



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Edition 43 of our NSW Public Sector Newsletter. On 25 May 2018 the European Union General Data Protection Regulation (GDPR) came into force. The GDPR differs in some respects from Australian privacy law and it will have an impact on Australian businesses and entities. Certain aspects of the GDPR 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

General Data Protection Regulation commences 25 May

Employers whose negligence leads to the death of an employee will face up to 20 years in jail under tough new laws to be introduced by a re-elected Andrews Labor Government. Under the proposed new law, employers will face fines of almost \$16 million and individuals responsible for negligently causing death will be held to account and face up to 20 years in jail. <https://www.oaic.gov.au/media-and-speeches/news/general-data-protection-regulation-commences-25-may>

Australia's privacy protection laws "unsustainable" in wake of tough new EU regulations

Australia's weaker privacy protection laws will be unsustainable when tough new measures giving individuals "the right to virtually disappear", came into force in the European Union, according to a senior researcher at the University of Sydney Business School. <https://www.idm.net.au/article/0011997-australia-s-privacy-protection-laws-unsustainable-wake-tough-new-eu>

Look for the silver lining in GDPR's privacy obligations

The GDPR is the an opportunity for data-driven companies, not just a privacy burden. Understanding where data is and that it is managed correctly is not only fundamental to complying with GDPR, but also to providing the highly personalised and predictive services which the modern customer expects. <https://www.cso.com.au/article/641604/look-silver-lining-gdpr-privacy-obligations/>

Data privacy regulations causing headaches for AU businesses

Global and regulatory landscapes are tightening to ensure more data privacy in the face of increasing data sharing and cyber threats, and while many Australian businesses have prepared for the Notifiable Data Breaches scheme, fewer are prepared for GDPR. <https://securitybrief.com.au/story/data-privacy-regulations-causing-headaches-au-businesses/>

Counter Terrorism Laws Extended and Enhanced

The Australian Government has introduced the Counter-Terrorism Legislation Amendment Bill (No.1) 2018 to extend vital counter-terrorism powers for our law enforcement and national security agencies for a further three years. <https://www.attorneygeneral.gov.au/Media/Pages/Counter-Terrorism-Laws-Extended-and-Enhanced-24-May-2018.aspx>

Legal aid under microscope

The Attorney-General's Department has issued the terms of reference for two reviews into legal aid arrangements around the nation. The reviews will look into the National Partnership Agreement on Legal Assistance Services 2015–20 (NPA) and the Indigenous Legal Assistance Program (ILAP). <https://psnews.com.au/2018/05/21/legal-aid-under-microscope/>

Protesting outside NSW abortion clinics could soon be outlawed

Protesters outside abortion clinics in New South Wales may be forced to abandon their posts, if State Parliament passes a new bill due to be introduced. <http://www.abc.net.au/news/2018-05-17/protesting-outside-abortion-clinics-in-nsw-may-soon-be-outlawed/9767936>

LCA: New Modern Slavery Act on the horizon

A Modern Slavery Reporting Requirement will be introduced as part of the new Modern Slavery Act. More than 3,000 large corporations and other entities will be required to [publish annual public statements](#) on their actions to address modern slavery in their supply chains and operations under the proposed new legislation. <https://www.lawcouncil.asn.au/media/news/new-modern-slavery-act-on-the-horizon>

Ombudsman releases NDIA reviews report

The Commonwealth Ombudsman Michael Manthorpe recently released a report into the National Disability Insurance Agency's (NDIA) handling of reviews of decisions under the National Disability Insurance Scheme Act 2013. The report discusses systemic issues highlighted by complaints and stakeholder feedback including significant backlogs, delays in decision making and poor communication practices. <http://www.ombudsman.gov.au/news-and-media/media-releases/media-release-documents/commonwealth-ombudsman/2018/15-may-2018-ombudsman-releases-ndia-reviews-report>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Identity crime and misuse in Australia: results of the 2016 online survey](#)

Russell G. Smith, Penny Jorna, Australian Institute of Criminology: 24 May 2018.

This report presents the results of the latest identity crime and misuse survey, undertaken by the AIC in May 2016. It updates information obtained in earlier surveys, undertaken in 2013 and 2014, and provides an indication of how identity crime and misuse of personal information environment has changed in Australia since 2013.

[Did the 2013 Bail Act increase the risk of bail refusal?](#)

BOCSAR: released 21 May 2018.

BOCSAR analysed the outcomes of 501,212 bail hearings involving 318,559 individuals. The impact of the legislation appears to be greater for high-risk defendants.

[State of digital rights](#)

Digital Rights Watch: 14 May 2018.

The central message of this report is that the impact of digital regulation should be viewed through the prism of human rights law. Government attempts to control the digital world create an inevitable tension between two fundamental human rights - fair access to the internet and personal rights to privacy and freedom of expression.

CASES

[Pascoe and Civil Aviation Safety Authority \(Freedom of information\) \[2018\] AATA 1273](#)

The Tribunal orders that document 38 be released to the applicant on or after 35 days. The reviewable decision is otherwise affirmed.

FREEDOM OF INFORMATION – exemption claims – categories of exemption – legal professional privilege – operations of agency exemption under s 47E(d) – personal information exemption – decision to limit stay releasing document – decision otherwise affirmed.

Administrative Appeals Tribunal Act 1975 (Cth) – s 43; Civil Aviation Authority 1988 (Cth) – s 74.

Freedom of Information Act 1982 (Cth) – ss 3, 3A, 11A, 11B, 42, 47E(d), 47F, 55, 58.

[Amos v Central Coast Council \[2018\] NSWCATAD 101](#)

ADMINISTRATIVE LAW – government information – forms of access – provision of inspection access only – whether provision of copy access would involve an infringement of copyright – whether Tribunal is entitled to consider fair dealing exception under copyright legislation

when determining whether there would be a copyright infringement – whether it is agency's purpose or applicants' purpose which is relevant for application of fair dealing exception in context of access application ADMINISTRATIVE LAW – government information – whether the Tribunal has jurisdiction to review the sufficiency of an agency's search where the agency has not made a determination that it does not hold information – whether the Tribunal has jurisdiction to review an implied decision that agency does not hold information – whether correct approach to review of decision that information is not held is to consider first that there are reasonable grounds to believe information exists and secondly whether searches were reasonable – whether applicant bears onus of proving respondent holds additional information – where information identified in second access application which was responsive to access application the subject of these proceedings, but not identified in relation to that application.

[CBL v Southern Cross University \[2018\] NSWCATAD 97](#)

ADMINISTRATIVE LAW – PRIVACY – personal information – solicitation - collection – lawful purpose – disclosure – disclosure within an agency – confidential information – no disclosure.

PRACTICE AND PROCEDURE

[NSW Privacy Commissioner: new guidance for public sector agencies on GDPR](#)

Now available, the report by the Commonwealth Ombudsman (report 03/2018) regarding the NDIA internal review processes, released May 2018: [Administration of Reviews under the National Disability Insurance Scheme Act 2013](#).

Comment: Without significant efforts to improve the timeliness of NDIA's administration of reviews and communication with participants, there remains a risk that participants' right to review will be undermined and review processes will continue to lack fairness and transparency and continue to drive a high volume of complaints.

[General Data Protection Regulation went live on 25 May](#)

The European Union's (EU) General Data Protection Regulation (GDPR) came into effect on 25 May 2018 to harmonise data privacy laws across Europe. It generally applies to data processing activities where an establishment is in the EU, or if outside the EU. Agencies and businesses should carefully assess whether the GDPR applies to their activities and seek their own legal advice accordingly. For more information, visit ico.org.uk and the Office of the Australian Information Commissioner at oaic.gov.au.

[Federal Budget 2018-19: Highlights for lawyers](#)

Law Council of Australia has produced a summary of key items from the recently released Federal Budget of interest to the legal profession, released on 17 May 2018.

[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 was on 31 May 2018.

[OAIC: Statement on Family Planning NSW](#)

The Office of the Australian Information Commissioner was notified by Family Planning NSW about a data breach incident that occurred on 25 April 2018. The OAIC understands that Family Planning NSW is in the process of notifying individuals whose personal information may have been affected by the breach.

OAIC Key dates

[Australian Government Agencies Privacy Code](#)

Commences 1 July 2018.

Current Inquiries

[Guidelines on the Marriage Act 1961 for authorised celebrants consultation](#)

The Attorney-General's Department invites feedback on the draft revised Guidelines on the Marriage Act 1961 for authorised celebrants (guidelines). Closing Monday, 4 June 2018.

[Copyright modernisation consultation paper](#)

Stakeholder views on reforms options for the Copyright Act. Closing 04 June 2018.

NSW

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

With the European Union (EU) General Data Protection Regulation (GDPR) came into effect on 25 May, the NSW Privacy Commissioner Samantha Gavel has released guidance for NSW public sector agencies on this matter. ["The Fact Sheet: NSW public sector agencies and the GDPR"](#) is aimed at helping NSW public sector agencies in understanding the GDPR and in particular the effect for those NSW public sector agencies that offer goods or services to EU citizens.

ICAC: Prosecution briefs with the DPP and outcomes

Tables of prosecution briefs with the DPP and outcomes. Last updated 14 May 2018.

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

[Supreme Court Practice Note SC CL 5 – General Case Management List](#)

Practice Note SC CL 5 – General Case Management List has been re-issued. This Practice Note applies to Urgent Applications in civil proceedings in the Common Law Division of the Supreme Court of New South Wales. The revised version has been published on the NSW Legislation website and commenced operation on 18 May 2018.

LEGISLATION

COMMONWEALTH

[National Redress Scheme for Institutional Child Sexual Abuse Bill 2018](#)

Introduced with the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018, the bill implements the joint response of the Commonwealth Government, the government of each participating state and territory, and each participating non-government institution to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse's Redress and Civil Litigation Report by: establishing the National Redress Scheme for Institutional Child Sexual Abuse to operate for a 10-year period from 1 July 2018; providing a payment of up to \$150 000 to survivors; providing access to counselling and psychological services to survivors; and providing an option for survivors to receive a direct personal response from the responsible institution.

[National Redress Scheme for Institutional Child Sexual Abuse \(Consequential Amendments\) Bill 2018](#)

Introduced with the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018, the bill amends the Administrative Decisions (Judicial Review) Act 1997 to exempt decisions made under the national redress scheme from judicial review; Freedom of Information Act 1982 to exempt protected information from disclosure under the Act; Social Security (Administration) Act 1999 to enable the use and disclosure of protected information if it is done for the purposes of the national redress scheme; and Age Discrimination Act 2004 to enable the exclusion of children applying to the national redress scheme if they will not turn 18 during the life of the scheme.

NSW

Bills introduced Government – 18 May 2018

[Electoral Funding Bill 2018](#)

[Road Transport and Other Legislation Amendment \(Digital Driver Licences and Photo Cards\) Bill 2018](#)

Non-Government – 18 May 2018

[Public Health Amendment \(Safe Access to Reproductive Health Clinics\) Bill 2018](#)

Bills passed by both Houses of Parliament – 18 May 2018

[National Redress Scheme for Institutional Child Sexual Abuse \(Commonwealth Powers\) Bill 2018](#)

Bills introduced Government – 25 May 2018

[Companion Animals and Other Legislation Amendment Bill 2018](#)

[Justice Legislation Amendment Bill \(No 2\) 2018](#)

[Miscellaneous Acts Amendment \(Marriages\) Bill 2018](#)

[Statute Law \(Miscellaneous Provisions\) Bill 2018](#)

Non-Government – 25 May 2018

[Anti-Discrimination Amendment \(Religious Freedoms\) Bill 2018](#)

[Public Accountability Legislation Amendment \(Sydney Motorway Corporation\) Bill 2018](#)

Bills passed by both Houses of Parliament – 25 May 2018

[Road Transport and Other Legislation Amendment \(Digital Driver Licences and Photo Cards\) Bill 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

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