



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Edition 42 of our NSW Public Sector Newsletter. The Federal Budget has commanded the news over the past fortnight, with significant funding cuts and increased spending in different sectors generating countless topics of conversation and debate. Certain aspects of the budget are covered below.

The purpose of this newsletter is to provide government lawyers with a digestible and relevant snapshot of current news, case law and legislation. We welcome feedback or suggestions for areas of interest at any time.

MEDIA

Senate calls for legal aid funding increase post Budget

The Senate has passed a motion calling on the Australian Government to reverse the downward trend in legal aid funding, which is now at its lowest level in over 20 years. The motion was passed following the recent Federal Budget which did not address the crisis in legal aid, and ahead of National Pro Bono Day, held on Tuesday 15 May. <https://www.lawcouncil.asn.au/media/media-releases/senate-calls-for-legal-aid-funding-increase-post-budget>

New Parliamentary Counsel appointed

Premier Gladys Berejiklian announced leading public sector executive Annette O'Callaghan as the new NSW Parliamentary Counsel. <https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/new-parliamentary-counsel-appointed/>

High Court – Katy Gallagher

The High Court has decided that Katy Gallagher was ineligible to be elected to the Senate because she was a dual citizen at the close of nominations for the 2016 Federal Election. The remaining four members, who have disclosed that they remained British citizens after 9 June 2016 and were therefore ineligible to be elected, are in breach of the Constitution by remaining in Parliament. These Members must immediately resign to allow for the orderly conduct of by-elections in each of these seats to ensure the integrity of the Australian Parliament is upheld. <http://www.attorneygeneral.gov.au/Media/Pages/High-court-katy-gallagher.aspx>

Budget 2018: Government set to shake-up consumer data rights with \$44.6m investment

The Australian Federal Government is set to shake-up the way public and private sector organisations can access and use consumer data by outlaying \$44.6 million to launch a new Consumer Data Right (CDR). There's also \$12.9 million for the OAIC to assess the privacy impact of designating sectors subject to the CDR, and to ensure the rules fit within the guidelines of the Privacy Act 1988. <https://www.cmo.com.au/article/640952/budget-2018-government-set-shake-up-consumer-data-rights-44-6m-investment/>

New Commissioner to set PS data free

A new national body to free up Government data for easier access by the public is to be established as part of the Government's response to recommendations of the Productivity Commission. Announced by the Minister Assisting the Prime Minister for Digital Transformation, Michael Keenan, the new Office of the National Data Commissioner will have the role of implementing a simpler and more efficient data sharing and release framework across all Government entities. <https://www.lawcouncil.asn.au/media/news/committee-recommends-redress-bills-pass>

Privacy Protection Is Everyone's Business

Attorney General Mark Speakman said the NSW Government is aware of the need for legislation to evolve with technology in our rapidly changing world. The NSW Government's intimate image-based abuse reforms were introduced in 2017 to enable courts to penalise the non-consensual sharing of intimate images with sentences including terms of imprisonment. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/privacy-protection-everyones-business.aspx>

Sexual Consent Laws To Be Reviewed in NSW

A review of the sexual consent provisions in the Crimes Act will determine if the law needs to be amended to protect victims better, Attorney General Mark Speakman announced recently. The review will consider sexual assault research and expert opinion, as well as community views, and developments in law, policy and practice in

Australia and internationally. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/sexual-consent-laws-to-be-reviewed.aspx>

NSW Privacy Commissioner launches new guidance for public sector agencies on GDPR

With the European Union (EU) General Data Protection Regulation (GDPR) coming into effect in a matter of weeks on 25 May, NSW Privacy Commissioner Samantha Gavel recently released guidance for NSW public sector agencies on this matter. <https://www.ipc.nsw.gov.au/news-media/news/nsw-privacy-commissioner-launches-new-guidance-public-sector-agencies-gdpr>

NSW Legislative Council Passes Modern Slavery Bill

On 3 May 2018, the NSW Legislative Council passed (with amendments) the Modern Slavery Bill 2018 (NSW) (the "Bill"). This Bill, a private member's Bill introduced by Paul Green, will now be considered in the Legislative Assembly. <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3488>

NSW Leads Nation on Path to Redress

The NSW Government has become the first state in Australia to introduce a Bill paving the way for it to join the National Redress Scheme for survivors of institutional child sexual abuse. The redress scheme, to begin on 1 July 2018, includes a payment of up to \$150,000 in recognition of a survivor's hurt and injury. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/privacy-protection-everyones-business.aspx>

Historic Criminal Justice Reforms in NSW

A transformational criminal justice reform designed to deliver swifter justice to victims and the community has begun in NSW, Attorney General Mark Speakman has announced. These tough and smart reforms encourage serious offenders to enter early appropriate guilty pleas, enabling victims to get on with their lives and police to return to front line duties. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/historic-criminal-justice-reforms.aspx>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Budget 2018-19](#)

Government of Australia: 08 May 2018.

The Turnbull Government has released the 2018-19 federal budget.

[The Domestic Violence Safety Assessment Tool \(DVSAT\) and intimate partner repeat victimisation](#)

Clare Ringland; NSW Bureau of Crime Statistics and Research: 03 May 2018.

This report outlines BOCSAR's evaluation of the DVSAT screening tool (which is a key component of the Safer Pathway program), to see how reliable it is in identifying victims of domestic violence at high risk of repeat victimisation.

PRACTICE AND PROCEDURE

High Court of Australia

[High Court of Australia Bulletin \[2018\] HCAB 3 \(28 April 2018\)](#)

Federal Budget 2018-19: Highlights for lawyers

Law Council of Australia has produced a summary of key items from last night's Federal Budget of interest to the legal profession. [Read more](#)

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](#).

[OAIC Statement on Commonwealth Bank of Australia incident in 2016](#)

The Office of the Australian Information Commissioner was notified of an [incident](#) by the Commonwealth Bank of Australia (CBA) in 2016. Having regard to the findings in the [report](#) by the Australian Prudential Regulation Authority into the CBA released on Tuesday, the OAIC has made further inquiries in relation to this matter.

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

NSW IPC Bulletin

The aim of the IPC Bulletin is to provide support and advice to public sector agencies, practitioners, interested parties from the private, government and university sectors, by publishing case notes and providing timely statutory updates that align with the IPC's administered legislation. Access the latest issue here [May 2018](#).

[ICAC public inquiry into allegations concerning Corrective Services NSW officers assault of prisoner](#)

The ICAC will hold a public inquiry commencing on Monday 21 May 2018 as part of an investigation it is conducting into allegations concerning the conduct of Corrective Services NSW (CSNSW) officers (Operation Estrý).

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

Tables of prosecution briefs with the DPP and outcomes.
Last updated 04 May 2018.

BOCSAR Publication Releases

[NSW Custody Statistics Quarterly update March 2018](#) – 30 April 2018.

Consent in relation to sexual assault offences: Consultation

The Attorney General has asked us to review s 61HA of the Crimes Act 1900 (NSW) which deals with consent in relation to sexual assault. The deadline for preliminary submissions is 29 June 2018. See the [Terms of reference](#) and [Making a preliminary submission](#).

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

[High Court \(2019 Sittings\) Rules 2018](#)

10/05/2018 - These Rules of Court appoint the High Court days of sitting for 2019.

[Criminal Code and Other Legislation Amendment \(Removing Commonwealth Restrictions on Cannabis\) Bill 2018](#)

10/05/2018 – The Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Bill 2018 removes Commonwealth barriers to the legalisation, regulation and taxation of cannabis. As such, the passage of this bill would allow any State or Territory Government to legalise and regulate cannabis.

NSW

Regulations and other miscellaneous instruments

[Uniform Civil Procedure \(Amendment No 85\) Rule 2018](#) (2018-193) – published LW 11 May 2018.

[Uniform Civil Procedure \(Amendment No 86\) Rule 2018](#) (2018-194) – published LW 11 May 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