be permitted and repeals the Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2007 (No. 1).

[Telecommunications \(Integrated Public Number Database Scheme - Criteria for Deciding Authorisation Applications\) Instrument 2017](#)

20/07/2017 - This instrument establishes the criteria for the Australian Communications and Media Authority to use in order to decide whether to authorise applications for access to the Integrated Public Number Database for public number directories and researchers, and repeals the Telecommunications (Integrated Public Number Database Scheme – Criteria For Deciding Authorisation Applications) Instrument 2007 (No. 1).

[Telecommunications \(Integrated Public Number Database - Public Number Directory Requirements\) Instrument 2017](#)

20/07/2017 - This instrument establishes the requirements for a public number directory using information from the Integrated Public Number Database.

[Telecommunications \(Integrated Public Number Database – Public Number Directory Additional Information\) Instrument 2017](#)

20/07/2017 - This instrument specifies the additional information that may be included in a public number directory to be that which is agreed between a person and the publisher.

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

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

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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 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 is 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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