



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

In a final attempt for freedom, former Labour minister Eddie Obeid has sought special leave to appeal his conviction to the High Court of Australia. The special leave application will be heard on 23 March, 2018. <https://www.smh.com.au/national/nsw/corrupt-former-nsw-minister-eddie-obeid-launches-bid-for-freedom-20180227-p4z1yi.html>

Here is a link to the decision of the NSW Court of Criminal Appeal which he is seeking leave to appeal from. http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWCCA/2017/221.html?context=1;query=obeid;mask_path=au/cases/nsw/NWCCA

MEDIA

Commencement of the Notifiable Data Breaches Scheme

New rules around mandatory reporting of serious data breaches recently came into effect. Entities subject to the Privacy Act 1988 – including most Australian Government agencies, businesses with an annual turnover of more than \$3 million, and specific categories of smaller businesses, such as health providers – are now required to notify individuals if their personal data has been involved in a serious breach. <https://www.attorneygeneral.gov.au/Media/Pages/Commencement-of-the-Notifiable-Data-Breaches-Scheme.aspx>

ICAC recommends NSW public sector tighten screening practices to combat employment application fraud and corruption

An Independent Commission Against Corruption report released recently recommends that the NSW public sector adopt stronger employment screening practices to help combat employment application fraud, which if left undetected can ultimately allow other corrupt conduct to occur. <http://www.icac.nsw.gov.au/media-centre/media-releases/article/5158>

Australia becoming more corrupt, shows international index

Australia rates comparatively well on international corruption scales, but it is getting worse, according to

the latest annual Corruption Perceptions Index (CPI) from Transparency International. <https://www.governmentnews.com.au/2018/02/australia-becoming-corrupt-shows-international-index/>

Evaluation of the Bail Assessment Officer (BAO) intervention

A new program designed to reduce the number of prisoners on remand through additional court support has had little 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/2018/mr-Evaluation-of-the-BAO-intervention.aspx

New domestic violence service for NSW Central Coast

Vulnerable people on the New South Wales Central Coast now have access to greater support services through a new, dedicated Domestic Violence Unit. Twelve existing units across the country have already helped 4,000 clients providing more than 9,000 discrete services since they were first established by the Turnbull Government in early 2016. <https://www.attorneygeneral.gov.au/Media/Pages/New-domestic-violence-service-for-nsw-central-coast.aspx>

NSW to get its own Productivity Commission

NSW will establish its own state-based Productivity Commission to “drive micro-economic reform and tackle burdensome regulation.” <https://www.governmentnews.com.au/2018/02/nsw-get-productivity-commission/>

CASES

[Calarco and Anor v Liverpool City Council \[2018\] NSWSC 217](#)

ADMINISTRATIVE LAW - claim for declaratory and prerogative relief - Defendant accepts hardship application by Plaintiffs under Land Acquisition (Just Terms Compensation) Act 1991 - Plaintiffs' property partly zoned “public recreation” and partly zoned “infrastructure - local drainage” - Defendant decides that acquisition under hardship application will apply to “public recreation” land only - whether land zoned “infrastructure - local drainage” is land reserved for “any other purpose that is

prescribed as a public purpose for the purpose" of s.26(1) (c) Environmental Planning and Assessment Act 1979 - held that land is so prescribed by Appendix 8 to State Environmental Planning Policy (Sydney Region Growth Centres) 2006 - Plaintiffs entitled to relief - orders made.

[Bernard-Ross v State of NSW \[2018\] NSWSC 182](#)

ADMINISTRATIVE LAW – declaratory relief – applicant in custody – applicant involved in potential litigation – judicial review of decision affecting conditions of applicant’s incarceration – access to laptop with write and edit functionality in cell – application dismissed.

[DFD v New South Wales Education Standards Authority \[2018\] NSWCATAD 48](#)

ADMINISTRATIVE REVIEW – Education Act – home schooling – registration – whether registration restricted to children of compulsory school-age – significance of policy – whether policy is Government policy.

[Svanda v Commissioner of Police, NSW Police Force \[2018\] NSWCATAD 50](#)

ADMINISTRATIVE LAW – Government information – Application for review of implicit decision that respondent does not hold any information apart from that identified by the respondent – Whether the respondent holds further information – Where applicant conceded that respondent conducted reasonable searches for the information sought.

[DJH v Secretary, Department of Education;; DJI v Secretary, Department of Education \[2018\] NSWCATAD 31](#)

HUMAN RIGHTS - disability discrimination- educational authority - direct discrimination - indirect discrimination - victimisation - vicarious liability.

[Veall v Department of Planning and Environment \[2018\] NSWCATAD 47](#)

ADMINISTRATIVE LAW – Access to government information – informant – personal information – opinion as personal information - correct application of public interest test – correct and preferable decision.

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](#).

High Court of Australia Bulletins

High Court of Australia Bulletin [2018] HCAB 01 - published on 28 February 2018. http://www.hcourt.gov.au/assets/library/hcabulletin/highcourtbulletin2018_01.pdf

Current Inquiries

[Judiciary Amendment \(Commonwealth Model Litigant Obligations\) Bill 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. Submissions closed on 28 February 2018.

[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.

NSW

[NCAT: Updated procedural direction on expert evidence](#)

The President has revised NCAT Procedural Direction 3 - Expert Evidence which sets out how expert witnesses are to provide evidence in Tribunal proceedings. [NCAT Procedural Direction 3 - Expert Evidence \(PDF, 50kB\)](#)

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

Tables of prosecution briefs with the DPP and outcomes. Last updated 1 March 2018.

LEGISLATION - NSW

[Intelligence Services Amendment \(Establishment of the Australian Signals Directorate\) Bill 2018](#)

House of Representatives Third reading agreed to 28/02/2018.

Amends: the Intelligence Services Act 2001 to: establish the Australian Signals Directorate (ASD) as an independent statutory agency within the Defence portfolio reporting directly to the Minister for Defence; amend ASD’s functions to include providing material, advice and other assistance to prescribed persons or bodies, and preventing and disrupting cybercrime; require the Director-General of ASD to brief the Leader of the Opposition about matters relating to ASD; and give the Director-General powers to employ persons as employees of ASD; and 18 Acts to make consequential amendments.

[Australian Bill of Rights Bill 2017](#)

HR Removed from the Notice Paper in accordance with (SO 42) 27/02/2018.

Seeks to give effect to certain provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child by: declaring an Australian Bill of Rights; providing that any Commonwealth, state or territory law that is inconsistent with the Bill of Rights is invalid to the extent of the inconsistency; specifying that Commonwealth, state and territory laws must be interpreted consistently with the Bill of Rights; and providing the Australian Human Rights Commission with a range of additional powers and functions in relation to the rights and freedoms in the Bill of Rights.

[Electoral Amendment \(Banning Foreign Political Donations\) Bill 2017](#)

HR Removed from the Notice Paper in accordance with (SO 42) 27/02/2018.

Amends the Commonwealth Electoral Act 1918 to: prohibit the receipt of a gift which exceeds \$1000 by a political party or candidate from a foreign person or a person who has not provided a statutory declaration stating that they are not a foreign person; provide that a gift received in these circumstances is a debt owing to the Commonwealth and may be recovered by the Commonwealth; and provide that a gift received in these circumstances is not unlawful if it is returned within 30 days after its receipt.

[Crimes Amendment \(National Disability Insurance Scheme—Worker Screening\) Bill 2018](#)

House of Representatives Third reading agreed to 28/02/2018.

The amendments in this Bill would create an exception for convictions of persons who work, or seek to work, with people with disability in the National Disability Insurance Scheme (NDIS) so that those convictions can be disclosed to, and taken into account by, Commonwealth, State and Territory agencies, to enable State and Territory worker screening units to determine whether the person is suitable to work with people with disability in the NDIS.

NSW

Proclamations commencing Acts

[Parole Legislation Amendment Act 2017 No 57](#) (2018-53) — published LW 23 February 2018.

Proclamations commencing Acts

[Children \(Detention Centres\) Amendment \(Parole\) Regulation 2018](#) (2018-54) — published LW 23 February 2018.

[Crimes \(Administration of Sentences\) Amendment \(Parole\) Regulation 2018](#) (2018-55) — published LW 23 February 2018.

[Crimes \(Sentencing Procedure\) Amendment \(Parole Orders\) Regulation 2018](#) (2018-56) — published LW 23 February 2018.

[Liquor Amendment \(Lock Out Exemption for Mardi Gras\) Regulation 2018](#) (2018-57) — published LW 23 February 2018.

Bills assented to

Vexatious Proceedings Amendment (Statutory Review) Act 2018 No 1 — Assented to 20 February 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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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