



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

This edition covers a range of issues including an update on a recent Court decision confirming the scope of NCAT's judicial powers and an update on the proposed Bill for certain crimes now to be dealt with by a magistrate rather than by the District Court.

MEDIA

New bill to lessen NSW court delays criticised for not doing enough

A bill introduced in NSW Parliament that would address long court delays by allowing some serious crimes to be dealt with in the Local Court has been criticised as making "no sense". The Justice Legislation Amendment Bill 2018, which passed through the Legislative Assembly on Wednesday, means indictable crimes will be dealt with by a magistrate unless a prosecutor or defence lawyer chooses to take them to the District Court. <http://www.smh.com.au/nsw/new-bill-to-lessen-nsw-court-delays-criticised-for-not-doing-enough-20180216-p4z0mq.html>

Legal body sounds alarm on 'failed' justice targets

One of Australia's legal bodies has highlighted the lack of co-ordinated national response measures being put in place to reduce the "shameful disproportion" in incarceration rates of Aboriginal and Torres Strait Islander adults and children. The NSW Law Society president has flagged that Australia has failed to establish 'Closing the Gap' justice targets, resulting in a "lack [of] co-ordinated national response to the most pressing problem facing our criminal justice system. <https://www.lawyersweekly.com.au/wig-chamber/22734-legal-body-sounds-alarm-on-failed-justice-targets>

New laws protect students from sexual predators

The NSW Government recently introduced legislation to expand special care laws to ensure a teacher who has a sexual relationship with any student at their high school can face jail time. The Justice Legislation Amendment Bill 2018 will expand the definition of teacher under the special care offence. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/new-laws-protect-students-from-sexual-predators.aspx>

Terror teens in NSW juvenile system to have greater security and de-radicalisation programs

Under the new \$6 million scheme, juvenile detainees deemed by law enforcement agencies to pose a possible risk will be given a national security interest designation and face increased screening and restrictions on mail, phone calls and visitors. Premier Gladys Berejiklian has also not ruled out keeping extremist teens in prison beyond the end of their sentences, by extending laws which currently apply only to adult radicalised prisoners. <http://www.abc.net.au/news/2018-02-07/nsw-invests-in-security-and-de-radicalisation-for-juvenile-jails/9404118>

CASES

'NW' and Screen Australia (Freedom of information) [2018] AICmr 15

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 public interest to release conditionally exempt documents — (CTH) Freedom of Information Act 1982 ss 11A(5), 22, 42 and 47E(d).

'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.

CNS v Transport for NSW [2018] NSWCATAD 40

ADMINISTRATIVE Law - PRIVACY – Personal Information – Whether reasonably necessary to collect information for allied purpose – Right to anonymous travel - Travel History -- Purpose of collection unrelated to collection – Purpose of collection unrelated to use – General right to privacy.

[Johnson v Dibbin; Gatsby v Gatsby \[2018\] NSWCATAP 45](#)

CONSTITUTIONAL LAW – judicial power – whether Civil and Administrative Tribunal (NSW), NCAT, exercises judicial power – whether NCAT exercises judicial power when determining matters under the Residential Tenancies Act 2010 (NSW) – NCAT exercises judicial power
CONSTITUTIONAL LAW – Chapter III courts – defining characteristics of Chapter III courts – whether Civil and Administrative Tribunal (NSW), NCAT, a “court of a State” within Chapter III – NCAT is a court of a State for the purposes of Chapter III
COURTS AND TRIBUNALS – Civil and Administrative Tribunal (NSW), NCAT – jurisdiction of NCAT – whether Tribunal has authority to adjudicate in matters under the Residential Tenancies Act 2010 (NSW) between residents of different states – NCAT has authority to adjudicate
COURTS AND TRIBUNALS – courts of record – Civil and Administrative Tribunal (NSW), NCAT – whether NCAT a court of record – NCAT a court of record.

[ZfV & anor v ZFW & ors \[2018\] NSWCATAP 44](#)

HUMAN RIGHTS – Tribunals, commissions and other authorities – Civil and Administrative Tribunal – procedural fairness – application of hearing rule
HUMAN RIGHTS – Legislation – application of failure to give parties notice of hearing as required by s 10 of Guardianship Act 1987 (NSW).

[Cooper v NSW Ministry of Health \[2018\] NSWCATAD 37](#)

ADMINISTRATIVE LAW - Government information - access – Cabinet Information – general principles - reasonable grounds – temporal scope – subject matter scope - revealing “the position” of a particular Minister.

[Stuart v Commissioner for Fair Trading \[2018\] NSWCATAD 39](#)

ADMINISTRATIVE LAW – administrative tribunals – procedure – distinction between stay of orders and order temporarily granting a licence – whether member of outlaw motor cycle gang is a “close associate” of an applicant for an operator licence under the Tattoo Parlours Act 2012 (NSW) – public interest considerations.

[David DeBattista v Minister for Planning \[2018\] NSWLEC 8](#)

PRACTICE AND PROCEDURE – notice of motion – leave sought to adduce expert evidence – interrogatories – enforcement proceedings – judicial review – whether evidence relevant to decision under review – relevance matter for trial judge – motion allowed.

PRACTICE AND PROCEDURE

Law Council consults on Review of Australian Solicitors' Conduct Rules

The Law Council is undertaking a review of the Australian Solicitors' Conduct Rules. This is the first comprehensive review of the Rules since they were first promulgated in June 2011. The Law Council's Professional Ethics Committee has developed a [Consultation Discussion Paper for the Review](#) and invites comments and submissions on the issues raised and discussed. [Read more here](#). The closing date for Submissions is 31 May 2018, which may be lodged [here](#).

LCA Submissions

06 February 2018— [Inquiry on the impact of new and emerging information and communications technology on Australia law enforcement agencies](#)

NSW

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 15 February 2018.

LEGISLATION - NSW

Bills introduced Non-Government

[Family Impact Commission Bill 2018](#)
[Medicinal Cannabis \(Compassionate Access\) Bill 2018](#)

Bills passed by both Houses of Parliament

[Vexatious Proceedings Amendment \(Statutory Review\) Bill 2018](#)

Bills Passed legislative assembly

[Justice Legislation Amendment Bill 2018](#)

Passed legislative assembly - 14 February 2018 - Indictable crimes such as robbery, recklessly dealing with proceeds of crime of more than \$5000, perverting the course of justice, and supplying a prohibited drug less than a commercial quantity will be dealt with by a magistrate unless a prosecutor or defence lawyer chooses to take them to the District Court.

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