



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to Edition 47 of our NSW Public Sector Newsletter. This issue looks at the new My Health Record system and its opt-out process.

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 could face an Australian class action, and an astrophysicist is leading the charge

The man leading a legal challenge against Facebook in Australia says he hopes the case will encourage people to be more careful with what they share on social media networks. <http://www.abc.net.au/radionational/programs/lawreport/2018-07-17/9989290>

Privacy Commissioner to release delayed data breach report but My Health Record adopts a different definition

As the My Health Record fallout continues, the Federal Government's delayed quarterly data breach notification report will be released soon, with the number of reported breaches in Australian healthcare expected to have skyrocketed. <https://www.healthcareit.com.au/article/privacy-commissioner-release-delayed-data-breach-report-next-week-my-health-record-adopts>

National Redress Scheme

The National Redress Scheme started on 1 July 2018 and will run for 10 years. The NSW Government has joined the Scheme. This means people who were abused in the care of NSW Government institutions can apply to the Scheme for redress. <https://www.justice.nsw.gov.au/Pages/media-news/news/2018/National-Redress-Scheme-.aspx>

New service helps victims of sexual assault

Sexual assault victims can access free legal help to protect their private counselling sessions from becoming public in court proceedings, after Attorney-General and Minister for Justice Yvette D'Ath officially launched

"Counselling Notes Protect". <http://statements.qld.gov.au/Statement/2018/7/18/new-service-helps-victims-of-sexual-assault>

Move to combat Modern Slavery

The Law Council has been supportive of the establishment of a Modern Slavery Act in Australia, particularly the inclusion of reporting requirements. The proposed Modern Slavery Bill contains provisions for supply chain reporting that encourages certain entities, with an annual consolidated revenue of more than \$100 million, to report on modern slavery risks in their supply chains. <https://www.lawcouncil.asn.au/media/news/move-to-combat-modern-slavery>

AHRC: Submissions to the National Inquiry into sexual harassment in Australian workplaces are now open

The National Inquiry, led by the Australian Sex Discrimination Commissioner Kate Jenkins, is seeking submissions from individuals and organisations across the country about their experiences relating to workplace sexual harassment. <https://www.humanrights.gov.au/news/media-releases/submissions-national-inquiry-sexual-harassment-australian-workplaces-open-today>

More than \$2.5 Million to help locals fight crime in NSW

Another round of the \$10 million Community Safety Fund is now open, giving local businesses and organisations an opportunity to put forward their crime-fighting ideas to help make their communities a safer place to live. <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/More-than-2-5-Million-to-help-locals-fight-crime.aspx>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[The Implementation and Performance of the Cashless Debit Card Trial](#)

ANAO: 17 July 2018.

The objective of the audit was to assess the Department of Social Services' (Social Services) implementation and evaluation of the Cashless Debit Card trial.

[Australian Broadcasting Corporation Amendment \(Fair and Balanced\) Bill 2017](#)

Don Arthur; Parliamentary Library (Australia: 11 July 2018).

This Bill would amend the Act to insert the words 'fair' and 'balanced' into paragraph 8(1)(c). The amended Act would require the Board 'to ensure that the gathering and presentation by the Corporation of news and information is fair, balanced, accurate and impartial according to the recognized standards of objective journalism.'

[OAIC Net 06 July 2018](#)

Australian Government Agencies Privacy Code commences; Variation to the Privacy (Credit Reporting) Code 2014 commences; Consultation on Public Interest Determination – Australian Honours System; Consultation on Australia's Open Government National Action Plan 2018-2020; Consultation on New Australian Government Data Sharing and Release Legislation.

CASES

[Christie v Australian Communications And Media Authority \[2018\] FCCA 1796](#)

ADMINISTRATIVE LAW – Radio communications licence transferred to applicant and co-licencee – dispute between co-licencees – respondent authority required to approve form on which application for transfer of licence is made – applicant did not sign, consent to or know of application or transfer – applicant seeks to renew licence and is informed of transfer – applicant objected to transfer – respondent authority gave reasons – licence re-transferred – applicant objected – respondent authority gave reasons for second transfer – applicant issues proceeding seeking judicial review of decision relating to second transfer of licence – application for extension of time in which to seek judicial review of decision relating to first transfer of licence.

STATUTORY INTERPRETATION – Licensee defined by applicable legislation to mean the person specified in the licence – applicant and co-licencee specified in licence – only co-licencee signed transfer – respondent authorised to transfer licence where application for transfer signed by a licensee – whether signature of both co-licencees required for valid application – whether singular includes plural – whether application for transfer signed only by co-licencee was valid – extension of time granted.

Mr Christie's fundamental complaint is that the transfer of the Licence was affected by Mr Loughnan without his knowledge or consent.

[Turnbull v Strange \[2018\] NSWCA 157](#)

CIVIL PROCEDURE – subpoenas – application to set aside – whether subpoena requiring public sector agency to disclose personal information should be set aside – Privacy and Personal Information Protection Act 1998 (NSW), ss 18, 23(6) HUMAN RIGHTS – legislation – Privacy and Personal Information Protection Act 1998 (NSW) – meaning of "personal information" – whether recorded conversations "information... about an individual" HUMAN RIGHTS – legislation – Privacy and Personal Information Protection Act 1998 (NSW) – whether subpoena should be set aside on basis that

it required disclosure of personal information by public sector agency WORDS AND PHRASES – "information or an opinion... about an individual" – Privacy and Personal Information Protection Act 1998 (NSW), s 4.

[Champion Homes Sales Pty Ltd v Commissioner for Fair Trading \[2018\] NSWCATOD](#)

ADMINISTRATIVE LAW – judicial review – State Insurance Regulatory Authority – appeal against decision of proper officer of Authority refusing referral of medical assessment to review panel – where primary medical assessment certificate issued for nil whole person impairment following motor accident – where assessor did not apply methodology in MAA Permanent Impairment Guidelines – whether reasonable cause to suspect that medical assessment "incorrect in a material respect" – Motor Accidents Compensation Act 1999 (NSW), s 63 – whether decision of proper officer unreasonable – whether lack of "evident and intelligible justification" – summons dismissed.

PRACTICE AND PROCEDURE

[Reminder: Australian Digital Health Agency three month "opt-out period" for My Health Record](#)

As [announced](#) by the Australian Digital Health Agency, every Australian will be offered a My Health Record unless they choose not to have one during the three-month opt-out period that will run from 16 July to 15 October 2018. A national communications strategy will be implemented to explain the opt-out process. During the opt-out period individuals who do not want a record will be able to opt-out by visiting the [My Health Record website](#).

[OAIC: My Health Record opt-out period has commenced](#)

Until 15 October 2018, you have the choice to advise the Australian Digital Health Agency (ADHA) if you do not want a My Health Record to be automatically created for you.

[Reminder: Data Sharing and Release](#)

As part of its response to the Productivity Commission Inquiry into Data availability, the Australian Government is developing legislation to facilitate the sharing and release of Government data. Comment is sought on the questions raised in the Issues Paper, to inform the development of this legislation. Due 1 August 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 took 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](#).

ALRC Discussion Paper: Class Action Proceedings and Third-Party Litigation Funders (DP 85)

The ALRC invites submissions in response to the proposals, questions and analysis in the Discussion Paper, which is

available on the ALRC website: www.alrc.gov.au/inquiries/class-action-funding

Submissions were due to the ALRC by 30 July, 2018.

NSW

[Review of the Crime Commission Act 2012](#)

The Crime Commission Act 2012 is being reviewed to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Submissions close 20 August 2018.

Strengthening child sexual abuse laws in NSW

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.

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

See the latest issue here [July 2018](#).

LEGISLATION

Commonwealth

[Interactive Gambling Amendment \(Lottery Betting\) Bill 2018](#)

Amends the Interactive Gambling Act 2001 to prohibit betting on the outcome, or a contingency that may or may not happen in the course of the conduct, of Australian and overseas lottery draws (including a keno draw).

Assent Act no: 73 Year: 2018 09 July 2018.

NSW

Regulations and other miscellaneous instruments

[Commons Management Regulation 2018](#) (2018-378) — published LW 13 July 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