



## PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Edition 46 of our NSW Public Sector Newsletter. This issue looks at new laws relating to modern slavery and reporting on procurement, and also new laws relating to Australia's national security.

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

#### Facebook is investigated by Australia's privacy watchdog amid claims the social media giant 'breached privacy laws and enabled credit card fraud'

Facebook is under scrutiny as Australia's privacy commissioner probes the multi-billion dollar company for allegedly breaching privacy laws and enabling online financial fraud. The Mark Zuckerberg-led social media giant is being investigated over potentially obstructing the Australian Privacy Principles. <https://www.smh.com.au/business/companies/facebook-tries-to-move-on-but-cambridge-analytica-won-t-go-away-20180704-p4zpic.html>

#### PS procurement bought into new slavery laws

Procurement officers across the Australian Public Service will soon be required to report any goods and services purchased for the Commonwealth that might involve modern slavery anywhere in the production cycle. <https://psnews.com.au/2018/07/05/ps-procurement-bought-into-new-slavery-laws/>

#### AHRC: Modern slavery 'hidden in plain sight'

The Federal Government's proposed Modern Slavery Bill 2018 would require mandatory annual reporting by large businesses and organisations on the risks of modern slavery in their supply chains and operations. The Bill would also require the Federal Government to publish an annual statement covering possible modern slavery risks in Commonwealth procurement. <https://www.humanrights.gov.au/news/stories/modern-slavery-hidden-plain-sight>

#### New Modern Slavery Bill lacks teeth

Stronger oversight and compliance measures are needed to ensure the Government's new modern slavery legislation is effective in combating forced labour, said the Human Rights Law Centre recently. <https://www.hrlc.org.au/news/2018/6/28/new-modern-slavery-bill-lacks-teeth>

#### National Redress Scheme starts in NSW

NSW survivors of institutional child sexual abuse will be among the first in Australia to be able to seek redress under a new national scheme that began recently. The National Redress Scheme will be administered by the Commonwealth Department of Social Services and will run for 10 years. <https://www.lawcouncil.asn.au/media/media-releases/law-council-supports-calls-for-voice-to-parliament>

#### IPC publishes the Agency Information Guide Review Report

On 29 June 2018, Elizabeth Tydd (NSW Information Commissioner and Open Data Advocate) published the Agency Information Guide Review Report of the ten principal departments and the IPC, with the results demonstrating significant improvements in compliance levels by NSW principal departments. <http://www.ipc.nsw.gov.au/news-media/news/ipc-publishes-agency-information-guide-review-report>

#### Justice Project nears completion

The Justice Project team has been finalising a large number of recommendations, group-by-group priorities, overarching themes and chapters which will form the final Justice Project Report. Once complete, the Justice Project will be one of the most comprehensive and national reviews into the state of access to justice in Australia for people experiencing disadvantage. <https://www.lawcouncil.asn.au/media/news/justice-project-nears-completion>

#### National Security Bills pass

The Australian Government has passed both the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018 and Foreign Influence Transparency

Scheme Bill 2018. Both Bills underwent a series of substantial amendments, which in the Law Council's view were necessary and vastly improve on earlier draft versions. <https://www.lawcouncil.asn.au/media/news/national-security-bills-pass>

### **Australia's national security greatly enhanced with new laws**

Attorney-General, Christian Porter, said that Australia's national security has been greatly enhanced with the successful passage of two major bills. "The Espionage and Foreign Interference Bill and the Foreign Influence Transparency Scheme Bill are strong new laws against those who seek to undermine our national security and our democratic institutions and processes. <https://www.attorneygeneral.gov.au/Media/Pages/Australias-national-security-greatly-enhanced-with-new-laws.aspx>

### **Parliamentary Committee Report on Foreign Influence Transparency Scheme**

Attorney-General, Christian Porter, welcomed the release of the Parliamentary Joint Committee on Intelligence and Security's (PJCI's) report on the Government's Foreign Influence Transparency Scheme Bill 2017. <https://www.attorneygeneral.gov.au/Media/Pages/Parliamentary-committee-report-on-foreign-influence-transparency-scheme.aspx>

### **PUBLISHED - ARTICLES, PAPERS, REPORTS**

#### **[Consumer Safeguards Review Part A – Redress and complaints handling: consultation paper](#)**

Department of Communications and the Arts (Australia): 05 July 2018.

This consultation paper sets out the problems and complexities that consumers face when navigating current regulatory and institutional arrangements and proposes reforms to address these problems.

#### **[Digital delivery of government services](#)**

Senate Finance and Public Administration References Committee; Parliament of Australia: 27 June 2018.

Digital transformation represents one of the best opportunities to deliver more to those who pay for government, those who work for government, and those who government works for.

#### **[Review of the operation of Schedule 5 to the Broadcasting Services Act 1992](#)**

Department of Communications, Information Technology and the Arts (Australia): 26 June 2018.

This is the report of the Review of Schedule 5 to the Broadcasting Services Act 1992 (the Act), conducted by the Department of Communications, Information Technology and the Arts (the Department). Schedule 5 of the Act establishes the Online Content Co-regulatory Scheme (the Scheme), which commenced on 1 January 2000.

#### **[Reviews of the Enhancing Online Safety Act 2015 and the Online Content Scheme - discussion paper](#)**

Department of Communications and the Arts (Australia): 26 June 2018.

This discussion paper is the starting point of two reviews inviting stakeholders and interested parties to provide their

views about the Online Safety Act and the Online Content Scheme in Schedules 5 and 7 to the BSA, which regulates the internet industry and content services industry, in relation to prohibited and potentially prohibited content.

### **CASES**

#### **['PD' and Australian Skills Quality Authority \(Freedom of information\) \[2018\] AICmr 57](#)**

Freedom of Information – Whether disclosure would disclose the existence or identity of a confidential source of information – Whether documents contain deliberative matter prepared for a deliberative purpose – Whether disclosure would unreasonably affect an organisation in respect of its lawful business affairs – Whether contrary to the public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 37(1)(b), 47C and 47G.

#### **[Richard Rudd and Civil Aviation Safety Authority \(Freedom of information\) \[2018\] AICmr 56](#)**

Freedom of Information – Whether disclosure would have a substantial adverse effect on the management or assessment of personnel – Whether disclosure of personal information is unreasonable – Whether contrary to public interest to release conditionally exempt documents – (CTH) Freedom of Information Act 1982 ss 11A(5), 47E(c) and 47F.

#### **[Peter Zonneville v Department of Education and Communities \[2018\] NSWCATAD 139](#)**

ADMINISTRATIVE LAW – judicial review – appeal on question of law – procedural fairness – protective orders – where Tribunal indicated contentment with proposed orders but then did not make all proposed orders – where procedural fairness was denied – whether certain orders may only be made as a package – statutory interpretation – individual orders may be made to the exclusion of others.

#### **[Cairns v ANZ Banking Group Limited \[2018\] NSWCATAD 138](#)**

HUMAN RIGHTS - discrimination in provision of marketing services – both applicants of New Zealand nationality and origin – first respondent marketed second respondent's life insurance to first applicant - whether direct discrimination on grounds of race – whether indirect discrimination HUMAN RIGHTS - discrimination in provision of insurance services –second respondent issued life insurance policy to both applicants - exclusion clause enabled insurer to decline benefit unless insured held Australian citizenship or permanent residency visa - whether direct discrimination on grounds of race - whether indirect discrimination HUMAN RIGHTS - aiding and abetting – whether in marketing life insurance to the first applicant the first respondent aided or abetted the second respondent to discriminate directly or indirectly against him.

#### **[Park v Transport for NSW \(No 2\) \[2018\] NSWCATAD 134](#)**

GIPA Act – Government information – access – confidential information – cabinet material – position Minister was taking – whether conclusive presumption of overriding public interest against disclosure - Cabinet information – special procedure for dealing with Cabinet information.

## PRACTICE AND PROCEDURE

### [Consultations for Australia's second Open Government National Action Plan 2018-20](#)

Final consultations closed on 8 July. See the Phase Two: Draft Plan.

In this second phase, from 25 June-8 July, a draft Plan was released for comment.

### [OAIC: Commencement of the Australian Government Agencies Privacy Code](#)

The Australian Government Agencies Privacy Code (the Code) came into effect on 1 July 2018, requiring Australian Government Agencies to move to a best practice approach to privacy governance across the APS, with the ongoing support of the Office of the Australian Information Commissioner (OAIC).

### [Acting Australian Information Commissioner and acting Privacy Commissioner approves variations to the Privacy \(Credit Reporting\) Code 2014](#)

On 29 May 2018, the acting Australian Information Commissioner and acting Privacy Commissioner approved a variation of the registered Privacy (Credit Reporting) Code 2014 Version 1.2 (CR Code Version 1.2). The variations commenced on 1 July 2018.

## Human rights and technology

New challenges to our basic rights and freedoms in an age of big data, artificial intelligence and social media, will be explored by leaders in industry, government and academia at a landmark event in Sydney. The Australian Human Rights Commission's Human Rights and Technology conference will take place on 24 July 2018, at the Four Seasons Hotel in Sydney. More information about the project and the conference is available at [tech.humanrights.gov.au](http://tech.humanrights.gov.au).

## High Court of Australia

High Court of Australia Bulletin [2018] HCAB 05 (27 June 2018) ([PDF](#)).

## AAT Bulletins 2018

[Issue No. 24/2018, 25 June 2018](#)

[Issue No. 25/2018, 2 July 2018](#)

## NSW

### IPC Newsletter July 2018

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. Review the latest edition here [July 2018](#).

### IPC: Agency Information Guide Review Report

The [Agency Information Guide Review Report](#) of the ten principal departments and the IPC, with the results demonstrating significant improvements in compliance levels by NSW principal departments, was released on 29 June 2018.

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

Tables summarising information about briefs that are with the DPP, and prosecution outcomes. Last updated 20 June 2018.

## COAT NSW Annual Conference

The 2018 Council of Australasian Tribunals (COAT) [NSW Annual Conference](#) will be held at the Pullman Sydney Hyde Park on 7 September, 2018. To view the full conference program and to register, please visit the official Conference website at [www.coatnswconference.com.au](http://www.coatnswconference.com.au). Early Bird Registration closed on Friday, 13 July, 2018.

## LEGISLATION

### Commonwealth

#### Acts

##### [Copyright Amendment \(Service Providers\) Act 2018](#)

Act No. 71 of 2018 – 04 July 2018.

##### [National Security Legislation Amendment \(Espionage and Foreign Interference\) Act](#)

Act No. 67 of 2018 - 03 July 2018.

#### Bills

##### [Modern Slavery Bill 2018](#)

House of Representatives Second reading moved 28 June 2018.

The Modern Slavery Bill 2018 will establish a Modern Slavery Reporting Requirement. This will require certain large businesses and other entities in Australia to make annual public reports (Modern Slavery Statements) on their actions to address modern slavery risks in their operations and supply chains.

##### [Foreign Influence Transparency Scheme Bill 2018](#)

Senate Finally passed both Houses 28 June 2018 Assent Act no: 63 Year: 2018 29 June 2018 - Introduced with the Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017, the bill establishes the Foreign Influence Transparency Scheme to: require registration by certain persons undertaking certain activities on behalf of a foreign principal; require registrants to disclose information about the nature of their relationship with the foreign principal and activities undertaken pursuant to that relationship; place additional disclosure requirements on registrants during elections and other voting periods; establish a register of scheme information and provide for certain information to be made publicly available; provide the secretary with powers to obtain information and documents; and establish various penalties for non-compliance with the scheme.

##### [National Security Legislation Amendment \(Espionage and Foreign Interference\) Bill 2017](#)

Senate Finally passed both Houses 28 June 2018 Assent Act no: 67 Year: 2018 29 June 2018.

Amends: the Criminal Code Act 1995 to: amend existing, and introduce new, espionage offences relating to a broad range of dealings with information, including solicitation and preparation and planning offences; introduce new offences relating to foreign interference with Australia's political, governmental or democratic processes; replace

the existing sabotage offence with new sabotage offences relating to conduct causing damage to a broad range of critical infrastructure that could prejudice Australia's national security; introduce a new offence relating to theft of trade secrets on behalf of a foreign government; amend existing, and introduce new, offences relating to treason and other threats to national security, such as interference with Australian democratic or political rights by conduct involving the use of force, violence or intimidation; introduce a new aggravated offence where a person provides false or misleading information relating to an application for, or maintenance of, an Australian Government security clearance; eight Acts to make consequential amendments; the Crimes Act 1914 and Criminal Code Act 1995 to replace certain existing, and introduce new, offences relating to secrecy of information; 20 Acts to make consequential amendments; the Telecommunications (Interception and Access) Act 1979 to amend the definition of a 'serious offence' to include the offences provided for by the bill; and the proposed Foreign Influence Transparency Scheme Act 2017 to amend the definitions of 'electoral donations threshold', 'general political lobbying' and 'political or governmental influence'.

## Regulation

### [Privacy \(Credit Reporting\) Code 2014 \(Version 2\)](#)

28/06/2018 - This instrument repeals and replaces the Privacy (Credit Reporting) Code 2014 (Version 1.2) to clarify obligations under the code, reflect current industry practice and ensure consistency with the provisions in the Privacy Act 1988.

## NSW

### Proclamations commencing Acts

[Coal Industry Amendment Act 2018 No 19](#) (2018-362) — published LW 29 June 2018.

[Companion Animals and Other Legislation Amendment Act 2018 No 27](#) (2018-301) — published LW 29 June 2018.

[Electoral Act 2017 No 66](#) (2018-302) — published LW 29 June 2018.

[Electoral Funding Act 2018 No 20](#) (2018-365) — published LW 29 June 2018.

[Fisheries Management Amendment Act 2015 No 59](#) (2018-303) — published LW 29 June 2018.

[Greyhound Racing Act 2017 No 13](#) (2018-304) — published LW 29 June 2018.

[Justice Legislation Amendment Act \(No 2\) 2017 No 44](#) (2018-305) — published LW 29 June 2018.

[Liquor and Gaming Legislation Amendment Act 2018 No 7](#) (2018-306) — published LW 29 June 2018.

[Local Land Services Amendment Act 2017 No 48](#) (2018-307) — published LW 29 June 2018.

[Saint John's College Act 2018](#) (2018-308) — published LW 29 June 2018.

## Regulations and other miscellaneous instruments

[Civil and Administrative Tribunal Amendment \(Fees\) Regulation 2018](#) (2018-312) — published LW 29 June 2018.

[Civil Procedure Amendment \(Fees\) Regulation 2018](#) (2018-313) — published LW 29 June 2018.

[Criminal Procedure Amendment \(Fees\) Regulation 2018](#) (2018-315) — published LW 29 June 2018.

[Criminal Procedure Amendment \(Intervention Programs\) Regulation 2018](#) (2018-316) — published LW 29 June 2018.

[Electoral Funding Regulation 2018](#) (2018-366) — published LW 29 June 2018.

[Electoral Regulation 2018](#) (2018-320) — published LW 29 June 2018.

[Lobbying of Government Officials \(Lobbyists Code of Conduct\) Amendment Regulation 2018](#) (2018-367) — published LW 29 June 2018.

[Photo Card Amendment \(Fees and Penalty Notice Offences\) Regulation 2018](#) (2018-329) — published LW 29 June 2018.

## Bills assented to

Modern Slavery Act 2018 No 30 — Assented to 27 June 2018.

Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018 No 32 — Assented to 27 June 2018.

Criminal Legislation Amendment (Child Sexual Abuse) Act 2018 No 33 — Assented to 27 June 2018.

Victims Rights and Support Amendment (Statutory Review) Act 2018 No 34 — Assented to 27 June 2018.

For the full text of Bills, and details on the passage of Bills, see [Bills](#).



## 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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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