



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

A recent serious breach of Federal cabinet confidentiality arose when highly sensitive cabinet documents were discovered in two old filing cabinets bought at a second-hand shop in Canberra. The documents ended up in the hands of the ABC. A Department of Prime Minister and Cabinet spokesperson said the secretary had initiated an urgent investigation into the disposal of the filing cabinets. The breach highlights a key risk factor for government to consider in the area of data security. <https://www.theaustralian.com.au/news/latest-news/secret-papers-found-in-old-filing-cabinets/news-story/c88ab423ff6135b98718948ba311f9c5>

<http://www.smh.com.au/federal-politics/political-news/abc-issues-apology-to-kevin-rudd-over-cabinet-files-report-20180208-p4yzrk.html>

MEDIA

NSW Law Society to tackle court delays and Legal Aid funding in 2018

The Law Society of NSW will lobby for more resources for Legal Aid and look at "alternatives to imprisonment" as part of a list of priorities revealed recently at NSW Parliament. <http://www.smh.com.au/nsw/law-society-to-tackle-court-delays-and-legal-aid-funding-in-2018-20180131-h0rk2p.html?csp=71960e7218a10f47da153dcebc5c895b>

New second Parliamentary Counsel appointed

The Attorney-General announces the appointment of Mr Keith Byles PSM as Second Parliamentary Counsel to the Office of Parliamentary Counsel (OPC) for a seven year period. <https://www.attorneygeneral.gov.au/Media/Pages/New-second-Parliamentary-Counsel-appointed-16-January-2018.aspx>

Extent of donations to Australia's political parties revealed

The Australian Electoral Commission's recently published annual returns reveal the extent of the cash poured into the political process – more than \$207 million in total. The returns are likely to put the spotlight back on foreign donations and come as the Joint Standing Committee on

Electoral Matters examines legislation aimed at banning overseas cash from the Australian political process. <https://thenewdaily.com.au/news/national/2018/02/01/political-donations-2017/>

NSW Law Society: Access to justice and transparent appointments

Greater resourcing of the courts and Legal Aid and a more transparent process in appointments to Commonwealth Tribunals, are among top advocacy priorities for The Law Society of NSW's new President Doug Humphreys. <http://www.lawsociety.com.au/about/news/1436992>

HRLC: Government's over-the-top secrecy laws will create more problems than they will

The National Integrity Committee, hosted by The Australia Institute, today welcomed the announcement by Opposition Leader Bill Shorten that a Labor government will legislate to establish a federal corruption watchdog. <http://www.tai.org.au/content/national-integrity-committee-welcomes-labor%E2%80%99s-federal-corruption-watchdog-policy>

National Integrity Committee welcomes Labor's federal corruption watchdog policy

The Australian Government's proposed legislation to overhaul Australia's secrecy laws is excessive, poorly designed and does not heed the Australian Law Reform Commission's recommendations, the Human Rights Law Centre told a parliamentary committee today. <https://www.hrlc.org.au/news/2018/1/30/governments-over-the-top-secrecy-laws-will-create-more-problems-than-they-will-fix>

BOSCAR NSW Custody Statistics updated

New figures released by the NSW Bureau of Crime Statistics and Research (BOCSAR) show that the NSW prison population grew by just 0.7 per cent in the last 12 months. In December 2017, the NSW prison adult population stood at 12,989. http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2018/mr-NSW-Custody-Statistics-Quarterly-update-Dec-2017.aspx

Terrorist's refusal to stand in court could have 'ramifications', judge warns

A NSW Supreme Court Justice tells a man involved in police accountant Curtis Cheng's 2015 murder that his refusal to stand during his sentencing hearing could have "ramifications". <http://www.abc.net.au/news/2018-01-29/supreme-court-justice-says-not-standing-could-have-ramifications/9369548>

PC Report on Government Services – Justice

The Productivity Commission's Report on Government Services (RoGS) also covers Justice – Police, Courts and Corrective Services. Total government expenditure for the justice services measured in RoGS was almost \$16 billion in 2016-17, around 7.2 percent of total government expenditure on services. <https://www.governmentnews.com.au/2018/01/pc-report-government-services-justice/>

Productivity Commission Report on Government Services – Overview

The Productivity Commission has begun releasing its 23rd annual Report on Government Services (RoGS). It is a major exercise, with separate chapters released in seven parts on all areas of government service delivery. <https://www.governmentnews.com.au/2018/01/productivity-commission-report-government-services-government-news-cover-depth/>

Police sharpen focus on public videos

The Australian Federal Police (AFP) has moved to make it easier for members of the public to provide their recordings of events to the police for possible use in tracking down criminals. <http://www.psnews.com.au/aps/582/news/police-sharpen-focus-on-public-videos>

LCA: Secrecy of information, treason, espionage and sabotage target of new Bill

The Law Council considers many of the offence provisions are broadly drafted to capture a range of benign conduct that may not necessarily amount to harm or prejudice Australia's interests and as such, considers the Bill should not proceed as currently drafted. <https://www.lawcouncil.asn.au/media/news/secrecy-of-information-treason-espionage-and-sabotage-target-of-new-bill>

Inmates facing charges after South Coast CCTV reviewed

Up to 27 inmates from South Coast Correctional Centre are being investigated over their involvement in a disturbance at the Nowra facility on 3 January. Commissioner Peter Severin said this type of behaviour is unacceptable and our staff are working hard to ensure the inmates responsible are charged over their involvement in the incident, which put officers and other inmates at risk. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/inmates-facing-charges-after-south-coast-cctv-reviewed.aspx>

CASES

[William Summers and Department of the Prime Minister and Cabinet \(Freedom of information\) \[2018\] AICmr 9](#)

Freedom of Information – Whether disclosure could cause damage to the international relations of the Commonwealth – Whether documents contain deliberative matter prepared for a deliberative process – Whether contrary to the public

interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 33(a)(iii) and 47C.

['NV' and Department of Human Services \(Freedom of information\) \[2018\] AICmr 14](#)

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 the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5) and 47E(d).

[Australian Associated Press Pty Ltd and Department of Foreign Affairs and Trade \(Freedom of information\) \[2018\] AICmr 13](#)

Freedom of Information – Charges – Request 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 ss 29, 55D.

['NJ' and Department of Home Affairs \(Freedom of information\) \[2018\] AICmr 12](#)

Freedom of Information – Whether work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations – (CTH) Freedom of Information Act 1982 ss 24, 24AA, 24AB.

['NT' and Australian Sports Anti-Doping Authority \(Freedom of information\) \[2018\] AICmr 11](#)

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 contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982, ss 11A(5), 42 and 47E(d).

['NS' and Department of Human Services \(Freedom of information\) \[2018\] AICmr 10](#)

Freedom of Information – Whether reasonable steps taken to locate documents – (CTH) – Freedom of Information Act 1982 s 24A.

['NR' and Department of Home Affairs \(Freedom of information\) \[2018\] AICmr 8](#)

Freedom of Information – Whether disclosure would prejudice lawful methods or procedures – Whether disclosure would disclose commercially valuable information – (CTH) Freedom of Information Act 1982 ss 37(2)(b) and 47(1)(b).

[Andrew Leigh and Australian Federal Police \(Freedom of information\) \[2018\] AICmr 7](#)

Freedom of Information – Whether disclosure of personal information is unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5) and 47F.

[Alameddine v Roads and Maritime Services \[2018\] NSWCATAD 22](#)

ADMINISTRATIVE REVIEW – Passenger Transport – Private hire vehicles – Refusal of applications for authorisation

as driver of private hire car and driver of taxi-cab under Passenger Transport Act 1990 – Commencement of new legislation – Whether Tribunal still has jurisdiction to review decisions made under Passenger Transport Act.

PRACTICE AND PROCEDURE

OAIC: Australian Government Agencies Privacy Code

The [Australian Government Agencies Privacy Code](#) (the Code) was registered on 27 October 2017 and commences on 1 July 2018. The Code sets out specific requirements and key practical steps that agencies must take as part of complying with Australian Privacy Principle 1.2 (APP 1.2). It requires agencies to move towards a best practice approach to privacy governance to help build a consistent, high standard of personal information management across all Australian Government agencies.

OAIC: Freedom of information regulatory action policy

The OAIC is seeking public comment on an exposure draft of the Freedom of information regulatory action policy. The closing date for comments is 16 February 2018. Below are links to the draft Freedom of information regulatory action policy and the consultation information.

[Consultation information: Freedom of information regulatory action policy](#)

[Consultation draft: Freedom of information regulatory action policy](#)

OAIC: IC review procedure direction

The Australian Information Commissioner has issued a written direction under s 55(2)(e)(i) of the Freedom of Information Act 1982 as to certain procedures to be followed in Information Commissioner (IC) reviews. The Direction applies to agencies and ministers during IC reviews and preliminary inquiries prior to the commencement of an IC review. The Direction has been published on the [OAIC's website](#) and takes effect from 26 February 2018.

LCA Submissions

01 January 2018—Law Council
[2018-19 Pre-Budget Submission](#)

25 January 2018—Law Council
[Electoral Legislation Amendment \(Electoral Funding and Disclosure Reform\) Bill 2017](#)

22 January 2018— Law Council
[Home Affairs and Integrity Agencies Legislation Amendment Bill 2017](#)

Human Rights Law Commission Submissions

Submission: Realising the Right to Equality

This submission responds to the Modernisation of the Anti-Discrimination Act Discussion Paper (Discussion Paper)1 released by the Department of the Attorney-General and Justice in September 2017 regarding the modernisation of the Anti-Discrimination Act (the Act).

[Download the HRLC submission here.](#)

Submission: Secrecy offences: the wrong approach to necessary reform

The Human Rights Law Centre has told a parliamentary committee about the serious concerns raised by the new criminal offences for handling government information,

concluding that the proposed regime has no place in a healthy democracy, in which open government and the freedom to scrutinise government must be maintained.

[Download the HRLC submission here.](#)

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. 3/2018, 29 January 2018](#)

[Issue No. 2/2018, 22 January 2018](#)

Current Inquiries

Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017

On 7 December 2017 the Senate referred the Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 8 May 2018. The deadline for submissions to the inquiry is 28 February 2018.

[Judiciary Amendment \(Commonwealth Model Litigant Obligations\) Bill 2017](#)

The adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying

On 7 September 2017 the Senate referred the below matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 29 November 2017. On 19 October 2017 the Senate extended the committee's reporting date to the last sitting day in March 2018, which is 28 March 2018. https://www.aph.gov.au/search/url/Inquiry/25543_43

NSW

Joint Protocol to reduce the contact of people with disability with the criminal justice system

The NSW Ombudsman's office has developed a [Joint Protocol](#) for disability services and police. The Joint Protocol aims to reduce the frequency of police involvement in responding to behaviour by people with disability living in supported accommodation. This will facilitate collaboration between police and residential services for a coordinated approach. For more information, read the Joint Protocol [fact sheet](#).

NSW Law Society: Cybersecurity warning

Law practices have received emails from people purporting to request legal services with attachments containing malware. To preserve your cybersecurity, think carefully before opening attachments from unknown addresses. <http://ecomms.lawsociety.com.au/cv/869f50f66e732d1347061e25d5b1f7ac364449a1/p=2911572>

ICAC: Prosecution briefs with the DPP and outcomes

Tables of prosecution briefs with the DPP and outcomes. Last updated 31 January 2018.

LEGISLATION - NSW

Regulations and other miscellaneous instruments

[Drug Court Amendment \(Eligibility Criteria\) Regulation 2018](#) (2018-15) — published LW 25 January 2018.

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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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