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ISSUE 25



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

The purpose of this newsletter is to provide government lawyers with a digestible and relevant snapshot of current news, case law and legislation. We welcome feedback or suggestions for areas of interest at any time. Relevant contact details can be found on the last page of this newsletter.

MEDIA

NSW Trustee and Guardian ends surety bond scheme and apologises to private managers

The NSW Civil & Administrative Tribunal (NCAT) recently held that NSW Trustee & Guardian could not require a private manager to purchase a Surety Bond without NCAT or the Supreme Court requiring the manager to give security. We have decided not to appeal against this decision and therefore we will be ending the Surety Bond Scheme that has been in operation. NSW Trustee & Guardian would like to apologise for any inconvenience and stress caused by the introduction of the Surety Bond Scheme found by NCAT to be without power. We are currently writing to all affected private managers to inform them of our decision. <http://www.tag.nsw.gov.au/surety-bond-scheme.html>

Helping vulnerable families through family law disputes

Vulnerable families, including those experiencing violence, will now have access to new and enhanced services to help them through family relationship breakdowns, with an additional \$9.87 million in funding from the Turnbull Government <https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/ThirdQuarter/Helping-vulnerable-families-through-family-law-disputes.aspx>

Mandatory Independent Hearing and Assessment Panels for all Sydney Councils

Independent Hearing and Assessment Panels (IHAPs) will become mandatory for all councils in Sydney and Wollongong to guard against corruption and lead to better local planning decisions. <http://www.planning.nsw.gov.au/News/2017/IHAPs-to-be-introduced-for-all-Sydney-councils>

Parliamentary inquiry into family law system 'weakened by lack of judicial input'

Federal Labor accuses the Government of continually delaying calling senior judges to give evidence before a parliamentary inquiry into the state of the family law system <http://www.abc.net.au/news/2017-08-09/parliament-inquiry-family-law-system-lacks-judicial-testimony/8790774>

Time to rethink ASIO's compulsory questioning and detention powers

The Law Council today told a Parliamentary Committee that ASIO's current questioning and detention powers appear unnecessary to prevent or disrupt a terrorist act, given other powers already in operation. The President of the Law Council, Fiona McLeod SC, said that the current ASIO questioning and detention powers fail to strike the right balance between protecting the community while upholding the rule of law <https://www.lawcouncil.asn.au/media/media-releases/time-to-rethink-asios-compulsory-questioning-and-detention-powers>

New social media restrictions for public servants

Checking Facebook and liking a post critical of the Government could be enough to see public servants facing disciplinary action, under new guidelines that also say employees may be held accountable for comments other people

make on their Facebook pages. <http://www.abc.net.au/news/2017-08-07/facebook-liking-anti-government-posts-could-cost-public-service/8780660>

ICAC finds former Department of Justice officer corrupt

The ICAC has found that a former Department of Justice officer engaged in serious corrupt conduct by accepting cash and benefits from an approved supplier, including assisting in the installation of a swimming pool at his home, in return for recommending that the supplier's companies be allocated work. <http://www.icac.nsw.gov.au/media-centre/media-releases/article/5151>

Free Birth Certificates for Vulnerable People in NSW

An outreach program for disadvantaged communities is providing homeless and Aboriginal people with free birth certificates and other support to help them get their lives back on track, Attorney General Mark Speakman announced today. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/free-birth-certificates-for-vulnerable-people.aspx>

Fewer sex abuse convictions despite doubling in court cases: Justice McClellan

The head of the child sex abuse royal commission will call for legal changes to ensure victims are given the best chance of receiving justice, saying in a speech to be delivered today that conviction rates have fallen despite an increase in the number of cases before the courts <http://www.abc.net.au/news/2017-08-02/child-sex-abuse-royal-commission-chair-calls-for-victim-justice/8765792>

New Acting ALRC President and Three New Magistrate Appointments in NSW

On 28 July 2017, there were two important announcements regarding appointments, firstly the appointment of the Acting President of the Australian Law Reform Commission (ALRC) before the commencement of the new President's term in three months; and, additionally, three new magistrate appointments in NSW. <https://www.alrc.gov.au/publications/acting-president-announced>

<http://www.justice.nsw.gov.au/Documents/Media%20Releases/2017/three-new-magistrates-for-NSW.pdf>

NSW Custody Statistics quarterly update June 2017

The NSW prison population reached 13,092 in June this year, not counting prisoners held in police cells. This brings the total increase in the NSW adult prison population over the last 12 months to 3.8 per cent. http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2017/mr-NSW-Custody-Statistics-Quarterly-update-June-2017.aspx

CASES

[NuCoal Resources Ltd v Department of Premier and Cabinet \[2017\] NSWCATAD 245](#)

GOVERNMENT INFORMATION - conclusive presumption of overriding public interest against disclosure – information that would be privileged from production on the ground of client legal privilege – in-house lawyers - secondary material also privileged if that material discloses the privileged communication.

PRACTICE AND PROCEDURE

[ALRC Brief - August 2017](#)

Published on 8 August 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. 32/2017, 7 August 2017](#)

[Issue No. 31/2017, 31 July 2017](#)

NSW

NSW Department of Justice: Practice Notes

PN SC GEN 17 - [Practice Note SC GEN 17 – Supreme Court Representative Proceedings](#).

NSW Sentencing Bench Book

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

[Services for people with disability at NCAT](#)

NCAT has developed new resources NCAT support for people with disability and Can you hear in the hearing room

[NCAT Legal Bulletin Issue 6 of 2017](#)

The NCAT Legal Bulletin provides a summary of relevant and interesting case law of significance to the work of the NSW Civil and Administrative Tribunal. This issue covers the period of June to July 2017

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

Last updated 2 August 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 is 31 July 2017. <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Current-projects/VIS/Victims.aspx>

Royal Commission civil litigation recommendations

The NSW Government is considering the recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse about how to provide justice to victims of future institutional child abuse.

The Department of Justice has developed a consultation paper which identifies some of the potential issues and poses questions about possible options for reform. [Download the consultation paper in PDF](#). Submissions close on 4 September 2017.

LEGISLATION

COMMONWEALTH

Bills Progress

[Fair Work Amendment \(Protecting Vulnerable Workers\) Bill 2017](#)

Amends the Fair Work Act 2009 to: increase maximum civil penalties for certain serious contraventions of the Act; Senate Second reading debate 10 Aug 2017

New Bills

[Australian Border Force Amendment \(Protected Information\) Bill 2017](#)

Registered 09 August 2017, Introduced HR 09 August 2017 - The Australian Border Force Amendment (Protected Information) Bill 2017 (the Bill) amends the Australian Border Force Act 2015 (the ABF Act) to: 1) repeal the definition of protected information in subsection 4(1) of the ABF Act, that includes any information obtained in a person's capacity as an entrusted person, and substitute a definition of Immigration and Border Protection information, so that only specific kinds of information are covered by the secrecy and disclosure provisions in Part 6 of the ABF Act

Regulations

[Census and Statistics \(Statistical Information\) Direction 2017](#)

09/08/2017 - This direction by the Treasurer to the Australian Statistician is to collect certain statistical information on same-sex marriage Census and Statistics (Statistical Information) Direction 2017

[Federal Circuit Court Amendment \(Costs and Other Measures\) Rule 2017](#)

02/08/2017 – These Rules amend the Federal Circuit Court Rules 2001, with costs for family law proceedings and general federal law proceedings

NSW

Bills introduced – 11 August 2017

Government

[Environmental Planning and Assessment and Electoral Legislation Amendment \(Planning Panels and Enforcement\) Bill 2017](#)

Non-Government

[Public Accountability Legislation Amendment \(Sydney Motorway Corporation\) Bill 2017](#)

Bills revised following amendment in Committee – 11 August 2017

[Charitable Fundraising Amendment \(Inquiries\) Bill 2017](#)

Bills passed by both Houses of Parliament – 11 August 2017

[Charitable Fundraising Amendment \(Inquiries\) Bill 2017](#)

[Justice Legislation Amendment Bill 2017](#)

Proclamations commencing Acts

[Independent Commission Against Corruption Amendment Act 2016 No 65 \(2017-387\)](#) – published LW 4 August 2017

Regulations and other miscellaneous instruments

[Workplace Surveillance Regulation 2017 \(2017-417\)](#) – published LW 11 August 2017.

[Commercial Agents and Private Inquiry Agents Regulation 2017 \(2017-388\)](#) – published LW 4 August 2017.

[Crimes \(Administration of Sentences\) Amendment \(Parole Applications\) Regulation 2017 \(2017-386\)](#) – published LW 31 July 2017.

[Subordinate Legislation \(Postponement of Repeal\) Order 2017 \(2017-389\)](#) – published LW 4 August 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 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 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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