



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

High Court decision on 'Citizenship Seven'

FIVE federal MPs, including Barnaby Joyce, have been ruled ineligible to sit in Parliament, following the decision handed down by the High Court on 27 October.

The disqualification of Barnaby Joyce means the Coalition has lost its one-seat majority in the House of Representatives.

<http://www.hcourt.gov.au/assets/publications/judgment-summaries/2017/hca-45-2017-10-27.pdf>

MEDIA

Vital independent counter-terrorism reports back many Law Council concerns

The Law Council has welcomed the release of the Independent National Security Legislation Monitor's (INSLM) reports on a range of counter-terrorism laws, which reflects numerous positions of the peak legal body. The INSLM has made key recommendations aimed at improving the safeguards of the regimes, several which are consistent with Law Council positions. <https://www.lawcouncil.asn.au/media/media-releases/vital-independent-counter-terrorism-reports-back-many-law-council-concerns>

Australia's election to Human Rights Council an opportunity to lead and to learn

Australia's election to the United Nations Human Rights Council (UNHCR) is an excellent opportunity to both lead globally and learn locally, according to the Law Council of Australia. Australia will take its seat on 1 January 2018 and will serve for a three-year term. <https://www.lawcouncil.asn.au/media/media-releases/australia-s-election-to-human-rights-council-an-opportunity-to-lead-and-to-learn>

Senate urged to reject mandatory sentences in bills

The bills, targeting sex crimes against children and firearms trafficking, are intended to better protect the Australian community from the dangers of such grievous conduct. Law Council of Australia President, Fiona McLeod SC, said that while these aims were laudable, mandatory sentencing has been shown to have no effect on crime rates, while

undermining the independence of the judiciary and creating unjust and unintended consequences. <https://www.lawcouncil.asn.au/media/media-releases/senate-urged-to-reject-mandatory-sentences-in-bills>

Salim Mehajer investigated over fraudulent insurance claims

The New South Wales police confirm they are investigating embattled former Auburn deputy major Salim Mehajer over several alleged fraudulent insurance claims. <http://www.abc.net.au/news/2017-10-19/salim-mehajer-insurance-fraud/9064934>

Turnbull Government funds new domestic violence units

The Attorney General has announced the expansion of the Turnbull Government's pilot program to deliver targeted services to women through specialist domestic violence units. \$3.4 million in funding has been committed to establish six new specialist domestic violence units and support the expansion of an existing one, ensuring more women can receive the vital legal and social support they need. <https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/FourthQuarter/Turnbull-Government-funds-new-domestic-violence-units-16-October-2017.aspx>

Proposed counter-terrorism laws over-reach in relation to children

The Australian Bar Association (ABA) urges the Federal government to reconsider proposed changes to counter-terrorism laws which would allow for children as young as 10 years of age to be detained for up to 14 days without charge. <http://austbar.asn.au/index.php/news-media/proposed-counter-terrorism-laws-over-reach-in-relation-to-children>

Safety First' Justice reforms enter NSW parliament

The NSW Government has introduced legislation for a tougher and smarter justice system that puts community safety first. Stronger community-based sentencing options will see more offenders under supervision and subject to conditions that hold them to account and help prevent them from returning to a life of crime. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/safety-first-justice-reforms-enter-parliament.aspx>

Operation Belcarra - Government response to CCC recommendations

Last week, the Crime and Corruption Commission delivered its thorough and comprehensive report into corruption risk in local government. Commissioner Alan MacSporran QC makes it clear many of these issues are not new – some were addressed by the Criminal Justice Commission 26 years ago. <http://statements.qld.gov.au/Statement/2017/10/10/bill-introduced-to-strengthen-councillor-complaints-process>

Appointments of new Chief Justice of the Family Court and Chief Judge of the Federal Circuit Court

The new Chief Justice of the Family Court will be the Honourable John Pascoe AC CVO, the current Chief Judge of the Federal Circuit Court. With Chief Judge Pascoe's elevation, Mr William Alstergren QC will become the new Chief Judge of the Federal Circuit Court. Both appointments commenced on 13 October 2017. <https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/FourthQuarter/Appointments-of-new-Chief-Justice-of-the-Family-Court-and-Chief-Judge-of-the-Federal-Circuit-Court-10-October-2017.aspx>

DTA to probe Digital Standard

The Digital Transformation Agency (DTA) has launched a review of the Digital Service Standard and has called for comment, input and feedback from Government service teams across the Australian Public Service. <https://www.dta.gov.au/news/help-us-review-the-standard/>

CASES

[TYGJ and Information Commissioner \[2017\] AATA 1689](#)

PRIVACY – published decision – application for further redactions regarding location of work and position title consistent with existing confidentiality order – application for confidentiality order regarding names of APS employees – reputational harm – unanswered allegations – application for confidentiality order granted. Acts Interpretation Act 1901 s 34AAA.

[Brown v Tasmania \[2017\] HCA 43](#)

Question 2.

Section 6(1), (2), (3) and (4), s 8(1), s 11(1), (2), (6), (7) and (8), s 13 and Pt 4 of the Workplaces (Protection from Protesters) Act 2014 (Tas) in their operation in respect of forestry land or business access areas in relation to forestry land are invalid because they impermissibly burden the implied freedom of political communication Constitutional law (Cth) – Implied freedom of political communication – Where plaintiffs protested in vicinity of forest operations – Where plaintiffs directed to leave and stay away from forestry land – Where plaintiffs arrested and charged, purportedly under Act, as result of protest activity – Whether Act restricts otherwise lawful protest activity – Whether implied freedom burdened – Whether Act, or provisions thereof, impose impermissible burden on implied freedom in their operation in respect of forestry land and related business access areas – Whether provisions suitable, necessary and adequate in balance.

Constitutional law (Cth) – Where plaintiffs charged under Workplaces (Protection from Protesters) Act 2014 (Tas) – Where charges not pursued – Where plaintiffs intend to engage in conduct unless conduct validly proscribed by

Act – Whether plaintiffs have standing to challenge validity of Act.

[Quach v New South Wales Health Care Complaints Commission; Quach v New South Wales Civil and Administrative Tribunal \[2017\] NSWCA 267](#)

PROCEDURE – vexatious litigants and proceedings – whether applicant has shown cause why he should not be prohibited from instituting or maintaining proceedings relating to the subject matter of the present proceedings – whether applicant has frequently instituted or conducted vexatious proceedings in Australia – where applicant has on several occasions taken steps in proceedings that have been found to be vexatious and an abuse of process – where applicant has on other occasions taken steps in proceedings with no reasonable cause – whether terms of vexatious proceedings order should preserve the applicant's right to seek an extension of time for a statutory appeal against decisions of NCAT.

[CRE v Blacktown City Council \[2017\] NSWCATAD 285](#)

ADMINISTRATIVE REVIEW – Privacy and Personal Information Protection Act – disclosure of contact information to principal certifying authority – whether internal review could be conducted by consultant retained for that purpose – allegations of bias and partiality on part of Council employees – whether practicable for review to be conducted by an employee or officer of the Council.

[Brooks v Secretary, Department of Family and Community Services \[2017\] NSWCATAD 300](#)

PRACTICE AND PROCEDURE – scope of complaint under Anti-Discrimination Act 1977 (NSW), where President of Anti-Discrimination Board declined race discrimination complaint against employer as lacking in substance – where Tribunal granted leave for complaint to proceed – whether complaint includes allegations not described in original complaint to President – whether complaint covers periods outside period of complaint as referred by President SUMMONS – whether professional confidential relationship privilege applies so that applicant should not be given access to certain documents produced under summons.

[BP Australia Pty Ltd and National Offshore Petroleum Safety and Environmental Management Authority \(Freedom of information\) \[2017\] AICmr 98](#)

Freedom of Information – Access grant – Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs – (CTH) Freedom of Information Act 1982 s 47G.

PRACTICE AND PROCEDURE

DIIS consultation: data on digital future

This paper is the start of the conversation with all Australians and we're asking for your ideas to help develop the strategy. Your responses will help the government to identify the key issues, challenges and opportunities. In this paper, we consider the broader digital economy, including enabling and supporting the digital economy (through digital infrastructure, standards and regulation, and trust, confidence, and security). Consultation closes on 30 November 2017. Access the paper here: <https://industry.gov.au/innovation/Digital-Economy/Documents/Digital-Economy-Strategy-Consultation-Paper.pdf>

OAIC: New My Health Record resources released

OAIC has published [new resources](#) to assist healthcare providers understand their privacy obligations under the My Health Record system.

AAT Annual Report 2016-17

The AAT's annual report for the financial year ending 30 June 2017 was tabled in parliament on 18 October 2017 and is available on our website. A summary of high-level statistics and commentary from the report is contained in [2016-17 At a Glance](#).

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. 42/2017, 16 October 2017](#)

[Issue No. 41/2017, 9 October 2017](#)

[Australian Public Sector Anti-Corruption Conference \(APSACC\) 2017](#)

The Office of the Commonwealth Ombudsman is proud to partner with the Australian Public Sector Anti-Corruption Conference (APSACC) 2017. The conference will run from 14–16 November 2017 at The Westin, Sydney.

NSW**[Unsolicited proposals](#)**

Issues Background October, 05/2017 by Chris Angus. Unsolicited proposals are projects proposed directly to government by private parties rather than in response to a request from government. There remain concerns as to the level of transparency and public reporting on unsolicited proposals received by government.

NSW Law Reform Commission: Review NSW government support for Community Legal Centre (CLC) services

The Review invites submissions until 23 October 2017, and will consult with stakeholders until early November. Further details are available on the [Department of Justice website](#). Download the full [Terms of Reference](#) for the review.

[Statutory review of the Terrorism \(Police Powers\) Act 2002](#)

The Terrorism (Police Powers) Act 2002 confers special powers on police officers to respond to terrorist activity and terrorist attacks. Section 36 of the Act requires the Attorney General to undertake a review of the Act in order to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Department of Justice is conducting the review on behalf of the Attorney. Submissions close 9 November 2017.

Sentencing Council: submissions on victims' involvement in sentencing**[ICAC Annual Report 2016-17](#)**

The ICAC's Annual Report 2016-2017 was made public on 20 October 2017.

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

Prosecution briefs with the DPP and outcomes - Last updated 12 October 2017.

ICAC November 2017 workshops

Workshops by leading practitioners on conducting investigations, strategic corruption prevention management or effective complaint handling. [Limited offer - November 2017 workshops](#)

[Trends in NSW Police clear up rates](#)

NSW Bureau of Crime Statistics and Research: 10 October 2017.

This report analyses the trends in crime clear up rates and methods of proceeding against offenders over the decade from 2007 to 2016 in New South Wales.

[Intensive correction orders versus short prison sentence: A comparison of re-offending](#)

Crime and Justice Bulletin, October 2017: Joanna JJ Wang and Suzanne Poynton.

There was a 11%-31% reduction in the odds of re-offending for an offender who received an ICO compared with an offender who received a prison sentence of up to 24 months. The bivariate probit model with an instrumental variable did not reveal a significant effect or evidence of endogeneity.

LEGISLATION**COMMONWEALTH****[Australian Broadcasting Corporation Amendment \(Fair and Balanced\) Bill 2017](#)**

Introduced senate 18/10/2017 - The amendment to the ABC Act set out in Schedule 1 to the Bill will modify and expand the existing statutory duty of the Board relating to ensuring the gathering and presentation by the ABC of news and information is accurate and impartial according to the recognised standards of objective journalism.

[Marriage Regulations 2017](#)

17/10/2017 - These regulations provide procedural and technical support for the marriage framework established by the Marriage Act 1961. The Marriage Regulations 2017 will replace the Marriage Regulations 1963, which will sunset on 1 April 2018.

[High Court Amendment \(Appeals and Other Matters\) Rules 2017](#)

13/10/2017 - These rules amend the appellate procedures in the High Court Rules 2004, expanding the timeline for filing of material in advance of the hearing of appeals. The rules also change the sequence and form of some of the material filed by the parties in appeals.

NSW**Bills introduced Government – 13 October 2017****[Crimes \(High Risk Offenders\) Amendment Bill 2017](#)**

Changes to the Crimes (High Risk Offenders) Act 2006 include: d) to make certain offences against the laws of

the Commonwealth “serious sex offences” and “offences of a sexual nature” for the purposes of the Principal Act (Schedule 1 [11]–[13]), (e) by changing the test to be applied by the Supreme Court in deciding whether or not to make a continuing detention order in respect of a high risk offender so that an order may be made if the Supreme Court is satisfied that the risk of the offender committing another serious offence would be unacceptable unless the order is imposed instead of being satisfied that adequate supervision will not be provided by an extended supervision order.

[Crimes \(Sentencing Procedure\) Amendment \(Sentencing Options\) Bill 2017](#)

The following Bills are cognate with this Bill: Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017; Crimes (High Risk Offenders) Amendment Bill 2017.

The object of this Bill is to improve the availability and nature of community-based sentencing options that are among the options for courts when sentencing offenders.

[Justice Legislation Amendment \(Committals and Guilty Pleas\) Bill 2017](#)

The objects of this Bill are to amend the Criminal Procedure Act 1986, the Children (Criminal Proceedings) Act 1987, the Crimes (Sentencing Procedure) Act 1999 and other Acts as follows:

(a) replace the current procedure for committal proceedings for offences committed by adults or serious children’s indictable offences, where a Magistrate conducts an inquiry into the evidence against an offender, with a new procedure overseen by a Magistrate that requires the prosecutor to disclose a brief of evidence to the accused person and to certify the charges to be proceeded with. The new committal proceedings will also provide for a formal conferencing procedure to enable opportunities for appropriate early guilty pleas to be considered during committal proceedings

[Parole Legislation Amendment Bill 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 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