



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

Welcome to this fortnight's edition of our NSW Public Sector Newsletter. This edition covers ICAC's released guidelines to help NSW public sector agencies involved in direct negotiations with external parties to manage corruption risks, and much more.

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

High Court case to defend laws that protect safe access to abortion clinics

Laws that protect the dignity, safety and privacy of women seeking reproductive healthcare should be upheld, the Human Rights Law Centre has argued in submissions accepted recently by the High Court. <https://www.hrlc.org.au/news/2018/8/31/high-court-case-to-defend-laws-that-protect-safe-access-to-abortion-clinics>

Mark Latham's 'extraordinary' defence in Osman Faruqi defamation case struck out

Mark Latham's defence against a defamation action brought by ABC online editor Osman Faruqi has been struck out in its entirety by a federal court judge, who labelled the 76-page document "extraordinary". <https://www.theguardian.com/australia-news/2018/aug/30/mark-lathams-extraordinary-defence-in-osman-faruqi-defamation-case-struck-out>

Land and Environment Court says Colo property illegally cleared by fringe Islamic group

Two men who claimed their Islamic-influenced group was not subject to Australian law because it was a "basic religious charity" have been found to have illegally cleared a rural property north-west of Sydney

by the NSW Land and Environment court. <http://www.abc.net.au/news/2018-08-27/colo-property-illegally-cleared-by-diwan-al-dawla/10169746>

Law Council launches landmark Justice Project Final report

The Law Council has officially launched the [Justice Project's Final Report](#) with a call for the urgent implementation of Justice Impact Tests among the 59 recommendations. <https://www.lawcouncil.asn.au/media/news/law-council-launches-landmark-justice-project-final-report>

Push for UK-style 'justice impact test' to improve policy-making

Law and order policies that place the courts under strain and other proposals affecting the justice system would be subjected to a UK-style "justice impact test" before they could be implemented by Australian governments, under a plan backed by former High Court Chief Justice Robert French. <https://www.smh.com.au/national/push-for-uk-style-justice-impact-test-to-improve-policy-making-20180822-p4zz0k.html>

Legislation to reform Federal Courts introduced into Parliament

The Attorney-General said new legislation would bring together the Family Court of Australia and the Federal Circuit Court of Australia into one structure to be known as the Federal Circuit and Family Court of Australia (FCFC), which will operate from 1 January 2019. <https://www.attorneygeneral.gov.au/Media/Pages/Legislation-to-reform-federal-courts-introduced-into-parliament.aspx>

Lax security culture in hospitals could affect My Health Record privacy, insiders fear

A national digital health records database, the program promises to provide clinical benefits by making it easier for patients to share more health data with more medical practitioners than ever before. Now insiders say

My Health Record is also vulnerable to privacy breaches due to a tradition of shared logins and open computers within some healthcare organisations. <http://www.abc.net.au/news/health/2018-08-21/lax-hospital-security-culture-could-undermine-my-health-record/10128274>

CCC welcomes initial results from the special Global Corruption Barometer survey (2018)

The Crime and Corruption Commission (CCC) welcomes the first release of data from the special Global Corruption Barometer survey (2018) released by Griffith University and Transparency International Australia. <http://www.ccc.qld.gov.au/news-and-media/ccc-media-releases/ccc-welcomes-initial-results-from-the-special-global-corruption-barometer-survey-2018-20-august-2018>

Faith in Australian governments falls amid corruption concerns

Trust and confidence in all levels of Australian government is continuing to slide as calls intensify for the establishment of a national anti-corruption agency. <http://www.abc.net.au/news/2018-08-20/faith-in-australian-governments-falls-amid-corruption-concerns/10138928>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[Operational Efficiency of the Australian Commission for Law Enforcement Integrity](#)

ANAO: 28 August 2018.

The objective of this audit was to examine the efficiency of the Australian Commission for Law Enforcement Integrity (ACLEI) in detecting, investigating and preventing corrupt conduct.

[Rising inequality? A stocktake of the evidence: Commission research paper](#)

This research paper was released on 28 August 2018 and its purpose is to contribute to an informed discussion in Australia by bringing together and taking stock of the latest and most complete evidence measuring the prevalence of, and trends in, inequality, economic mobility and disadvantage across Australian society.

[The forgotten victims: prisoner experience of victimisation and engagement with the criminal justice system - key findings and future directions](#)

Australia's National Research Organisation for Women's Safety: 22 August 2018.

This research focuses on women in prison who have concerns about their personal safety post-release. The aim of this research is to understand the factors that influence these women to seek help, and how this might inform service responses.

[Cabinet Handbook - 11th edition](#)

Department of the Prime Minister and Cabinet (Australia): 21 August 2018.

The Cabinet Handbook is designed to ensure that the Federal Cabinet observes conventions and principles and fulfils its central purpose of informed decision-making.

CASES

[Carlton v Roads and Maritime Services \[2018\] NSWCATOD 140](#)

ADMINISTRATIVE LAW - merits review – bus service operator – accreditation – safety critical components – public passenger vehicle maintenance plan - manufacturer standards – maintenance and repair.

[Mawbey v Commissioner for Fair Trading \[2018\] NSWCATOD 141](#)

ADMINISTRATIVE REVIEW – Home Building – disciplinary action – whether electrician effected reverse polarity – whether guilty of improper conduct – whether fit and proper person – penalty to be imposed.

[Jones v Commissioner for Fair Trading, Department of Finance, Services and Innovation \[2018\] NSWCATOD 142](#)

ADMINISTRATIVE LAW – Administrative Review - Home Building Act 1989 – application for contractor licence endorsed to be equivalent to a supervisor certificate – application of Instrument issued by the respondent Commissioner – whether the Tribunal is satisfied the applicant has the necessary breadth of experience – need for third party verification of experience.

[Transport for NSW v Waters \[2018\] NSWCATAP 200](#)

ADMINISTRATIVE LAW – access to government information – where appellant alleged that respondent had collected his travel data via a Gold Opal Card for an unlawful purpose – whether Tribunal had erred in failing to respond to a substantial argument articulated by the respondent – whether the Tribunal had erred in asking itself the wrong question.

[Kristoffersen v Department of Industry \[2018\] NSWCATAD 190](#)

ADMINISTRATIVE LAW – whether Tribunal has jurisdiction to review decision that applicant cannot purchase roads that do not adjoin his property.

[Magerovski v Commissioner for Fair Trading, Department of Finance, Services and Innovation; Service Today NSW v Commissioner for Fair Trading, Department of Finance, Services and Innovation \[2018\] NSWCATAD 192](#)

ADMINISTRATIVE REVIEW – Home Building – Disciplinary action – improper conduct – knowledge - fit and proper person – grounds for refusal – penalty.

[Golden International Trading Pty Ltd v Independent Pricing and Regulatory Tribunal \[2018\] NSWCATAD 189](#)

ADMINISTRATIVE LAW – merits review – failure to conduct audit as required – cancellation of accreditation – appropriate sanction.

[DNM v NSW Ombudsman \[2018\] NSWCATAD 186](#)

Administrative Law – administrative review - Government Information (Public Access) – whether information relating to the monitoring and reporting function of the Ombudsman under s 6B(1)(e) of the Public Interest Disclosures Act is excluded information under the Government Information (Public Access) Act 2009 – consequence of access application seeking excluded information – access application invalid.

[Mahony v Dental Council of NSW \[2018\] NSWCATOD 146](#)

STATUTORY INTERPRETATION – meaning of “Committee” in ss158, 158A of Health Practitioner Regulation National Law TRIBUNALS – whether a health practitioner can appeal to NCAT from a decision of an Assessment Committee.

[Tanyous v Secretary, Department of Education \[2018\] NSWCATAD 197](#)

ADMINISTRATIVE REVIEW – Education and Care Services National Law – Provider Approval – Fitness and propriety of individual to be involved in the provision of an education and care service - Where respondent decided to refuse to grant provider approval on basis of lack of fitness -- Knowledge relevant to fitness - Correct and preferable decision UNLAWFULLY OR IMPROPERLY OBTAINED EVIDENCE – Where respondent had a policy of requiring applicants for provider approval and relevant individuals to undergo an assessment prior to processing application – Where respondent decided that applicant was not a fit and proper person to be involved in the provision of an education and care service – Where decision was made on basis of assessment results showing lack of knowledge of National Law – Whether respondent’s requirement that individuals undergo an assessment is lawful – Whether evidence concerning assessment lawfully obtained - Exercise of discretion as to whether to exclude evidence COSTS – Where respondent late in filing and serving material - Whether special circumstances warranted an award of costs.

[Anderson v University of Sydney \[2018\] NSWCATAD 196](#)

ADMINISTRATIVE LAW – Government Information (Public Access) Act -- legal professional privilege -- sufficiency of evidence to establish factors against disclosure - weight to apply significantly to factors against disclosure – personal factors of application in favour of disclosure of information.

[Taylor v Office of Destination NSW \[2018\] NSWCATAD 195](#)

ADMINISTRATIVE LAW – Government Information (Public Access) Act 2009 – Access to information – refusal of access – correct application of public interest test – discharge of onus – confidential information - consultation – aggrieved persons – public interest considerations in favour of disclosure – public interest considerations against disclosure – weight - balancing exercise - correct and preferable decision.

PRACTICE AND PROCEDURE

High Court Bulletin

[High Court of Australia Bulletin \[2018\] HCAB 06.](#)

AAT Corporate Plan 2018-19

The AAT’s Corporate Plan 2018–19 is available on the [Corporate and Strategic Plan page](#) of the website.

AAT Bulletins 2018

[Issue No. 33/2018, 27 August 2018](#)

[Issue No. 32/2018, 20 August 2018](#)

Attorney-General Reviews

[Legal assistance review](#)

In 2018, separate and concurrent reviews will be undertaken of the [National Partnership Agreement on Legal Assistance Services 2015-2020](#) (NPA) and the [Indigenous Legal Assistance Program](#) (ILAP). The reviews will assess the effectiveness, efficiency and appropriateness of the NPA and the ILAP as mechanisms for achieving their respective objectives and outcomes within available resources, and identify best practice and opportunities for improvement. Submissions close on 28 September 2018.

[Law Council of Australia Update](#)

The Law Council produces a fortnightly newsletter which highlights the Law Council’s important activities and advocacy, along with any relevant media and events stakeholders would be interested in.

ABA Submissions

[ALRC Inquiry into Class Action Proceedings and Third-Party Litigation Funders](#) 24 August 2018.

NSW

[ICAC: guidelines to help public sector agencies manage corruption risks in direct negotiations](#)

The ICAC has released guidelines to help NSW public sector agencies involved in direct negotiations with external parties to manage corruption risks, but recommends they avoid the practice if possible due to the high level of those risks

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

Tables summarising information about briefs that are with the DPP, and prosecution outcomes. Last updated 23 August 2018.

[ICAC: Operation Dasha public inquiry](#)

The Operation Dasha public inquiry into allegations concerning the former Canterbury City Council will next sit for two weeks from Monday 8 October 2018.

[JUDCOM: Local Court Bench Book – Preliminaries](#)

Update 127, August 2018 - Specific penalties and orders. The penalties and commentary in all Acts and Regulations have been revised and updated.

New Court Appointments

22 August 2018 - [Justice Brereton to Join the Court of Appeal](#).

[NSW Justice: Task Force – Terms of Reference](#)

The Task Force is established with the objective of assessing the circumstances and CSNSW's subsequent investigation and management of a number of inappropriate relationships between CSNSW staff and offenders.

The confidential email address: TaskForce@justice.nsw.gov.au remains open until the end of September 2018.

[Register now for the 12th National Investigations Symposium](#)

Early bird registration is now open for the 12th National Investigations Symposium, to be held in Sydney over 14 & 15 November 2018.

LEGISLATION

COMMONWEALTH

Bills

[Office of National Intelligence Bill 2018](#)

28/08/2018 -The Office of National Intelligence Bill 2018 (the Bill) implements the recommendation of the 2017 Independent Intelligence Review (the Review), as endorsed by Government, to establish an Office of National Intelligence (ONI) as an independent statutory agency within the Prime Minister's portfolio reporting directly to the Prime Minister. The Review recommended that the role, functions and staff of the Office of National Assessments (ONA) be subsumed into ONI.

[Australian Multicultural Bill 2018](#)

24/08/2018 – The Bill establishes a federal multicultural commission, (to be named the Australian Multicultural Commission), which will provide advice to the Minister on issues pertinent to multicultural communities, acts as a single coordination point for integrated responses to community issues, undertakes wide ranging consultations with various bodies and develops and maintains relationships between community organisations.

[Federal Circuit and Family Court of Australia \(Consequential Amendments and Transitional Provisions\) Bill 2018](#)

24/08/2018 - The Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 (the Bill) makes consequential amendments and provides transitional provisions necessary to support the Federal Circuit and Family Court of Australia Bill 2018 (the FCFC Bill).

[Federal Circuit and Family Court of Australia Bill 2018](#)

23/08/2018 – The Federal Circuit and Family Court of Australia Bill 2018 (the Bill) would bring the Federal Circuit Court of Australia (the Federal Circuit Court) and the Family Court of Australia (the Family Court) together into an overarching, unified administrative structure to be known as the Federal Circuit and Family Court of Australia (FCFC).

[Freedom of Information Legislation Amendment \(Improving Access and Transparency\) Bill 2018](#)

22/08/2018 -The purpose of this Bill is to introduce measures that make government more transparent and accountable, and assist citizens and the media to access information under the law. The Bill amends the Archives Act 1983, the Australian Information Commissioner Act 2010, and the Freedom of Information Act 1982.

[My Health Records Amendment \(Strengthening Privacy\) Bill 2018](#)

House of Representatives Second reading moved 22 August 2018.

The My Health Records Amendment (Strengthening Privacy) Bill 2018 will amend the My Health Records Act 2012 (MHR Act) to strengthen the privacy framework of the My Health Record system.

Acts Compilation

[Crimes Legislation Amendment \(Powers, Offences and Other Measures\) Act 2018](#)

Act No. 75 of 2018 as made – An Act to amend legislation relating to the criminal law and law enforcement.

[Counter-Terrorism Legislation Amendment Act \(No. 1\) 2018](#)

Act No. 74 of 2018 as made - An Act to amend various Acts relating to counter-terrorism, including the Administrative Decisions (Judicial Review) Act 1977.

NSW

Proclamations commencing Acts

[Criminal Legislation Amendment \(Child Sexual Abuse\) Act 2018 No 33](#) (2018-490) – published LW 31 August 2018.

[Casino Control Amendment Act 2018 No 8](#) (2018-461) – published LW 24 August 2018.

Regulations and other miscellaneous instruments

[Electoral Funding Amendment \(By-Election Funding\) Regulation 2018](#) (2018-489) – published LW 29 August 2018.

[Casino Control Amendment Regulation 2018](#) (2018-465) – published LW 24 August 2018.

[Child Protection \(Offenders Prohibition Orders\) Regulation 2018](#) (2018-466) – published LW 24 August 2018.

[Liquor Regulation 2018](#) (2018-473) – published LW 24 August 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