



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Last week, the NSW Court of Appeal handed down its decision in *Obeid v Lockley* [2018] NSWCA 71, dismissing an appeal by Edward Obeid and other members of his family against Grant Lockley and Paul Grainger, who were members of staff of the Independent Commission Against Corruption (ICAC). The key issue before the Court was whether the respondents, Lockley and Grainger, were “public officers” for the purpose of proving the tort of misfeasance in public office. While Bathurst CJ ultimately held that the respondents were “public officers” exercising powers pursuant to the ICAC Act, such as applying for and executing warrants, the appeal was dismissed for reasons including the following:

1. Any reputational harm caused by the respondents due to the publication of an article in the Sydney Morning Herald was not reasonably foreseeable;
2. Any loss suffered by the appellants was not actually caused by the respondents; and
3. The appellants failed not prove that the respondents were either aware of, or recklessly indifferent to, the fact that the appellants were likely to suffer harm.

Agreeing with Bathurst CJ, Leeming JA importantly cited with approval the following comment by Professor Aronson, one of Australia’s leading government and administrative law lawyers:

*“Not all public servants fall within the scope of the misfeasance tort, even though their salaries come from public funds, and even though they may be ‘officers’ for administrative purposes and have to take an oath on appointment. A person might be a public employee but not a public officer. There is in fact no single definition of ‘public officer’ across all contexts”.*

### MEDIA

#### New law opens borders to data sharing

The passage of a new law in the United States creates a framework for law enforcement Agencies around the world to access security data across borders. The Minister for Law Enforcement and Cyber Security, Mr Taylor said the Americans’ Clarifying Lawful Overseas Use of Data Act

(CLOUD Act) establishes important safeguards for lawful access to data based on adherence to human rights norms and the rule of law. <http://psnews.com.au/2018/04/12/new-law-opens-borders-to-data-sharing/>

#### Three new magistrates for NSW

Attorney General Mark Speakman announced the appointments of Richard Funston, Leanne Robinson and Andrew Miller as magistrates of the Local Court of NSW. Mr Miller and Ms Robinson will be sworn in as magistrates on 23 April 2018 and Mr Funston on 30 April 2018. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/three-new-magistrates-NSW.aspx>

#### Notifiable Data Breaches first Quarterly report released

The Office of the Australian Information Commissioner (OAIC) has published the first quarterly report on data breach notifications received under the Notifiable Data Breaches (NDB) scheme, which came into force on 22 February 2018. <https://www.oaic.gov.au/media-and-speeches/news/notifiable-data-breaches-first-quarterly-report-released>

#### LCA makes recommendations to electoral funding bill

The Law Council has commended the bipartisan committee’s recommendations to improve the Government’s electoral funding and disclosure reform bill. However, the Law Council added that there were still further issues to consider including; clarification of the definition of ‘political expenditure’ and addressing the possibility of having overlapping ‘Transparency Registers’ under two different schemes. <https://www.lawcouncil.asn.au/media/media-releases/recommendations-to-electoral-funding-bill-a-vast-improvement--although-still-more-issues-to-consider>

#### High Court launches Constitution Centre

The High Court of Australia has opened the Australian Constitution Centre at its headquarters in Canberra. The Court said the six principles were: democracy, the rule of law, the separation of powers, federalism, nationhood and right. <http://psnews.com.au/2018/04/09/high-court-launches-constitution-centre/>

### IPA NSW: Government GIPA dashboard available online for the first time

Recently the Information and Privacy Commission NSW launched a public dashboard that will enable government agencies and the public to quickly and easily access agency and sector performance data for the first time <https://www.ipc.nsw.gov.au/news-media/media-releases/nsw-government-gipa-dashboard-available-online-first-time>  
See [The dashboard is available on the IPC website.](#)

### Australia's privacy commissioner is coming after Facebook over Cambridge Analytica

The office of the Australian privacy commissioner is launching an investigation into Facebook in the wake of the social media giant confirming that private information belonging to 310,000 Australians may have been accessed without authorisation by the controversial political data science group Cambridge Analytica. <https://www.businessinsider.com.au/now-australias-privacy-commissioner-is-coming-after-facebook-over-cambridge-analytica-2018-4>

### Citizens want eGovernment, but wary of data breaches

Australians want to be able to deal with all levels of government online but they remain wary of how governments treat their private information. That's among the key findings of major survey of over 5,000 people in five countries across Asia Pacific about how they prefer to engage with government. <https://www.governmentnews.com.au/2018/04/citizens-want-egovernment-but-wary-of-data-breaches/>

### Holding child sex abusers to account in NSW

Offenders convicted of persistent child sex abuse will face a maximum penalty of life in jail under extensive reforms implementing the criminal justice recommendations of the Royal Commission into Institutional Responses to Child Sex Abuse. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/holding-child-sex-abusers-to-account.aspx>

## PUBLISHED - ARTICLES, PAPERS, REPORTS

### [Advisory report on the Electoral Legislation Amendment \(Electoral Funding and Disclosure Reform\) Bill 2017](#)

Joint Standing Committee on Electoral Matters, Parliament of Australia: 09 April 2018.

While most would agree that only Australians should have the power to influence our election outcomes, our nation is one of the few western democracies where foreign money can still be used to influence domestic elections.

## CASES

### [Park v Transport for NSW \[2018\] NSWCATAD 82](#)

ADMINISTRATIVE LAW – access to government information – cabinet material – whether reasonable grounds for withholding information established.

### [Obeid v Lockley \[2018\] NSWCA 71](#)

TORTS – Misfeasance in public office – officers of ICAC appointed as senior investigators recorded contents of

documents on video during execution of search warrant – whether officers held public office – whether officers acted in excess of power – whether officers were aware of or recklessly indifferent to a likely risk of harm to the plaintiffs – whether sufficient for there to be a reasonable foreseeable risk of harm – whether officers caused damage to the plaintiffs.

## PRACTICE AND PROCEDURE

### High Court of Australia Bulletin

High Court of Australia Bulletin [2018] HCAB 02 (4 April 2018). [http://www.hcourt.gov.au/assets/library/hcabulletin/highcourtbulletin2018\\_02.pdf](http://www.hcourt.gov.au/assets/library/hcabulletin/highcourtbulletin2018_02.pdf)

### 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

06 April 2018— Law Council  
[Supplementary submission: Review of the Identity-matching Services Bill 2018](#)

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

The Australian Law Reform Commission (ALRC) [Issues Paper for its Review of the Family Law System](#), 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.

### [OAIC: Facebook and Cambridge Analytica](#)

The Commissioner has opened a formal investigation into Facebook, following confirmation from Facebook that the information of over 300,000 Australian users may have been acquired and used without authorisation. The investigation will consider whether Facebook has breached the Privacy Act 1988 (Privacy Act).

### OAIC Key dates

[Australian Government Agencies Privacy Code](#)  
Commences 1 July 2018.

### 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.

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

Tables of prosecution briefs with the DPP and outcomes.  
Last updated 3 April 2018.

**[ICAC: Public inquiry into allegations concerning former Canterbury City Council starts Monday](#)**

The ICAC public inquiry to be held as part of an investigation it is conducting into allegations concerning the former Canterbury City Council (Operation Dasha) started Monday 16 April 2018.

**[ICAC: Operation Skyline public inquiry adjourned](#)**

The Operation Skyline investigation public inquiry into allegations concerning the Awabakal Local Aboriginal Land Council is adjourned until 10:00am on Monday 7 May 2018.

**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 which commenced on 6 April 2018. The pilot scheme is aimed at assisting self-represented litigants in Classes 4 and 5 of the Court's jurisdiction. If it proves successful it may be broadened to other Classes or types of proceedings in the Court.

**NSW Law Reform Commission: Access to digital assets upon death or incapacity**

The Attorney General has asked us to review and report on the laws that affect access to a NSW person's digital assets after they die or become incapacitated. We invite preliminary submissions on what this review should cover. The deadline for preliminary submissions is 1 June 2018. See [Terms of reference](#) and [Background information about access to digital assets](#)

Note: The review will consider relevant NSW, Commonwealth and international laws, including those relating to intellectual property, privacy, contract, crime, estate administration, wills, succession and assisted-decision making.

**LEGISLATION****COMMONWEALTH****[Communications Legislation Amendment \(Online Content Services and Other Measures\) Act 2018](#)**

Registered 13 April 2018 - Act No. 28 of 2018.

**[Communications Legislation Amendment \(Online Content Services and Other Measures\) Bill 2017](#)**

Assent Act no: 28 Year: 2018 11 April 2018 - Amends the: Broadcasting Services Act 1992 to: enable the Australian Communications and Media Authority (ACMA) to make online content service provider rules which impose gambling promotions restrictions on online content service providers; and provide the ACMA with the power to

determine program standards about gambling promotional content which apply to certain broadcasters and subscriptions providers; Australian Communications and Media Authority Act 2005 to: require the ACMA to monitor compliance with online content service provider rules; and enable the ACMA to delegate the power to issues certain notices; and Enhancing Online Safety Act 2015 to make consequential amendments.

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

Assent Act no: 25 Year: 2018 11 April 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.

**NSW****Regulations and other miscellaneous instruments**

[Crimes \(Administration of Sentences\) Amendment \(Classification of Inmates\) Regulation 2018](#) (2018-122) — published LW 6 April 2018.

[Evidence \(Audio and Audio Visual Links\) Amendment \(Bail Exemptions\) Regulation 2018](#) (2018-123) — published LW 6 April 2018.

**Proclamations commencing Acts**

[Justice Legislation Amendment Act 2018 No 4](#) (2018-133) — published LW 13 April 2018.

**Regulations and other miscellaneous instruments**

[Crimes \(High Risk Offenders\) Regulation 2018](#) (2018-134) — published LW 13 April 2018.

## KEY CONTACTS

### PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with the appropriate expertise and achieving maximum efficiency.

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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](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