



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

SUPREME & FEDERAL COURT CLOSURES UNTIL AT LEAST 15 NOVEMBER

The Law Courts Building at Queens Square (where both the Supreme and Federal Courts are housed) will be closed to the judiciary, the profession and the public until at least 15 November 2017.

This is to enable necessary repairs resulting from a burst water pipe between levels six and seven, and the consequential damage.

Please consult the relevant court websites to see where cases are listed, and where temporary registries have been established.

Supreme Court - http://www.lawlink.nsw.gov.au/practice-notes/nswsc_pc.nsf/pages/694

Federal Court - <http://www.fedcourt.gov.au/news-and-events/29-october-2017>

MEDIA

New leaders announced for key law enforcement agencies

Michael Phelan APM will be the next Chief Executive Officer of the Australian Criminal Intelligence Commission (ACIC) and the Director of the Australian Institute of Criminology (AIC). Nicole Rose PSM will be the next CEO of the Australian Transaction Reports and Analysis Centre (AUSTRAC). <https://www.ministerjustice.gov.au/Media/Pages/New-leaders-announced-for-key-law-enforcement-agencies-3-November-2017.aspx>

No doubt there's corruption at all levels': Former judges call for federal ICAC

A group of prominent former judges call for the establishment of a federal anti-corruption agency, saying serious corruption almost certainly exists in federal politics. <http://www.abc.net.au/news/2017-11-02/former-judges-call-for-federal-icac/9112396>

Data breach sees records of 50,000 Australian workers exposed

Nearly 50,000 Australians and 5000 federal public servants have had sensitive personal information exposed online as part of one of the nation's biggest ever data breaches. <http://www.smh.com.au/national/public-service/data-breach-sees-records-of-50000-australian-workers-exposed-20171102-gzdef3.html>

Referendum rejection profoundly disappointing, constitutional reform must advance

The Law Council of Australia has expressed profound disappointment at the Federal Government's decision to reject the Referendum Council's recommendation for a referendum into the creation of a representative body to give Aboriginal and Torres Strait Islander First Nations a Voice to the Australian Parliament. <https://www.lawcouncil.asn.au/media/media-releases/referendum-rejection-profoundly-disappointing-constitutional-reform-must-advance>

Redress scheme close to reality with introduction of landmark bill today

The Law Council applauded the Federal Government's recent introduction of landmark legislation establishing a Commonwealth redress scheme for survivors of child sexual abuse. The bill will enable survivors of child sexual abuse in an institutional setting to access three elements of the redress scheme. <https://www.lawcouncil.asn.au/media/media-releases/redress-scheme-close-to-reality-with-introduction-of-landmark-bill-today>

Law Council releases Regional Processing Policy, calls for initiative on regional approach

The Law Council's [Regional Processing Policy](#), released recently, acknowledges that the High Court of Australia has upheld the constitutional validity of the detention of asylum seekers on Nauru. However, the High Court was not asked to and did not consider whether the offshore detention regime is consistent with Australia's international legal obligations. <https://www.lawcouncil.asn.au/media/media-releases/law-council-releases-regional-processing-policy-calls-for-initiative-on-regional-approach>

Senate quashes Citizenship Bill amendments

The Senate has thrown out controversial proposed changes to the Citizenship Bill, which would have given the minister the power to override the decisions of the independent umpire (the Administrative Appeals Tribunal). <https://www.lawcouncil.asn.au/media/news/senate-quashes-citizenship-bill-amendments>

Evaluation of the 2015 Domestic Violence Evidence-in-Chief (DVEC) reforms

A new law designed to increase the conviction and guilty plea rate in domestic violence cases has had little if any effect according to a new report released today by the NSW Bureau of Crime Statistics and Research (BOCSAR). [http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2017/mr-Evaluation-of-the-2015-Domestic-Violence-Evidence-in-Chief-\(DVEC\)-reforms.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2017/mr-Evaluation-of-the-2015-Domestic-Violence-Evidence-in-Chief-(DVEC)-reforms.aspx)

CASES

[El Kassir v Commissioner of Police, NSW Police Force \[2017\] NSWCATAD 319](#)

HUMAN RIGHTS – where President of Anti-Discrimination Board declined a complaint of discrimination – where applicant required President to refer complaint to the Tribunal – whether fair and just for leave to be granted for complaint to go ahead.

[Mailey v Sutherland Shire Council \[2017\] NSWLEC 145](#)

JUDICIAL REVIEW – challenge to emergency order issued under Local Government Act 1993 requiring replacement of failing retaining wall – order not beyond power or uncertain – order not issued for improper purpose.

[BMB16 v Minister for Immigration and Border Protection \[2017\] FCAFC 169](#)

STATUTORY INTERPRETATION – consideration of the word “review” in Part 7AA and whether it has the same core meaning as it has in Parts 5 and 7 of the Act – where a strong contextual consideration exists that a word used throughout an enactment is to be interpreted consistently.

STATUTORY INTERPRETATION – consideration of the nature of the review to be conducted pursuant to s 473CC of the Act – whether the Authority’s review is restricted to the correction of error in relation to those issues held to be determinative by the delegate – where the Authority’s review is expressly described in the Act as “limited” and “on the papers” – where the Authority is limited to the review of material provided to it under s 473CB of the Act, except in exceptional circumstances – where the Authority may affirm a decision or remit the decision for reconsideration with permitted directions or recommendations – where the review is a compulsory aspect of the process of a “fast track applicant” applying for a visa – where the Authority is not obliged to conduct an oral hearing – where Parliament has not expressly stated that the Authority’s power of review is limited to a review for correction of error.

[Shord v Commissioner of Taxation \[2017\] FCAFC 167](#)

TAXATION – onus of proof – Taxation Administration Act 1953 (Cth), s 14ZZK(b) – whether there was a duty upon the Commissioner of Taxation under s 33(1AA) of the Administrative Appeals Tribunal Act 1975 (Cth) to assist in

obtaining evidence of the payment of tax by the appellant in foreign countries.

ADMINISTRATIVE LAW – review by Administrative Appeals Tribunal of objection decision of the Commissioner of Taxation – the Commissioner advised the Tribunal at the hearing that he no longer pursued a contention in the statement of facts and contentions – the appellant’s representative nevertheless adduced evidence and made submissions on that contention – the Tribunal found against the appellant on that contention – whether there was a denial of procedural fairness.

[Dan Conifer and Department of the Prime Minister and Cabinet \(Freedom of information\) \[2017\] AICmr 103](#)

FREEDOM OF INFORMATION – Whether material obtained in confidence – Whether documents contain deliberative matter prepared for a deliberative process – 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 is unreasonable – Whether contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5) and 45, 47C, 47E(d) and 47F.

[Mullen and Chief Executive Officer, Australian Aged Care Quality Agency \(Freedom of information\) \[2017\] AATA 1805](#)

FREEDOM OF INFORMATION – Freedom of Information request – Aged Care Act – whether documents requested exempt – whether disclosure prohibited – ‘protected information’ – decision affirmed.

PRACTICE AND PROCEDURE

[High Court of Australia](#)

High Court of Australia Bulletin [2017] HCAB 08 (1 November 2017).

[ANAO Audit insights: Communicating effectively with stakeholders](#)

Effective, engaging and accessible communication remains an ongoing focus for the Australian National Audit Office (ANAO), given the important role that we play in providing assurance to the Parliament of Australia, and improving public sector administration.

[Law Council Submissions](#)

24 October 2017 – Business Law Section - [Privacy \(Credit Reporting\) Code 2014](#)

[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. 44/2017, 30 October 2017](#)

[Issue No. 43/2017, 23 October 2017](#)

[OAIC: Notifiable Data Breaches webinar this November](#)

Attend a webinar hosted by the OAIC on 21 November, which will focus on the key requirements of the upcoming Notifiable Data Breaches (NDB) scheme.

NSW[Policing young people in NSW: A study of the Suspect Targeting Management Plan](#)

Vicki Sentas, Camilla Pandolfini: 25 October 2017 - This research found that young people on the Suspect Targeting Management Plan (SMTP) experience inappropriate forms of over-policing, disproportionate to the future risks they are alleged to pose to society.

[Reminder: 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.

JUDCOM[Criminal Trial Courts Bench Book, 25 October 2017](#)[ICAC: Prosecution briefs with the DPP and outcomes](#)

Prosecution briefs with the DPP and outcomes - last updated 03 November 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](#)

[NCAT Legal Bulletin Issue 9 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 September 2017 (issued October 2017).

LEGISLATION**COMMONWEALTH**[Regulatory Powers \(Standardisation Reform\) Bill 2016](#)

HR: 3rd reading 26/10/2017 - Amends: 15 Acts to remove current provisions providing for regulatory regimes and to apply the standard provisions of the Regulatory Powers (Standard Provisions) Act 2014; and the Regulatory Powers (Standard Provisions) Act 2014 in relation to: the ability to secure evidence of a contravention when exercising monitoring powers; the age of photographs for identity cards; the time period for the making of a civil penalty order; and the cap on the amount to be stated in an infringement notice.

[Commonwealth Redress Scheme for Institutional Child Sexual Abuse \(Consequential Amendments\) Bill 2017](#)

HR introduced 26/10/2017 - The Bill establishes a Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse (the Scheme). The Scheme will provide three elements of redress to eligible survivors of institutional child sexual abuse. This Bill will also exempt decisions made under the Scheme from judicial review

under the Administrative Decisions (Judicial Review) Act 1977. This amendment will ensure the Scheme remains survivor focused and trauma informed by maintaining the principles that the Scheme be a low threshold and non-legalistic process for survivors who have already suffered so much.

[Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017](#)

HR introduced 26/10/2017 - A Bill for an Act to deal with consequential matters relating to the enactment of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Act 2017.

[National Integrity Commission Bill 2017](#)

23/10/2017 - The National Integrity Commission is established as an independent statutory agency and consists of the National Integrity Commissioner, the Law Enforcement Integrity Commissioner and the Independent Parliamentary Advisor.

The National Integrity Commissioner is concerned with corruption in relation to public officials and Commonwealth agencies and has full investigative powers, including conducting public and private hearings and summoning any person or agency to produce documents and appear before the Commissioner.

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

Act No. 115 of 2017 - An Act to amend the Australian Border Force Act 2015, and for related purposes

Administered by: Immigration and Border Protection
- Originating Bill: Australian Border Force Amendment (Protected Information) Bill 2017 - Registered 31 Oct 2017
Date of Assent 30 Oct 2017.

REGULATIONS[Charter of the United Nations \(Sanctions—Democratic People's Republic of Korea\) Amendment \(2017 Measures No. 2\) Regulations 2017](#)

03/01/2017 - This instrument amends the Charter of the United Nations (Sanctions - Democratic People's Republic of Korea) Regulations 2008 to implement UN Security Council Resolutions 2371 and 2375.

NSW**Acts assented to**

Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017 No 52 — Assented to 24 October 2017.

Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 No 53 — Assented to 24 October 2017.

Crimes (High Risk Offenders) Amendment Act 2017 No 54 — Assented to 24 October 2017.

Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017 No 55 — Assented to 24 October 2017.

Parole Legislation Amendment Act 2017 No 57 — Assented to 24 October 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.



Mark Feetham

Partner
+61 2 8248 5847
+61 414 908 225
mfeetham@tglaw.com.au



Loretta Reynolds

Partner, Markets
+61 3 8080 3705
+61 403 069 819
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

LIBRARY RESOURCE



Adeline Tran

Lawyer
+61 2 9020 5709
resourcecentre@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:

- (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