



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

We would like to thank all those who attended Thomson Geer's NSW Public Sector CPD Intensive on 20 March 2018. It was very good to be able to have a dialogue on a range of important topics with our readers.

We note that Eddie Obeid's application for special leave to the High Court of Australia was refused on 23 March 2018, and he will be forced to pay back almost \$300,000 in taxpayer-funded legal assistance as well as his \$660,000 parliamentary pension. <https://www.smh.com.au/national/nsw/eddie-obeid-to-pay-back-300-000-in-legal-fees-and-660-000-pension-20180324-p4z62d.html>

In other news, we understand that steps to appeal the decision of the NSW Civil and Administrative Tribunal have been taken in the matters of *Robinson v Transport for NSW* and *Robinson v Roads and Maritime Services* - the decision was published on 30 November 2017, and referred to in our December newsletter. <https://www.caselaw.nsw.gov.au/decision/5a1ce2d0e4b074a7c6e1a88d>. The Tribunal decision as it presently stands suggests caution should be taken when sharing privileged information with statutory corporations in order to ensure that waiver of privilege does not occur.

### MEDIA

#### LCA: Amendments to Espionage Bill supported, but more work still required

The Law Council of Australia has welcomed the Attorney-General's proposed amendments to the Federal Government's National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 and has urged the Parliamentary Joint Committee on Intelligence and Security to recommend further improvements to the legislation. <https://www.lawcouncil.asn.au/media/media-releases/amendments-to-espionage-bill-supported-but-more-work-still-required>

#### ACMA: New gambling ad rules introduced

Gambling advertisements will be banned during the broadcast of live sports between 5.00 am and 8.30 pm on commercial free-to-air TV, radio and pay TV. These [new rules](#) are contained in industry codes which have been

registered by the Australian Communications and Media Authority. The new rules will come into effect on 30 March 2018. <https://www.acma.gov.au/theACMA/new-gambling-ad-rules-introduced>

#### Appointment to the Family Court of Australia

The Hon Justice Linda Gail Sutherland has been appointed as a Judge of the Family Court of Australia. Justice Sutherland commenced on 16 March 2018 and will hold a dual commission as a Judge of the Family Court of Western Australia (FCWA), having commenced in that Court on 12 February 2018. <https://www.attorneygeneral.gov.au/Media/Pages/Appointment-to-the-Family-Court-of-Australia.aspx>

#### Re-appointment of National Children's Commissioner

The government has announced the re-appointment of Ms Megan Mitchell as the full-time National Children's Commissioner, for two years beginning on 25 March 2018. <https://www.attorneygeneral.gov.au/Media/Pages/Re-appointment-of-National-Childrens-Commissioner.aspx>

#### Australia's media companies join forces to fight 'chilling' security laws

Australia's top media organisations have demanded a blanket public interest exemption for journalists in response to the Coalition's amended foreign interference bill. [https://www.theguardian.com/media/2018/mar/14/australias-media-companies-join-forces-to-fight-chilling-security-laws?CMP=soc\\_567](https://www.theguardian.com/media/2018/mar/14/australias-media-companies-join-forces-to-fight-chilling-security-laws?CMP=soc_567)

#### Law Council tells Press Club access to justice reform now urgent, releases new recommendations

The Law Council of Australia told the National Press Club that some of Australia's most disadvantaged people cannot get access to justice and that urgent reform is needed. During the address, Law Council President, Morry Bailes, released [a progress report](#) and three early recommendations from its national [Justice Project](#), a root-and-branch review into the state of access to justice for some of Australia's most vulnerable. <https://www.lawcouncil.asn.au/media/media-releases/law-council-tells-press-club-access-to-justice-reform-now-urgent-releases-new-recommendations>

### **LCA: Many family law system reforms to consider, but funding shortage remains the primary issue**

The Law Council of Australia has welcomed the release of the Australian Law Reform Commission's Issues Paper, which raises 47 questions for consideration aimed at improving the family law system. The release of the Issues Paper marks an important milestone in the first major inquiry into the family law system in over 30 years. <https://www.lawcouncil.asn.au/media/media-releases/many-family-law-system-reforms-to-consider-but-funding-shortage-remains-the-primary-issue>

### **ALRC Review of the Family Law System – Call for submissions**

The Australian Law Reform Commission (ALRC) has released an Issues Paper for its Review of the Family Law System, and is calling for submissions from the public. The family law system is undergoing its first, independent comprehensive review since the inception of the Family Law Act 1975 more than forty years ago. <https://www.alrc.gov.au/news-media/media-release/family-law-system-IP>

### **NSW Introduces Bill Package to Improve Regulation of Liquor, Gaming and Clubs Industries**

The NSW Government has introduced a package of four cognate bills relating to regulation of liquor, gaming and clubs industries. The bills make a significant number of amendments to a number of pieces of legislation, building on existing measures designed to protect those impacted by gaming-related harm and improve the management of the liquor, gaming and clubs industries. <https://www.timebase.com.au/news/2018/AT04617-article.html>

### **National Apology to Victims and Survivors of Child Sexual Abuse Reference Group**

The Turnbull Government announced the membership of the National Apology to Victims and Survivors of Child Sexual Abuse Reference Group. The Group will facilitate the delivery of a National Apology to victims and survivors of institutional child sexual abuse by advising the Government on the form and content of the apology. <https://www.attorneygeneral.gov.au/Media/Pages/National-Apology-to-Victims-and-Survivors-of-Child-Sexual-Abuse-Reference-Group-9-March-2018.aspx>

### **First states commit to Redress Scheme**

New South Wales and Victoria will be the first states to opt into the National Redress Scheme for people who were sexually abused as children while in the care of institutions. Subject to the passage of legislation, the Redress Scheme will commence on 1 July. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/first-states-commit-to-redress-scheme.aspx>

### **Amendments to Espionage and Foreign Interference Bill**

The Turnbull Government has committed to refinements and improvements to the National Security Legislation Amendment (Espionage and Foreign Interference) Bill to ensure it strikes the right balance between keeping Australia safe and not impeding the ordinary and important work of journalists and media organisations. <https://www.lawcouncil.asn.au/media/media-releases/law-council-tells-press-club-access-to-justice-reform-now-urgent-releases-new-recommendations>

### **Deputy Chief Magistrate to join District Court**

Attorney General Mark Speakman announced the appointment of Deputy Chief Magistrate Chris O'Brien to the bench of the District Court of NSW. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/deputy-chief-magistrate-to-join-district-court.aspx>

### **Laws to protect pregnant job seekers pass parliament**

The NSW Parliament has repealed a law that allowed employers to fire or refuse to hire women who knew they were pregnant when applying for a job. "These amendments will ensure fair access to employment, which is good for the NSW economy and vital to ensuring gender equality." <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/laws-to-protect-pregnant-job-seekers-pass-parliament.aspx>

### **ICAC sinks teeth into PS job claims**

The NSW Independent Commission Against Corruption (ICAC) has called for stronger employment screening practices in the NSW Public Service to combat employment application fraud, in its report, Strengthening Employment Screening Practices in the NSW Public Sector. <http://www.psnews.com.au/aps/588/news/icac-sinks-teeth-into-ps-job-claims>

## **CASES**

### **Re Lambie [2018] HCA 6**

Constitutional law (Cth) – Parliamentary elections – Reference to Court of Disputed Returns – Where Court held there was a vacancy in representation of Tasmania in Senate – Where Court made directions for special count of ballot papers to fill vacancy – Where orders sought following special count that Mr Steven Martin be declared elected as senator to fill vacancy – Where Mr Martin held offices of mayor and of councillor of local government corporation under Local Government Act 1993 (Tas) – Whether Mr Martin incapable of being chosen or of sitting as senator by reason of s 44(iv) of Constitution – Proper construction of s 44(iv) of Constitution – Where no dispute that office of mayor or of councillor is "office of profit" – Whether office of mayor or of councillor constitutes office of profit "under the Crown".

Words and phrases – "civil service", "conflict between duties", "conflict of duty and interest", "control over holding or profiting from holding", "employment by the Crown", "employment in the public service", "executive government", "executive influence", "from the Crown", "incapable of being chosen or of sitting", "office of profit", "public service", "under the Crown", "will of the executive government". Constitution, ss 44(iv), 45(i), 48. Commonwealth Electoral Act 1918 (Cth), s 376. Local Government Act 1993 (Tas).

### **Haggar v Point to Point Transport Commissioner [2018] NSWCATOD 38**

ADMINISTRATIVE LAW – Passenger Transport – Where applicant drove private hire vehicles pursuant to an authority under the Passenger Transport Act 1990 – Where applicant had committed disqualifying offences 28 years ago – Where respondent decided, upon commencement of the Point to Point Transport (Taxis and Hire Vehicles) Act 2016, that the applicant should not be allowed to continue to drive passenger service vehicles, due to the disqualifying

offences – Principles governing exercise of discretion  
ADMINISTRATIVE LAW – Where applicant had not applied for internal review - Whether it was necessary for the Tribunal to deal with the application in order to protect the applicant's interests.

[Rous v Secretary, NSW Department of Education \[2018\] NSWCATAD 57](#)

HUMAN RIGHTS – Equal Opportunity – leave required for complaint to proceed – principles applying to grant of leave  
HUMAN RIGHTS – Equal Opportunity – elements of direct and indirect discrimination.

[DGB v Commissioner of Victims Rights \[2018\] NSWCATAD 55](#)

ADMINISTRATIVE LAW – merits review – victims support motor vehicle use – homicide as a result of motor vehicle use – purpose of victims support – clear intention of Parliament to exclude some claims.

[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.

[Fisher v Roads and Maritime Services NSW \[2018\] NSWCATAD 52](#)

ADMINISTRATIVE LAW – government information – review of decisions - reasonable grounds to believe information exists and is held - reasonableness of search.

## 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](#).

### Law Council of Australia Submissions

13 March 2018— Law Council

[Proposed amendments to the National Security Legislation Amendment \(Espionage and Foreign Interference\) Bill 2017 \(EFI Bill\)](#)

08 March 2018— Law Council

[Market Readiness of the National Disability Insurance Scheme](#)

### ALRC Review of the Family Law System – Call for submissions

The Australian Law Reform Commission (ALRC) has released an [Issues Paper for its Review of the Family Law System](#), and is calling for submissions from the public. The Issues Paper released provides discussion of issues identified in the Terms

of Reference, and asks questions about how they could be addressed.

The ALRC invites submissions in response to the 47 questions and analysis in the Issues Paper, which is available on the ALRC website at [alrc.gov.au/publications](http://alrc.gov.au/publications). Submissions are due to the ALRC by 7 May 2018.

### HCA: Review of Registry Operations and Case Management System

The High Court is reviewing its registry operations and case management system with a particular emphasis on current and future electronic needs. To participate in the review, please complete the online form by Friday, 6 April 2018. [The online form is available via this page](#).

### 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

#### [BOSCAR Long-term trends in violent and property crime and NSW Recorded Crime Statistics quarterly update December 2017](#)

Three of the ten offence types analysed in BOSCAR's report were found to have recorded rates higher in 2017 than in 1990. These included sexual assault (172% higher); other sexual offences (118% higher) and assault (59% higher).

### NSW Land and Environment Court

#### Pilot Duty Lawyer Scheme

A duty lawyer scheme will be trialled in the Land and Environment Court for a 6 month period commencing 6 April 2018. The pilot scheme is aimed at assisting self-represented litigants in Classes 4 and 5 of the Court's jurisdiction. <http://www.lec.justice.nsw.gov.au/>

#### LEC Judicial Newsletter

[Volume 10 Issue 1](#) of the Court's Judicial Newsletter is now available.

#### [NCAT: Do you know your rights and obligations?](#)

NCAT has developed a new resource that explains the rights and obligations of parties when NCAT makes an order or decision that affects them.

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

Tables of prosecution briefs with the DPP and outcomes.  
Last updated 16 March 2018.

[ICAC public inquiry into allegations concerning Awabakal Local Aboriginal Land Council](#)

The NSW Independent Commission Against Corruption (ICAC) announced that a public inquiry will be held, commencing on Monday 26 March 2018, as part of an investigation it is conducting into allegations concerning the Awabakal Local Aboriginal Land Council (LALC) (Operation Skyline).

**LEGISLATION****COMMONWEALTH**[Defence Force Discipline Regulations 2018](#)

16/03/2018 - This instrument repeals and replaces the Defence Force Discipline Regulations 1985.

[Privacy \(Australian Honours System\) Temporary Public Interest Determination 2018](#)

15/03/2018 - This determination applies to the disclosure of certain information by the Department of Home Affairs to OOSGG and PM&C for the purpose of verifying the Australian citizenship or permanent residency status of individuals who are the subject of: a. nominations for membership or honorary membership of the Order of Australia; b. applications for approval for the acceptance and wearing of foreign awards; and c. consideration for other awards in the Australian honours system.

[Sex Discrimination Regulations 2018](#)

14/03/2018 - These regulations remake the 1984 Regulations to continue to prescribe classes of care or services which are 'Commonwealth-funded aged care' for the purposes of the Sex Discrimination Act 1984. F2018L00246.

**NSW****Bills Introduced****Government**

[Casino Control Amendment Bill 2018](#)

[Gaming Machines Amendment \(Leasing and Assessment\) Bill 2018](#)

[Liquor and Gaming Legislation Amendment Bill 2018](#)

**Non-Government – 09 March 2018**

[Animal Protection and Crimes Legislation Amendment \(Reporting Animal Cruelty and Protection of Animal Enterprises\) Bill 2018](#)

[Modern Slavery Bill 2018](#)

**Bills passed by both Houses of Parliament – Week ending 09 March 2018**

[Justice Legislation Amendment Bill 2018](#)

The object of this Bill is to make various amendments to Acts relating to courts and crimes and related matters.

**Proclamations commencing Acts**

[Child Protection \(Working with Children\) Amendment \(Compliance Period\) Regulation 2018](#) (2018-87) – published LW 16 March 2018.

**Bills introduced Government – 16 March 2018**

[Child Protection \(Working with Children\) Amendment \(Statutory Review\) Bill 2018](#)

[Smoke-free Environment Amendment Bill 2018](#)

**Non-Government – 16 March 2018**

[Companion Animals Amendment \(Dining Areas\) Bill 2018](#)

**Bills passed by both Houses of Parliament – 16 March 2018**

[Casino Control Amendment Bill 2018](#)

[Gaming Machines Amendment \(Leasing and Assessment\) Bill 2018](#)

[Liquor and Gaming Legislation Amendment Bill 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](mailto:nswgovtlegal@tglaw.com.au) at anytime.



#### Mark Feetham

Partner  
+61 2 8248 5847  
+61 414 908 225  
[mfeetham@tglaw.com.au](mailto:mfeetham@tglaw.com.au)



#### Loretta Reynolds

Partner, Markets  
+61 3 8080 3705  
+61 403 069 819  
[lreynolds@tglaw.com.au](mailto:lreynolds@tglaw.com.au)

If you would like to receive a Contact Card with full list of contacts please email us.

### NEWSLETTER EDITOR

### LIBRARY RESOURCE



#### Sylvia Fernandez

Partner  
+61 2 8248 3499  
+61 418 340 118  
[sfernandez@tglaw.com.au](mailto:sfernandez@tglaw.com.au)



#### Adeline Tran

Lawyer  
+61 2 9020 5709  
[resourcecentre@tglaw.com.au](mailto:resourcecentre@tglaw.com.au)

### SUBSCRIBE TO NEWSLETTER

To subscribe please email [nswgovtlegal@tglaw.com.au](mailto:nswgovtlegal@tglaw.com.au)

## 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](mailto: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